

Panorama – Strictly Confidential – Subject to Legal Privilege

Overview

1. Prior to the broadcast of the Panorama programme and over a period of more than three months, the Post Office provided significant help and information to the programme's editorial team, including a two-hour 'on the record' briefing from senior people involved in Complaint Review and Mediation Scheme.
2. However, despite repeated requests, the Post Office was never provided with sufficient information about the allegations Panorama intended to include to enable full and meaningful responses, nor was it provided with the evidence upon which the allegations were being based.
3. It also became clear that Panorama was focussing on a very small number of individual cases, all of which have applied to the Criminal Cases Review Commission (CCRC) – a body who are subsequently being provided with all available information, including confidential legal material not available to others.
4. In addition to the Post Office's commitment of confidentiality to people who put forward cases to it for re-investigation, the CCRC should be allowed to complete its reviews without external comment.
5. Immediately following the broadcast, the Post Office issued its statement wholly rejecting the allegations. It is meeting with the BBC shortly regarding what it considers to be the programme's inadequacy in allowing proper right of reply and adherence to BBC guidelines. Formal complaint and legal routes are also being considered.

Prosecutions

Panorama: 'Crime wave sweeping middle England – the Post Office says it's caught dozens of postmasters with their hands in the till...'

6. The Post Office does not prosecute anyone for making innocent mistakes. From the 150 complaints put forward, 43 involve criminal convictions. These convictions have taken place over a period of more than 10 years.
7. The programme stated several times that the Post Office pursued theft charges against postmasters where there was 'no direct evidence of theft' or 'no evidence of theft'. This is entirely untrue.

Panorama: 'Back then, the Post Office's own criminal investigator had found no evidence of theft'

Panorama: 'Second Sight thinks they may have used theft charges as a tactic to put pressure on subpostmasters....internal Post Office documents talk about how a theft charge could make it easier to get a court order to make Jo repay the missing money'

8. Panorama broadcast allegations that Post Office may have brought theft charges without supporting evidence, and that theft charges were brought improperly to put pressure on postmasters and/or support recovery of financial losses from them. Panorama referred to two internal Royal Mail documents from early on in the investigation into losses at Jo Hamilton's branch to support these allegations, and broadcast the suggestion that the prosecution is a "miscarriage of justice".
9. In deciding whether to prosecute, Post Office considers (among other factors) whether the tests set out in the CPS's Code for Crown Prosecutors are met, which require prosecutors to be satisfied that there is sufficient evidence for a realistic prospect of conviction on each charge in and of itself, and that the prosecution is in the public interest.
10. Post Office would not be complying with the Code if it had brought a theft charge in the manner alleged by Panorama, and our review of the Hamilton prosecution documents, in their full context within the prosecution file, does not support Panorama's allegations.
11. The Hamilton prosecution file shows that the evidence for a theft charge was investigated at the outset and kept under review throughout the prosecution, that specialist external legal counsel advised on the sufficiency of that evidence before charges were laid, and ultimately that the legal opinion that "there is evidence she has taken the money, and that there is sufficient evidence to support theft" informed the decision to insist that the full loss be repaid before Royal Mail (prosecuting for Post Office) would accept the defendant's offer to plead guilty to false accounting and abandon the theft charge.
12. Ultimately however, whether the Hamilton prosecution is a "miscarriage of justice" is being investigated by the Criminal Cases Review Commission. The Commission, the independent organisation set up by statute to investigate suspected miscarriages of justice from the courts in England, Wales and Northern Ireland, will be assisted in its review by being given access to all of the available Post Office files, including the legal advice received.

Panorama: 'Seema was jailed as a thief. But was the star witness for the prosecution, the computer, ever properly examined? The expert witness for the defence doesn't think so... in every criminal case disclosure is vital, so the question is, did she get a fair trial?'

13. Panorama broadcast allegations that there may have been inadequate disclosure to the defence about Horizon during the trial for theft of Seema Misra, such that she may not have had a fair trial.

