

DRAFT: Not approved by management or counsel

To: John Sweeney
Cc Producer, Editor, BBC lawyer

Dear Mr Sweeney,

On the record - not for publication

Thank you for your email of 27th May 2015 with the areas you would like to discuss for your Panorama film.

It is worth saying from the outset that these questions do not appear to raise any new lines of inquiry beyond those about which we have already provided significant information to the BBC over some considerable time.

I take this opportunity to stress again that we have thoroughly investigated the cases of 150 sub-postmasters who filed complaints against the Post Office's Horizon IT system in 2013. These complaints, which arise from events which took place over a period between 2001 to [year], were put forward to a complaint and mediation scheme which we established and advertised precisely to try and resolve any outstanding individual concerns about the system. This followed a year-long independent inquiry.

While each case is, of course, different, the one common thread which links them all is the absence of any evidence of a systemic problem with the Horizon system capable of giving rise to the matters complained of.

One of the ironies of all this, is that Horizon, which is used by 78,000 people to perform six million transactions every day, has been an extremely reliable system. Introduced in 2001 and brought online in 2010, it has worked with no major problems for 14 years. The investigation of the cases where it is being claimed that Horizon has caused losses have found that, in fact, the majority of losses have been caused by human error.

There is simply no evidence that software or hardware problems or any kind of malicious 'remote tinkering' by external third parties have caused any of the losses in question. Were there to be any evidence of flaws, our major corporate customers (which include the major banks and government departments) would express considerable concerns given the enormous sums of money they entrust to us. They have not done so.

Moreover, and while in no way detracting from the very genuine upset felt by some of those with complaints which we are doing our level best to address fairly and sympathetically, 150 complaints can only be considered to be a relatively low number when set against the 500,000 people who have used the system since it was brought into service.

Of the cases investigated, xx have been closed. The Post Office is in the process of scheduling mediations in the majority of cases remaining in the scheme, with a view to resolving them fairly before bringing the scheme to a conclusion.

Despite an exhaustive investigation, review and mediation process that has lasted for more than three years, a very small number of sub-postmasters still feel they have been unfairly treated. We have gone to great lengths to address with their concerns.

Given the allegations that there may have been '*miscarriages of justice*', the Post Office has also had external lawyers review criminal cases. This has not produced any information to suggest that any of the convictions are unsafe. We are, of course, under a continuing duty of disclosure if any such information emerges; none has.

We note that you are currently investigating the examples of: Noel Thomas; Jo Hamilton; Jackie McDonald; Seema Misra; Scott Darlington; and Pam Stubbs. Please be advised that we do not consider it appropriate to discuss individual cases on camera.

You are incorrect when you say that cases '*are being appealed*'. To date, there have been no appeals against convictions.

What is happening is that the Criminal Cases Review Board is reviewing a number of cases. As you would expect, we are fully contributing to that review. We welcome the CCRB's involvement and hope that it can give people confidence in the exhaustive and ultimately fair nature of this process.

Let me now turn to the various *question areas* that you raise in your email.

The Post Office's prosecution policy

Did the post office follow the prosecutors' code, in particular the need for sufficient evidence before a charge is brought?

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

The Post Office had to satisfy two stages of the Code for Crown Prosecutors to start a prosecution.

Firstly, the evidential stage required us to be satisfied that there was sufficient evidence to provide a realistic prospect of conviction.

Secondly, the public interest stage required us to consider whether a prosecution is in the public interest.

Both of these criteria were met in each of the cases which were prosecuted.

In addition, the Post Office, as a prosecutor, had a duty to disclose fully and immediately all relevant information to the defendant and their legal team, whether it helps our case or hinders it.

Any decision by a defendant regarding their plea is made after he or she has had the opportunity to take private and confidential legal advice and consider, with lawyers, all the available evidence.

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.

The short answer to your question is, therefore, an unequivocal 'yes'.

Are the prosecution powers and investigative resources of the Post Office appropriate?

The Post Office has no special powers of investigation or prosecution. It has the same rights as any individual or organisation in England and Wales to do so. 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.

Interviews are compliant with The Police and Criminal Evidence Act 1984 (PACE).

The Post Office, like the Crown Prosecution Service, is bound by the Code for Crown Prosecutors.

Like the CPS, Post Office keeps cases under continuous review all the way up to and during any trial.

Both the Post Office and CPS prosecutions are scrutinised by the defence and the courts themselves.

It would therefore not be correct to suggest that the CPS would have acted differently from the Post Office as a prosecutor.

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

Investigators make every possible effort to try to determine the cause of financial losses.

Subpostmasters are not prosecuted for incurring losses in their branch.

