

1) What have SS said to the minister re 'their views have been misrepresented'?

Following a story in the Sunday Telegraph which claimed Second Sight had written to ministers over concerns their findings have been misrepresented, a journalist from the Shropshire Star has made contact. The journalist claims to have spoken with Ron Warmington who is said to have confirmed to him Second Sight has concerns George Freeman's statement at the Adjournment debate that *"Second Sight produced two independent reports – one in 2013 and the other earlier this year – both of which found there was no evidence of systemic flaws in the system"* is not correct.

Mr Warmington is said to believe that the term "systemic" can only be used when referring to a constant fault, and that is why, he says, the report said there were no systemic faults. The journalist continued to describe how Mr Warmington felt their report clearly said there were circumstances where a combination of factors could lead to a fault in the system which could account for some of the discrepancies which have resulted in civil and criminal proceedings against sub-postmasters.

Mr Warmington has also previously expressed concern over Post Office's stance that Second Sights Part Two report lacks evidence. On 8 June he wrote:

On 8 Jun 2015, at 23:17, Ron Warmington - 2nd Sight { **GRO** } wrote:

Patrick: we shall expect Post Office to apply some self-restraint in its desire to dismiss as incorrect or inadequately evidenced any of the findings in our Briefing Report - Part Two. Absent any opportunity for Second Sight to reply (to Post Office's 'rebuttal' report and to anything said on air in the Panorama programme) we expect time, and the exposure of both Reports to public scrutiny, to expose any errors that we have made... and also to expose any that Post Office has made in dismissing our findings. We stand ready to admit to anything that we have got wrong, but we expect Post Office to do the same.

As you are probably aware, it was our conformance to the prior agreement to minimise - in our Briefing Reports - any identification of case-level data that reduced the amount of 'evidence' referred to in those Reports. It was consequently, in my view, most inappropriate that Post Office levelled at Second Sight the criticism that its Briefing Report - Part Two was as it were light on supportive evidence.

Regards. Ron.

2) SS clearly believe we should be paying compensation for something - what? Why are they actively supporting JFSA?

The information provided above details that Second Sight feel there are circumstances where a combination of factors could lead to a fault in the system which could account for some of the discrepancies which have resulted in civil and criminal proceedings against sub-postmasters. This claim is also included at Para 26.8 in the conclusion of their P2 report where it states *"we remain concerned that in some circumstances Horizon can be systemically flawed from a user's perspective and Post Office has not necessarily provided an appropriate level of support"*.

These points are either not supported by evidence or have been proved not to be the cause of losses in branches.

3) Why did they think we would be destroying data? Clearly we wouldn't; so what is so sensitive that they thought we might/ or wanted to be sure data was protected. (And if the data destruction point is just a red herring, then it comes back to 2)

This has been an unsubstantiated allegation made by James Arbuthnot and other MPs on a number of occasions. The trigger for it re-surfacing could be because upon delivery of their final Case Review Report, we requested that Second Sight:

- Delivers up to Post Office all Confidential Information in its original format, including all versions of the same information in any different formats;
- Permanently and securely destroy all copies of that Confidential Information retained by Second Sight; and
- Confirms in writing that it has complied fully with the demands made above.

This demand reflects standard practice for securing confidential information at the end of an engagement. Post Office would be keeping all the documents provided by Second Sight (and Second Sight would only be destroying duplicate documents) so no information would be lost by Second Sight complying with this demand.

Paragraph 4.10 of their Part 2 Report also states *"Until recently, Post Office did not appear to operate a 'litigation hold' process whereby documents that may later be needed to support a complaint or investigation are preserved – irrespective of the seven year retention period"*.

Our position is that although some cases are very old and fall outside the standard retention periods for keeping information, Post Office has gone to considerable lengths to search its records and provide as much evidence as possible. Thousands of pages of information have been identified, recovered and made available both to Applicants and Second Sight.

4) What is the latest situation re Andrew Bridgen - if he meets us with Michael Rudkin, what are the details of the Rudkin case? Should BNR and PV be briefed fully? (It might be difficult for AB to be better briefed?) Would we consider taking GT along to the meeting, or getting a statement from GT to use in the meeting?

In respect of the potential for a meeting with Andrew Bridgen, we have approached Mr Bridgen on three separate occasions, most recently following the meeting with BNR on 15 July. He declined each time.

Below is a synopsis for the Rudkin case (I have attached a copy of the summary of the Rudkin case which was pulled together by Patrick which provides more detail should you require it)

M051

Prior to the Applicants second suspension and subsequent termination of contract in 2010, he had been a Subpostmaster at the Branch in question for over 8 years. The Applicant was also involved in the activities of NFSP and as a result was frequently absent on business; leaving the Applicants wife (in her own words) "totally in charge" of the Branch.

