

OFFICIAL - SENSITIVE

To: Jo Swinson  
From: Peter Batten GRO  
Date: 12 December 2014

**BIS**  
Department for Business  
Innovation & Skills

**Subject: Westminster Hall Debate: Horizon Case Review and Mediation Scheme**

### **Purpose**

1. James Arbuthnot MP has secured a Westminster Hall Debate on the Case Review and Mediation Scheme (“the Scheme”) that was established to provide a process for former-subpostmasters to have their cases considered for mediation. It is overseen by an independent Working Group. The Post Office is a member of the Working Group, but does not ‘own’ or is responsible for the Working Group or the Scheme.

### **Your objectives**

2. To be clear that matters concerning the Horizon system do not relate to any Government action or policy decision, but are wholly operational matters in which HMG has no role;
3. The independent Second Sight review published in July 2013 explicitly confirms that there are no systemic problems with the Horizon software;
4. Following last year’s report, there have been further detailed investigations into individual cases that corroborate the Post Office’s view that there are no issues with the system;
5. That those detailed investigations have taken place as part of the Scheme that was designed in concert with the JFSA, Second Sight and James Arbuthnot MP; and
6. That the small number of subpostmasters who have experienced issues are a minute proportion of the tens of thousands (68,000) of people successfully using the system across the network of over 11,500 branches on a daily basis.

### **Background to the Scheme**

7. In response to the publication last year of the Second Sight report, you made a statement to Parliament setting out three initiatives that the Post Office has since been delivering:
  - a. To set up a Working Group that includes the Justice for Subpostmasters Alliance to review cases;
  - b. To ensure an independent chair is appointed to oversee the process; and
  - c. To provide a branch user forum providing a channel for subpostmasters to raise concerns at the highest level in the business.
8. The Working Group comprises representatives from the JFSA, the Post Office and Second Sight. It is overseen by an independent Chair, Sir Anthony Hooper, who was recommended by the JFSA, and whose appointment was approved by members of the Working Group. The Working Group, collectively, is responsible for the design and delivery of the Scheme. Both are entirely independent of Government, which has played no role in either the design or delivery of the Working Group or the Scheme. **This is entirely appropriate as HMG cannot intervene in any process that reviews past convictions, as this should only properly be dealt with by the relevant judicial authorities.**
9. A process map of the Scheme is included at annex E, and the Post Office has completed reviews for XX cases. By comparison, Second Sight has completed just XX, and took XX months to complete their first case report; with a consequent delay to the operation of the Working Group.

## OFFICIAL - SENSITIVE

**Key facts**

10. Commissioned and awaited from POL.

**Recent developments**

11. The Working Group has made slower progress than originally envisaged, though this is in part due to the necessary trade-off between taking time to design and test a process at the outset (which would have been time consuming) or rapidly moving to open a scheme and learning and improving through the process (which is the route adopted to meet stakeholder expectation in summer 2013). Despite that slow progress, the Working Group and Scheme have been operational and delivering outcomes as seen above. On current trends the work of the Scheme is expected to be completed in November 2015.
12. On 8 December, James Arbuthnot published a letter (attached at annex C) placing heavy criticism on the Post Office's role in the Scheme, and announcing that he was withdrawing his support for the Scheme and the Working Group. A high level summary of Arbuthnot's criticisms are set out below (paras 16 – 20), and fuller rebuttals are included in the speech Q&A (annex B).
13. On 10 December, ShEx became aware that the JFSA has instructed a legal firm, Edwin Coe, to "pursue the rights" of subpostmasters whose claims are currently being considered through the Scheme. The JFSA did not inform the Post Office (as joint member of the Working Group) of this and the nature of the instruction is not clear. The Post Office has written to JFSA for more information about their intention with relation to the Scheme and the Working Group and next steps will be informed by the JFSA response.
14. This change in behaviour by the JFSA and James Arbuthnot can be understood due to the absence of any evidence of systemic issues with the Horizon system from either the 2013 independent report, or the further detailed investigations undertaken as part of the Scheme. The JFSA (and James Arbuthnot MP as their sponsor) are in an increasingly uncomfortable position due to their mismanagement of their members' expectations that has led to the situation where it is understood that many applicants believe they will receive large payouts under the Scheme.
15. Although the outcomes of the mediation process are subject to strict confidentiality arrangements, ShEx understands that where cases have been resolved with a financial payment, the scale of these payments is very low and can be generally classed as 'goodwill'. This is information that should not be relayed publicly as it relates to the outcome of a confidential mediation process, but it does serve to provide insight into the motivations behind JFSA and James Arbuthnot behaviours. Although neither JFSA nor Arbuthnot should be party to the outcome of the mediation processes, it is obvious that applicants are feeding information to both parties.

**James Arbuthnot's position**

16. In his letter of 8 December, Arbuthnot focuses on two key themes:
  - a. The Post Office's approach within the confines of the Scheme for those applicants who were convicted following a guilty plea; and
  - b. The interpretation of what is meant by 'Horizon'
17. On the first of these points, Arbuthnot is pushing a line that suggests the Post Office is excluding 90% of applicants from mediation. This is a number that the Post Office does not recognise, but struggled to clearly explain its position publicly on the 'Today' programme. Arbuthnot is arguing that all cases should proceed to mediation as a default position. This is contended by the Post Office that argue the purpose of the Working

OFFICIAL - SENSITIVE

Group is to consider applications on a case-by-case basis and to reach a decision whether to mediate.

18. Arbuthnot wants cases that involve a subpostmaster who has been convicted on a guilty plea to be mediated, but the Post Office is not accepting mediation in such cases as this would undermine a judicial ruling. However, the Post Office is willing to consider mediation for cases where a subpostmaster has been convicted on a guilty plea but where their application for mediation does not relate to that conviction (i.e. if the conviction relates to false accounting, but the application relates to concerns about training).
19. It is current understanding that where Arbuthnot refers to the Post Office blocking 90% of cases, this actually relates to cases that are discussed at the Working Group. The other 10% are those cases where there is agreement to mediate without need for a Working Group discussion. The role of the Working Group is to decide whether cases should be mediated – to say that this important part of the process is ‘blocking’ is specious.
20. On the second point (that the Post Office is changing the definition of what is meant by Horizon) we need a little more input from POL...

**List of annexes**

- A – Speech modules (see separate attachment)**
- B – Q&A (see separate attachment)**
- C – Arbuthnot letter (8 December)**
- D – Paula Vennells letter (28 November)**
- E – Scheme process map**

**Copied to:** Cable MPST; Perm Sec MPST; SpAd MPST; ShEx Post Office Team

OFFICIAL - SENSITIVE

**Annex C – Arbuthnot letter (8 December)**

OFFICIAL - SENSITIVE

**Annex D – Paula Vennells letter (28 November)**

OFFICIAL - SENSITIVE

Annex E – Scheme process map

---