They are not prosecuted for making mistakes.

Prosecution is only considered if there is very strong prima facie evidence that a criminal offence has been committed.

If false accounting has taken place it is, of course, difficult if not impossible to find the original cause of losses because false accounting deliberately and dishonestly hides them from the Post Office.

Have theft charges have been used to pressure subpostmasters to plead guilty to false accounting?

No.

The Post Office does not put pressure on defendants to plead guilty to criminal offences.

The Post Office has never brought charges for theft to encourage a 'guilty' plea to a charge of false accounting.

A defendant's decision to plead 'guilty' or 'not guilty' is made after the defendant has had the opportunity to 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.

Provision of information to independent investigators

Did you provide emails requested by Second Sight that related to Post Office staff based at Bracknell in 2008?

Second Sight was hired by the Post Office to provide independent reviews of each case in the mediation scheme.

It is wrong to suggest that information relevant to their reviews of cases has been withheld from Second Sight.

We provided Second Sight with all relevant material to allow them to do their job comprehensively – whether they have asked it or not - nothing has been overlooked.

We have been fully open, transparent and fair.

In 2013, Second Sight asked for access to the email accounts of a number of Post Office employees dating from 2008.

This was in response to an issue raised by Second Sight as part of its initial investigation, prior to the publication of its Report in July 2013. The allegation related to whether the Horizon test environment in the basement of Fujitsu's office in Bracknell could have been used to edit live branch data and so create errors in the Horizon system or change branch accounts. Transactions as recorded by Horizon cannot be edited or deleted by accessing the system remotely and, in any event, the test environment was not connected in any way to the live system.

The Post Office provided the email data it was able to retrieve. [DN: I am not clear this is 100% accurate – but happy to be told otherwise].

Post Office also provided Second Sight with a considerable amount of relevant documentation relating to the Bracknell office. This covered:

- systems access;
- building access; and
- security.

Finally, the Post Office provided Second Sight with a witness statement from a [senior/ key] member of staff who worked at the Fujitsu site at Bracknell at the time of the test.

This statement said that:

- the basement was a secure test environment;
- there was no connection to any live transaction data;
- live transaction data could not be accessed from the basement; and

- the basement was never used to access, change or manipulate live transaction data in branches.

Recently, Post Office further agreed to provide Second Sight with emails from key staff during August 2008; this being the month in which the key events which triggered for this line of enquiry were said to take place.

There has never been any evidence to support the theory that the Horizon test environment, entirely unconnected to the live system, could have generated errors or been used to change branch accounts.

Have you provided prosecution files to Second Sight at their request?

The Post Office has provided Second Sight with documents made available to the defence lawyers and the Courts. The provision of such documents to Second Sight was confirmed at one of the scheme's working group meetings in October 2014. The Post Office has abided by that. [DN: for lawyers but they will want to see references to privileged documents in here]

Did you provide disclosure of evidence about the Horizon system to expert witnesses for the defence in legal proceedings?

Yes. The Post Office takes its duty of disclosure extremely seriously. This is a continuing duty that we have kept firmly in mind during the re-investigation and review of cases put forward to the mediation scheme. No information has emerged to suggest that any conviction is unsafe. We cannot discuss individual cases, witnesses or evidence in those cases.

The operation of the Horizon computer system

Was the information available to the subpostmasters to determine whether losses for which they are liable have arisen?

Yes. Each branch has access to all the necessary information to balance the books. Thousands of subpostmasters do this at the end of every working day without difficulty.

At the end of each business day, every Subpostmaster is required to count and declare the amount of cash in the branch. If there is a discrepancy, they have access to all the necessary information to investigate the possible causes for the discrepancy.

Sometimes, the Post Office will send a Transaction Correction (TC) notice, notifying them that Horizon has detected a possible accounting error. In such a situation, a subpostmaster again has access to the information required to check the TC.

The TC is one of two ways in which the Post Office can help the subpostmaster correct errors in and/or update a branch's accounts. The other is known as a 'balancing transaction' (or

transaction acknowledgement). Both of these are visible to the subpostmaster, who also has a set of paper records which he or she can refer to.

These paper records are required to be kept by branches for up to 6 years.

So, for example, if a TC is sent to a branch claiming that the branch has under-recorded on Horizon the amount of cash dispensed from its ATM, the branch can verify or reject the TC by producing the paper receipt from the ATM that shows the amount of cash dispensed.

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

Not always. Obviously, there are some errors that cannot and could never be immediately detected by Horizon.

For example, where a member of staff accidentally hands £10 change to a customer rather than £5 or records a £100 cash deposit as a £1000 cash deposit. Only the Subpostmaster and their staff can monitor and prevent such errors.