In a letter to the Post Office in January 2009, the Applicant stated:

"I have thrust upon my wife the burden of trying to keep the business running and a home together. With the benefit of hindsight I may have neglected her, Furthermore little did I know that since the robbery of 2006 she has been suffering from depression and sleep deprivation which has culminated in Susan having a breakdown

all of which I was oblivious to until a member of POL audits pointed it out by which time the damage had been done".

A branch audit in 2008 revealed a shortage of £44,000. When questioned, the Applicant's wife admitted that she removed Post Office Cash and paid it into her Lloyds TSB Business Account to "pay for shop bills, wage bills and household bills".

Further, the Applicant's wife also admitted "the business as a whole and the staff, the overheads and the business have not been really doing what it should be doing".

The Applicant's wife was prosecuted and, having pled guilty, was subsequently convicted of theft.

The Applicant is now seeking compensation for £3.6 million. One of the Applications assertions is that Horizon could be accessed remotely by Post Office staff, without his knowledge or consent. Indeed, he believes there is a "Covert Operations Room" within the Fujitsu offices at Bracknell where he believes branches which hold too much cash are monitored.

5) Would like a brief report with an exec summary, before BNR meeting, covering cases we are still dealing with - eg., type of case, 3/4 line summary of what the issue was and when it took place, where the case sits in the process (CCRC, mediated, mediation request withdrawn, etc.), compensation requested - £ and why, etc. And to include update on the overall stats as previously.

Below is a table detailing the latest case numbers. 59 cases are with CEDR (i.e. still being dealt with), 56 of which do not have an agreed date for mediation set. The obstacle to mediations actually taking place remains the readiness of Applicants and their professional advisers to commit to dates.

As at 03/08/2015:

- 20 cases have been referred to the CCRC, of which 16 are from Scheme Applicants; and
- 45 DSARs have been made of which 42 are from Scheme Applicants

Applications to the Scheme		150
Applications rejected (ineligible)		4
Cases resolved prior to entry into the Scheme		10
Cases accepted into the Scheme		136
No. of cases (to date) not suitable for mediation: 49	Cases POL decided not to mediate ¹	43
	Cases not approved for mediation by the Working Group (Old Scheme process)	2
	Cases closed (e.g. missing Applicant / Applicant ill health)	4
	Residual	87
No. of cases (to date) suitable for mediation : 28 (note: 10 cases were also resolved, as indicated above, prior to entry into the Scheme)	Cases resolved during investigation	5
	Cases resolved prior to the mediation meeting	2
	Cases resolved at mediation	9
	Cases not resolved at mediation	11
	Cases mediated but not yet concluded	1
Residual		59

¹ Due to a previous court ruling

Cases with CEDR awaiting mediation to be scheduled or take place	59
Residual	0

6) Is it possible to identify any common issues, which may be at the base of a class action/ public enquiry request? Also ref 2) above

A number of the reported issues, which on first assessment appeared to demonstrate some general pattern or similarity do not actually reflect any systemic issue, but instead turn on the specific circumstances of the individual cases. There are therefore no matters that can be applied to Applicants generally but require a case by case assessment as has been done in the individual case reports of both Post Office and Second Sight.

7) What is our explanation as to why we refused to listen to SS, having employed them as our independent experts? To counter 'it's because we didn't like/agree with their conclusions/opinions'.

Although Second Sight's initial investigation found no evidence of system-wide issues with Horizon and its associated processes, it did point to areas where the Post Office could have done more to support Postmasters, for instance in the support they received. In response, the Post Office set up a Branch Support Programme which led to the introduction of a number of important new measures. I have attached a paper on the new measures brought in as a result of the Branch Support Programme.

Following publication of Second Sight's conclusions in 2013, the Post Office also set up a Complaint Review and Mediation Scheme to examine individual cases and, where appropriate, provide a forum to assist their resolution through mediation. 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.

However, many cases are based on allegations which, following investigation, are not supported by the evidence.

8) Would any compensation make this go away? (For the record I'm not suggesting this! Nor do I think the JFSA would entertain it. But want to be prepared if we are asked the question.)

Where quantified, claims are in excess on £65m.

As above where the facts indicate genuine grievances, those issues are being discussed with Applicants and a number of complaints have been resolved.

However, many cases are based on allegations which, following investigation, are not supported by the evidence.

This was also an option we assessed prior to 10 March 2015. The option, though dismissed at the time is summarised below:

"Payout or pay-to-litigate – call an end to the Scheme either by trying to offer a sufficiently attractive (likely to be in multiples of £10k) amount for Applicants to waive all and any claims they may have against Post Office or undertake to pay a sum to each Applicant for professional fees in bringing a claim against us (at least £5k), trusting the outcome to the Courts. This option has a certain appeal in terms that it, in a sense, draws a clear line under the Scheme and has the potential to reduce the number of litigants against Post Office. However, the signal it sends to the rest of the Network (that shouting loud enough 'pays') is damaging.