14. A review of the original trial transcripts undertaken in January 2014 by Post Office's external criminal law solicitors found that substantial disclosure about Horizon had been provided to the defence and its expert Charles McLachlan (a contributor to the Panorama programme). The review also found that Mrs Misra's defence made numerous applications for further disclosure and for the case to be stopped as an "Abuse of Process" because of inadequate disclosure. Each of those applications was however rejected by the presiding judge, such that the scope and extent of disclosure in the case can be said to have been scrutinised and sanctioned by the court.

Panorama: '...should Noel have been charged with theft in the first place.'

15. As with the Hamilton case, Panorama questions whether Mr Thomas should have been charged with theft as well as false accounting. Panorama refers to a Post Office document which it claims concluded that "that the missing money was probably caused by operational errors", and also notes that Horizon hardware in Mr Thomas's branch was removed for testing but the "results have now been lost".
16. Panorama did not report that the Post Office document (prepared recently in connection with the Mediation Scheme) notes (as it is right to) that the issue with the hardware testing ought to have been considered during the course of the prosecution if it was indeed relevant at the time.
17. This is however ultimately irrelevant. It is clear from the Panorama programme itself that Mr Thomas committed the crime of false accounting, and that he was following his legal advice when he chose to plead guilty to that offence. It is a matter for the court to determine sentence once a defendant pleads or is found guilty, having regard to all the circumstances of the case including the specific offence committed and its impact, and the defendant's conduct and character. In this case, the period of imprisonment to which Mr Thomas was sentence was for the crime of false accounting, not theft (although both carry the same maximum tariff).
18. Ultimately however, as with the Hamilton case, the Criminal Cases Review Commission is investigating whether Mr Thomas's prosecution is a "miscarriage of justice", with access to all of the available Post Office files.

Panorama: Second Sight ‘what was of interest to us was that a number of cases also started with an additional charge, which was that of theft. But in a significant number of cases, that theft charge was dropped in response to the defendant pleading guilty to false accounting..’

19. The Post Office made it very clear to Panorama that the Complaint Review and Mediation Scheme is not a criminal case review, but rather an investigation into whether Horizon operated as it should in a small number of cases.
20. Second Sight is a firm of accountants, it is not experts in criminal law or procedure, and was provided with all the relevant documentation to perform its role, as was agreed by the mediation scheme’s Working Group (of which they were a member) in 2014. Again, the limitations of Second Sight’s opinions regarding criminal law were made clear to the programme before broadcast.

Panorama: ‘The Post Office has its own investigators and it brings private prosecutions. It doesn’t have to go through the police or the Crown Prosecution Service.’

21. Panorama included comments about private prosecutions creating ‘potential miscarriages of justice’ from Professor Mark Button, who was presented in the programme as a legal expert but who does not have any involvement in the cases presented.
22. The Post Office has no special powers of prosecution – where it discovers evidence of criminal wrongdoing, it may exercise the right to bring a private criminal prosecution which is available to all companies and individuals in England and Wales. Many organisations conduct prosecutions within their own sphere of interest, including for example the Driver and Vehicle Standards Agency, Transport for London, the Environmental Agency, the BBC and many local authorities.
23. Post Office prosecutors are all experienced criminal lawyers, many of whom have significant experience in prosecuting for both Post Office and the Crown Prosecution Service. The Post Office follows the Code for Crown Prosecutors (the same code as the CPS). This requires a prosecution to have sufficient evidence and be in the public interest, both of which are kept under review right up to and including any trial. It means there must be sufficient evidence for **each** charge – if a theft charge is brought, there must be sufficient evidence for a realistic prospect of a conviction for theft.
24. External specialist criminal lawyers have continued to review material to ensure the Post Office complies with its continuing duty after a prosecution to disclose any information that subsequently comes to light which might undermine its prosecution case or support the case of the defendant.

The Horizon system – ‘operational errors’

Panorama: ‘...in paperwork we have obtained, the Post Office now admits that the most likely cause of the losses was operational errors...’

