

## **Chairman's Meeting with Lord Arbuthnot: Horizon Complaints - Briefing**

### **Positioning**

- You are meeting with Lord Arbuthnot in the context of the Review you are undertaking into the Post Office's handling of the Horizon-related complaints made against it, as part of your commitment to the Minister.
- The meeting provides you with the opportunity to explore the nature of his concerns, demonstrate the rigour you are applying to this review and, equally, convey your resolve to draw a final line under it.
- In relation to the last of these objectives, you are aware that the Criminal Cases Review Commission is already investigating possible miscarriages of justice, that the Post Office has offered to mediate every case in the scheme which does not involve a conviction and that the civil courts are available to those who choose not to mediate, or remain dissatisfied having done so.
- The meeting is, then, primarily an opportunity to hear what Lord Arbuthnot has to say, rather than a vehicle for seeking to put forward any contrary view or seek to persuade him of anything as such.
- With that in mind, we suggest that you open the meeting as follows

### **Opening**

- *Thank you for making the time to meet with me. As you know, the Minister asked that, as a newcomer to the business, I take a fresh look at the Post Office's handling of the Horizon-related complaints against it so that I might form a judgment as to whether the organisation's response has been appropriate to the task and, in particular, to assess whether anything further needs to be done*
- *I am, of course, aware of your long involvement in this matter and I am aware that your early, and apparently strong, support for the steps that the Post Office was taking has more recently been replaced by an equally strong sense that the entire exercise has been deeply flawed*
- *Accordingly, I am very keen to listen to and understand your concerns with an entirely open mind and with the benefit of having had no prior involvement in the issue*

## Background

- Lord Arbuthnot has been the most determined champion of those who believe that a number of subpostmasters, including Jo Hamilton (a former constituent of his until his recent elevation to the Lords – case facts at [Annex A](#)), have wrongly been held responsible and, in some cases, unfairly prosecuted for losses incurred in their branches. He has been a pivotal figure in the campaign to date and has made clear his intention to continue to play a central part in it from his new position in the House of Lords.
- His substantial involvement in the Horizon issue stretches back to early 2012 when he first raised the concerns of several SPMRs with Post Office's senior executives. He was broadly supportive of the Post Office's work to address these for approximately 2 years from that date. During this initial period, Second Sight's first set of enquiries found that there were no systemic issues with the Horizon system, but that Post Office might, however, have done more to support certain SPMRs in terms of training and early intervention and, as a result (and with his help), the Scheme was established to provide a vehicle for all complaints to be articulated, investigated and, hopefully, resolved through mediation where appropriate.
- From early to mid-2014, however, Mr Arbuthnot's stance towards the Post Office hardened following complaints from JFSA that the Post Office was taking an 'overly-lawyerly' approach, the investigation of cases was taking too long, and it became clear that Post Office would not automatically consider all cases as suitable for mediation, preferring to adopt an approach based on cases' merits. It would also have become clear to him that Post Office considered cases involving SPMRs with a criminal conviction represented a particular challenge in terms of mediation. It was, and remains, Post Office's view that such cases cannot be mediated given that mediation can never overturn convictions - only the Court of Appeal has this power – and therefore mediation will not help resolve the complaint.
- Perhaps prompted, at least in part, by the realisation that the Scheme was therefore unlikely to address his constituent Jo Hamilton's conviction for false accounting or result in her receiving a substantial payment by way of compensation, Mr Arbuthnot intensified the campaign against the Post Office. As a prominent MP, he called a Westminster Hall Debate on 17 December 2014, precipitated a short, stand-alone, inquiry by the BIS Select Committee on 3 February 2015, and raised the issue at Prime Ministers' Questions, the cover of Parliamentary Privilege allowing him free-reign to make damaging claims about the Post Office. We are also aware that he, together with a Labour colleague, went to see the Criminal Cases Review Commission in December 2014 to lobby them to investigate the Post Office; 23 cases involving the Post Office are now with the CCRC, the majority of which involve convictions following a guilty plea.
- Some of Lord Arbuthnot's principal criticisms, together with high level Post Office replies, are at [Annex B](#).

## **Annex A**

### **Jo Hamilton Case Facts**

An audit of the South Warnborough Sub Post Office, which revealed a cash and stock shortage of £37,000, took place on 9 March 2006 owing to concerns regarding the high levels of cash on hand being recorded at the branch. The applicant, Mrs Jo Hamilton, claims this shortfall was caused by “un-explained” issues with Horizon and a general lack of support and training from Post Office. Records indicate that the Applicant had been declaring on the Branch Trading Statements cash holdings of a minimum £15,000 (which rose to £35,000 by February 2006) when the branch weekly pay outs were in fact in the region of £2,500.

Whilst the Post Office cannot be absolutely sure when the variance in declared cash on hand and actual cash on hand first happened, the information obtained as part of the investigation indicates that inflated (false) cash declarations had been ongoing for more than two years.