Moreover, it could prove difficult to prevent Applicants from pooling their money, aggregating it to provide Edwin Coe LLP with a substantial fighting fund of, say, £500,000 to bring litigation against the Post Office. Even in circumstances where Post Office was ultimately successful in any such litigation, external legal advice is that it could cost the business in excess of £2million to defend and be extremely protracted (think years, rather than months)."

9) What might the 3/4 law firms advising groups of SPMRs have found that convinces them a class action might be possible? Also ref 2 above

Though I think the answer here is more about why no law firm has actually carried through the threat of a class action, I think this is a question for Rod / legal?

10) Is the 'unfair contract terms' view still around? I.e., institution vs individual. I seem to remember that it linked to the issue that we cannot prove a negative - i.e., we don't know where the money went: overly onerous/unfair contract putting all the responsibility on SPMRs? Is it still the same contract that we are asking current new SPMRs to sign up to? How does it compare to other franchise contracts? (This is likely to be a question asked.)

Again I think this may fall on you Rod? That said, below is

I) Our response to the question posed on its comparison to other contracts used in franchising agreements across the UK

"12.3. We understand that Post Office considers the terms of the Contract to be broadly similar to those used in franchising arrangements across the UK. Please provide full details evidencing this proposition?"

A franchise agreement is a private contract between two (or more) parties recording the basis on which they agree to do business in their particular circumstances. The SPMR Contract is similar in that it records the basis on which Post Office and Subpostmasters do business.

Enclosed at Annex 17 is an extract from the Encyclopaedia of Forms and Precedents. This is a leading legal text providing precedent agreements for various situations. The extract is Form 18 from Vol 16(4) and is a precedent for a "Non-Exclusive franchise agreement for a retail business".

As can be seen from the Precedent, the terms of a standardised franchising arrangement are broadly similar to the terms of the standard Subpostmaster Contract. There are obviously some differences between the two as the Subpostmaster Contract is tailored to Post Office's business whereas the Precedent is generic however the core principles are largely the same - for example (number references are to clauses in the Precedent):

- *Premises (4 and 9): Both Franchisee and SPMR are both responsible for leasing the premises and ensuring that it is appropriate to operate the business.*
- *Setup costs (10.1.2): The Franchisee must pay for the initial fit out and equipment costs if provided by the Franchisor. Post Office also requires this payment in some, but more limited, circumstances.*
- *Training: Franchisor / Post Office to provide initial training to the franchisee / SPMR (5.1.1) and the Franchisee/ SPMR is required to train their own staff (9.2.11)*
- *Employees (9.3.5): The Franchisee / Subpostmaster is responsible for employing suitable staff.*
- *Equipment / Software: The Franchisee / Subpostmaster is required to record all sales and other financial information using the equipment and software provided by the Franchisor (9.2.23 and 10.9).*
- *Telephone lines (9.2.22): The Franchisee / Subpostmaster must provide the communications line for the EPOS systems and credit card machines.*

- *Advice (6.2): At the Franchisor's discretion, it may provide advice to a Franchisee on how to operate the Franchisee's business – this reflects Post Office's approach to providing advice through its helplines.*
- *Problem support (6.3): Any support provided by the Franchisor to the Franchisee to help resolve problems will be at the Franchisee's cost. There is a slight difference here in that although Post Office's additional support is voluntary, it is provided at nil cost to Subpostmasters.*
- *Changes in business (9.2.2): Both Franchisor and Post Office can change its business model and products for sale.*
- *Information / Accounts (9.3.8 and 10.9) – the Franchisee is responsible for the accuracy of all reports, information and accounts.*
- *Audit (9.2.13 / 13): Both Franchisor and Post Office have a right, but not a requirement, to audit the Franchisee / Subpostmaster. Audit is described in the Precedent (13.1) as an inspection of the business and books – not a full accountancy audit. This is in line with Post Office's use of the word "audit".*
- *Responsibility for accounting errors (13.2) – Franchisee must "promptly rectify" any accounting error – again this is very similar to the wording the SPMR Contract.*
- *Liability: The Franchisee is required to indemnify the Franchisor for any loss resulting (i) a failure to follow the business operating practices (9.3.7.3) or (ii) "any deliberate or negligent act, error or omissions by you or your employees" (9.3.7.4) - this is almost identical to the SPMR Contract wording.*

In any event, the terms of the Subpostmaster Contract are the terms on which Applicants agreed to do business with Post Office. It is the relationship described in those terms that must be applied when assessing Post Office's and a Subpostmaster's actions. It is not open to anyone to look to retrospectively impose new duties on Post Office that did not previously exist. For this reason, Post Office maintains that challenges to the Subpostmaster Contract are outside the scope of the Scheme, which was to focus on Horizon and associated issues. Such an evaluation is also beyond Second Sight's expertise as they are accountants and not lawyers".

ii) Our response on the 'fairness' of the contract as included in Response to their Part 2 Report

"Paragraph 6.7 concludes that "from a business perspective" the contractual provisions referred to above (in particular Section 12 requiring the Subpostmaster to make good losses) operate to the detriment of, and are unfair to, a Subpostmaster.