25. The Post Office and Second Sight’s investigations did indeed produce overwhelming evidence that the majority losses complained of were caused by user actions (e.g. human operational errors made at the counter).
26. This does not change the Post Office’s position regarding cases involving criminal convictions. Falsifying accounts can also contribute to branch losses. Where accounts have been falsified it is not possible to identify the transactions that may have caused discrepancies and losses, preventing the correction of the practices and procedures that generated those losses.
27. Over the course of the investigations, the Post Office has demonstrated that Horizon works as it should and is robust and effective in dealing with the six million transactions put through the system every day for people up and down the country at 11,500 Post Office branches.
28. Second Sight has not identified any transaction caused by a technical fault in Horizon which resulted in a postmaster wrongly being held responsible for a loss. Without this, there is no evidence to support any of the broad allegations about Horizon.

Fujitsu ‘Whistleblower’ – Richard Rolls

Panorama: ‘..a team of computer technicians was dealing with Horizon errors, some of which he says, could create false losses. He also says financial records were sometimes changed remotely without the postmaster knowing. That is something the Post Office has always said simply can’t happen....’

29. Despite repeated requests, the Post Office was not provided with the identity or information about the Fujitsu ‘whistleblower’ before the Panorama broadcast and was therefore denied the opportunity to comment upon his capability to comment on the issues.
30. In fact, the ‘whistleblower’, Richard Rolls, worked for Fujitsu from 2001-2004 and does not appear to have worked in IT again since that time. Fujitsu has informed us that he worked on ‘estate management’ and did not work on branch accounting aspects of Horizon.
31. Panorama referenced statements by Mr Rolls about financial records being changed remotely. Transactions as they are recorded by branches cannot be edited and the Panorama programme did not show anything that contradicts this.
32. Mr Rolls spoke of making changes ‘through the back door’ and ‘putting in several lines of code in at a time’. Fujitsu has confirmed that this is likely reference to maintenance and

support tasks as would be expected of any standard IT function. Such remote access could not be used to manipulate transactions.

33. Remote agents cannot and could not 'work the terminals' as there is no functionality for this.
34. Every access is logged and there is an auditable footprint where records are still within the retention period

Second Sight

Panorama: Second Sight: 'In any large IT system it is inevitable that problems will occur. What seems to have gone wrong within the Post Office is a failure to investigate properly and in detail cases where those problems occurred. It's almost like institutional blindness.'

35. Ian Henderson, from Second Sight, said that there had been a 'failure to investigate properly and in detail cases where IT problems occurred'. This is incorrect – Post Office investigators' first task is to establish what has happened in the branch and its approach to each investigation will, by necessity, be influenced by the particular circumstances of the individual case.
36. That task will be frustrated when the branch accounts have been deliberately falsified, which is an act which precedes any Post Office investigation. By falsifying the accounts (whether through the inflation of cash on hand or otherwise) Subpostmasters or their assistants prevent Post Office from being able to identify the transactions that may have caused discrepancies and losses. The first step in identifying a genuine error is to determine the days on which the cash position in the accounts is different from the cash on hand. Where the cash on hand figure has been falsely stated, this is not possible.
37. The false accounting therefore hides any genuine errors from Post Office. It hides it at the time the losses occur and it remains the case now that Post Office is not able to identify which transactions may have caused the losses.
38. It is the Subpostmaster's (or their assistant's) false accounting that prevents Post Office from investigating the underlying losses, not the attitude of Post Office investigators.

'Bullying organisation'

Panorama: James Arbuthnot: 'It is a big organisation bullying individuals with no ability to cope in ways which sometimes see them sent to prison, made bankrupt, lose their livelihood...'

39. James Arbuthnot told the programme that the Post Office is bullying individuals with no ability to cope'.
40. This allegation simply not true – it is not borne out at all by any of the results that the Post Office has when it regularly asks people about their experiences of working in its network, or

by any other evidence.

41. Mr Arbuthnot also said that he believed the Post Office CEO should resign. In fact, the CEO 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 minority of system users. The Post Office remains willing to discuss these matters with Members of Parliament as it has done with a number.