Post Office subsequently prosecuted the Applicant for theft and false accounting. The charges were approved by an external barrister (who is now a QC) having considered the available evidence and on the 19 November 2007, the Applicant pleaded guilty to 14 false accounting charges at Winchester Crown court. The single theft charge was dropped by Post Office after an undertaking was given by the Applicant’s counsel that all monies owed to Post Office would be repaid prior to sentencing. A cheque for £37,644.89 was received by Post Office on the 18 Feb 2008 which included £1000 costs awarded to Post Office. The Judge is reported as saying: *"This wasn't just a muddle - it turned into fraud."*

In her application to the Scheme, Mrs Hamilton’s claim against the Post Office is in the region of £500k and includes “Future interest on credit cards - £49,420.80”. She has also now referred her case to the CCRC. Regrettably, Mrs Hamilton not only failed to make use of the NBSC helpline facility but also allowed all staff members to use the same Horizon log on details (in breach of contract). She then submitted false accounts systematically in order to hide the losses from Post Office.

The false accounting meant that it was not possible at the time of these events, and it remains impossible now, to precisely identify all the erroneous transactions which have caused the £37,000 shortfall. Post Office primarily relies on contemporaneously reviewing the branch accounts to help subpostmasters identify errors but because the accounts in this case have been falsified, it is not possible to distinguish between genuine errors and intentionally false entries.

Post Office has not been presented with any evidence which supports the Applicant’s claim that Horizon caused the shortfalls in the branch.

**Annex B****Known Areas of Concerns & High Level Post Office Answers**

Lord Arbuthnot has raised a wide range of complaints against the Post Office and it is likely that some or all of these will be raised during the course of your meeting. These, together with Post Office's headline responses, appear below:

- **Post Office has spent £ millions covering up miscarriages of justice**
  - *No evidence has been presented to Post Office to suggest miscarriages of justice have taken place in any of the cases which have been re-investigated as part of the Scheme. The Post Office has gone to great lengths to try to investigate and resolve the various complaints thoroughly. Ultimately, the CCRC will determine whether to refer any or all of 23 cases it is looking at to the Court of Appeal on the back of its investigations.*
- **Post Office unfairly narrowed the scope of the Scheme to exclude, for instance, issues relating to the 'fairness' of the SPMR contract or prosecutions practice**
  - *The Post Office has accepted and investigated complaints and claims raised as part of the Scheme which stray considerably beyond the initially agreed scope of that Scheme. These cover a multitude of issues which do not relate to Horizon per se. It appears that, since no evidence of flaws within the system were uncovered, JFSA, Second Sight and Applicants have sought to broaden the scope of the Scheme to cover contracts and/or investigation and prosecutions processes. The latter were specifically excluded from scope ab initio.*
- **Post Office fails properly to investigate the cause of losses in branch and leaves SPMRs with 'no option' but to commit the criminal offence of false accounting**
  - *Post Office always seeks to investigate the cause of losses. This is not always possible to do, especially in cases where a Subpostmaster has been falsifying accounts. Systems are in place to ensure that, when faced with a discrepancy, Subpostmasters have a number of options available to them which will allow trading to continue uninterrupted and the discrepancy investigated. A situation in which a Subpostmaster is compelled to commit a criminal offence cannot arise. A decision to falsify accounts when faced with a discrepancy is one the Subpostmaster makes for him or herself.*
- **Post Office has withheld documentation from Second Sight, misrepresented their findings and 'gagged' them**
  - *Post Office argues that it has acted transparently throughout this process. A huge amount of information (and all that is relevant to the scope of their work) has been shared with Second Sight. Post Office disputes the suggestion that it has misrepresented their findings. After 3 years of work, neither Second Sight, nor Post Office, has uncovered any evidence of a systemic flaw with Horizon which gave rise to the discrepancies at the heart of these complaints. The principal finding, by both Post Office and Second Sight, is that human error in branch is at the root of the majority of the problems experienced by applicants to the Scheme. Post office gave Second Sight permission to appear at the*

*Select Committee, on Panorama and meet with the Minister. The Post Office argues that this is evidence that it has not ought to gag Second Sight.*

- **Post Office has adopted an overly legalistic approach to these issues, senior executives have broken their word/frustrated the process and should resign**
  - *Post Office argues the notion that its approach to the Scheme has been overly 'legalistic' is unfounded. It is true that the Post Office has requested that those making allegations should substantiate them and argues that this is necessary given many Applicants have made multi-million pound claims for compensation. The Post Office has approached these complaints in a genuine spirit of readiness to accept where it might have fallen short and continues to recognise this through the settlements it is reaching at mediation. The Post Office Chief Executive initiated the entire Scheme and has directed that no effort be spared in seeking to achieve the right outcome.*