The Contract is a business to business arrangement. Save in a few very narrowly defined areas (which are not applicable here), there is no general principle at law of whether the Contract is 'fair' or not. In Post Office's experience, the terms of the Contract are broadly similar to those used in franchising arrangements across the UK.

In any event, Subpostmasters are agents and Post Office is their principal. At law, agents owe duties to their principals including the duty to act in good faith, to render accurate accounts and to make good any losses they cause. Section 12 of the Contract simply reflects these legal principles.

The Contract reflects the basis on which Post Office and thousands of Subpostmasters have successfully conducted business for decades and it is neither commercially nor legally unfair".

11) Are we dealing with SPMRs differently today than we were 3,5,10 years ago? (My sense is yes as all businesses change/improve.) If the current processes/support had been in place then, how might any of these cases have been dealt with differently? Is there an opportunity to recognise/compensate that in some way? Only for those in the scheme and once off. My understanding is that one would not normally read back new processes into old judgements and so am only asking the question at this stage.

I am not sure how to answer this one

12) How much have we spent already? How much will we have spent if it runs its course? If it went to JR or public enquiry, what is cost estimate? Is govt aware it would need to fund? If we became liable for any compensation, at what level would it create going concern issues? Is govt aware?

As at the end of Period 3 15/16 Sparrow had an aggregate spend of c.£8.4m since August 2013. We currently estimate further spend to be £3m - £3.5m subject the number of mediations achieved each week, when these begin and the level of external 'noise' created.

Cost of JR / Gvt enquiry?

Compensation liability?

13) Is Sir AH involved at present? Or likely to be asked to speak to BNR? What would he say if he did?

SAH is not currently involved though LT has indicated that BNR is attracted to the idea of SAH being considered as someone independent, who could perform some sort of spot review on a limited number of cases to establish their merits or to review Second Sight's work

Xxx what was the case SAH made a decision on and referenced there was no evidence of theft, despite the guilty plea? Xxx

14) If BNR wants to be sure we have been properly advised, is there a 'govt lawyer' function somewhere in the Cabinet Office, or indeed BIS, who might be asked to look at it? Could she/we use them for a second opinion?

MD / TW question?

15) Political context: AB, BNR, DC small majority, Commons minister, etc. Horizon scan re how to handle.

The minister is in a difficult position as Andrew Bridgen is an active (and sometimes difficult) backbench MP from her own party. He is also chairing a key committee in her brief. She will fear further scrutiny of the issue in Parliament (through debates and questions), and (further) potential activity by the BIS select committee. This could damage her reputation. She is also, as Paula points out, hampered by being a Lords minister. Hence we are seeking to bolster political support for our position through BIS and No 10 special advisers and other Tory MPs. There are clearly grave political risks involved in taking action now which ministers come to regret in time (through an expensive inquiry which fails to satisfy campaigners). On BIS select committee we are meeting the new chairman early in September and will take the opportunity to brief him in detail on the issue.

We are also continuing to meet MPs from all parties with constituents in the scheme to distance them from AB's campaign

16) suicide case: want to be sure about this as it will help minister - didn't we have an understanding from the family that there were wider issues?

The applicant received an initial ex gratia payment of £20k which rises to 50K plus a £140K 'NT payment' (which the Applicant was not technically eligible for) + 5k additional funding for her advisor. Interestingly this Applicant also parted company with, I believe, H&C in favour of One legal Services as she felt she was being used.

17) Options?

- Continue as we are but re-open mediation to avoid any misunderstanding. Allow it to take as long as it needs.
- Move to arbitration rather than mediation - to get to a lifo situation with each (non-criminal case) SPMR. Can this be done with a compensation cap?
- Just settle on the basis that costs will continue to strangle the business and it would remove the distraction. But see 11) and 12)
- Public enquiry - pros and cons?
- Independent review of SS reports - reporting to BNR or to AI, or to me.
- Independently arbitrated talks with PO, JFSA (and SS?)
- One-off settlement reading back today's principles to those SPMRs in the scheme that might have been affected differently.