In some cases, the precise errors that have caused losses cannot be identified some time after the events in question.

Obviously, every case is different. If there is not clear prima facie evidence that a criminal offence has been committed we will not and do not prosecute.

What was the amount of software and hardware problems discovered by Fujitsu?

The amount of software and hardware problems have been minimal.

Horizon is a massive IT system, used by 78,000 people working in Post Office branches to process six million transactions a day.

The system is constantly monitored and managed, with numerous checks and independent audits. Like all systems, it experiences issues from time to time but these have not been major. Where there have been issues, we have been absolutely up front about them and they have not caused detriment to postmasters.

Remote access to branch terminals

Is there the possibility of remote access to branch terminals without the knowledge of the subpostmaster?

No.

Horizon does not have functionality that allows Post Office or Fujitsu to edit or delete the transactions as recorded by branches. [DN: one of the things we need to discuss with CK]

Is there the possibility of fraud from someone remotely accessing the branch terminal?

No. [Depends how you define 'possibility']

The security of Horizon is constantly, independently audited and there is no evidence of this happening at all.

As well as Fujitsu and the Post Office themselves, Horizon is audited and accredited by:

- Ernst & Young – who produce an annual ISAE3402 service auditor report over the Horizon processing environment;
- Bureau Veritas – who perform an annual ISO27001 certification, the industry standard security accreditation; and
- Information Risk Management – who accredit Horizon to Payment Card Industry Data Security Standards, again on an annual basis.

At no time have any of these reviews raised the possibility of fraud from someone remotely accessing the branch terminal.

In addition, operational reviews with the National Federation of Subpostmasters (NFSP) have been in place for over 10 years. These have not raised this as an issue.

What is the account of Michael Rudkin and the response of the Post Office?

As mentioned, we do not consider it appropriate to discuss individual cases on camera. We will not comment on Mr Rudkin, other than to point out that this relates to the allegation, referred to earlier in this letter, that the Horizon test environment in the basement of Fujitsu's office in Bracknell could have been used to edit live branch data and so create errors in the Horizon system or alter branch accounts.

This was one of the matters reviewed by Second Sight. There has never been any evidence to support the theory that the Horizon test environment could have generated errors in the Horizon system or used to change branch accounts.

Indeed, we have clearly established that, since this facility is not connected to a live network, it would be impossible for this to have taken place.

[DN: you also have to ask yourself the question about why anyone in the PO WOULD do this, if it were possible]

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

Yes. We have outlined the background to the 'remote access issue' above.

The security of Horizon is constantly, independently audited and, most importantly, there is no evidence of remote access being a factor in any of the cases reviewed.

Disclosure of material that relates to prosecutions and convictions

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

. This is a continuing duty that we have kept firmly in mind during the re-investigation and review of cases put forward to the mediation scheme. No information has emerged to suggest that any conviction is unsafe.

The answer to the question is, therefore, unequivocally 'yes'.

Should the Post Office have disclosed the minutes of a meeting with Fujitsu in August 2010 which discussed a software bug with Horizon?

No.

This issue was not relevant to any of the cases. It relates to a 'Receipts / Payments' issue that affected a small number of branches that were the pilot branches for Horizon Online in 2010.

The issue was disclosed to Second Sight back in 2013 and was considered in Second Sight's Interim Report.

Treatment of subpostmasters

Were individual subpostmasters were routinely told that they were the only ones claiming to have problems with Horizon?

We have never sought to dismiss anyone's complaint by claiming that they were the "only one" raising these issues. As an IT system that has been working for more than 14 years, there are, naturally, many queries to our helpline. But the fact that a relatively small number of people have claimed to have serious issues has been well known for a long time. Indeed, that is why we set up a review.

Has the length of the mediation process has pushed some cases beyond the statute of limitations?

No.

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. The Scheme has not affected postmasters' legal rights, including the right to appeal.

Conclusion

I hope that this gives you a flavour of the extreme [DN: wrong word – extraordinary ?] lengths we have gone to – and continue to go to – to try and deal with all of the cases brought to us as thoroughly and fairly as possible.

I would also hope that you can acknowledge that the seriousness of your programme's subject matter is matched by the seriousness with which we have approached this issue over several years.

I know that the programme is currently due to be broadcast on 22 June but if there is any chance of this slipping, please let me know as soon as possible. In the meantime, I would be grateful if you could let me know whether this addresses all of the issues that you wish to raise with us. If there is anything else, please let us know. After that, we can get down to the issue of a recorded interview.

Yours sincerely,

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