

DRAFT LETTER TO BNR – PROJECT SPARROW

1, 2, 3 | ~~At Further to~~ our meeting on 26 January ~~2016, in which~~ I provided you with an update on the work I
 4, 5 | ~~have undertaken~~ ~~an undertaking~~ with the assistance of Jonathan Swift QC and Christopher Knight,
 6, 7 | ~~both of~~ ~~at~~ 11 Kings Bench Walk Chambers to review of the Post Office’s handling of complaints
 7 | made by Sub-Postmasters about the operation of the Horizon software system., I ~~now write to set out~~
 8 | ~~further information about~~ ~~wish to update you on the progress of the~~ ~~my review of the Post Office’s~~
 8 | ~~handling of the Horizon-related complaints.~~ ~~In particular, I thought it would be helpful to share with~~
 9 | ~~you my~~ approach to the review, the scope of work undertaken so far, and my initial findings. I also wish
 10 | ~~, as well as to~~ outline my plans to bring the work ~~for bringing it~~ to a conclusion.

Scope of the Review

11 | My objectives were as follows. ~~I took, as my starting point, the following scope:~~

“To review the Post Office’s handling of the complaints made by sub-postmasters regarding the alleged flaws in its Horizon electronic point of sale and branch accounting system, and determine whether the processes designed and implemented by Post Office Limited to understand, investigate and resolve those complaints were reasonable and appropriate”.

12, 13 | I considered that the ~~In my judgment, my~~ review should address both what had happened to date (in
 14, 15 | the period 2010 – 2015), the historical position and also the important question as to whether there
 16, 17 | were any gaps in the work done and what ~~at~~ more, if anything, could now reasonably or should now be
 18, 19 | done to address the complaints that had been raised. ~~, so as to enable all concerned to move forward~~
 18, 19 | ~~with confidence. As a result, the work was undertaken with two questions firmly in mind: What has~~
 18, 19 | ~~already been done in the 2010-2015 period? If there are any gaps in the work done, is there any further~~
 18, 19 | ~~action which can now reasonably be taken?~~

20, 21 | I ~~then~~ ~~decided~~ ~~terminated~~ that the particular focus should be on those matters at the heart of the complaints raised against the Post Office, namely:

- i) criminal prosecutions;
- ii) the Horizon system (i.e. the software);
- iii) the support provided to sub-postmasters through training and helplines; and
- iv) the investigations in the circumstances of specific cases where a complaint had been raised.

22, 23 | The remainder of this letter summarises the headline findings of the ~~from my~~ review in these areas, and the recommendations made against each.

24, 25 | In taking this work forward, ~~I can confirm that~~ ~~my~~ advisors requested and were given unrestricted access to documentation. Numerous meetings were held between them and a range of Post Office
 26, 27 | staff, employees of Fujitsu (who provide the system), and Deloitte. I met, ~~as well as~~ with Lord
 28 | Arbuthnot, and with representatives of Second Sight (the forensic accountants who have worked on
 29, 30, 31, ... | this issue) and ~~Fujitsu (who provide the system).~~ ~~For the avoidance of doubt, I did~~ ~~asked~~ Alan Bates,
 33, 34 | the Chairman of the Justice for Sub-postmasters’ Alliance, to meet me, ~~take part~~ but regrettably he declined.

Principal Findings and Recommendations

i) Criminal Prosecutions

35, 36, 37, ... ~~In terms of T~~the safety or otherwise of any specific conviction, ~~this~~ is a matter ~~for properly reserved to~~
 40, 41 the Criminal Cases Review Commission, ~~which is~~ the independent body established to consider
 42, 43 complaints of miscarriages of justice, and which is currently considering some 23 applications from
 44 former sub-postmasters. The Post Office is co-operating fully with the CCRC's work and I have, of course, directed that it should continue to do so.

45 ~~The Post Office has previously taken advice from solicitors and Leading Counsel expert in criminal law on the adequacy of the Post Office's policy and practice on disclosure where it acts as prosecutor. Based on that I am satisfied that proper disclosure was made. However nothing in the materials we reviewed suggested that there is any evidence that the Horizon system was responsible for those losses which resulted in convictions. In addition, we have seen evidence that Post Office's policy and practice in respect of disclosure of information were effective in ensuring that those facing prosecutions were not deprived of information or evidence which would have been helpful to them in their defence.~~

46, 47 ~~One matter My review team identified a discrete legal issue, which has raised been the subject of~~
 48, 49 ~~significant publicity in the BBC Panorama programme and elsewhere is the claim, arising out of the~~
 50 ~~accusation (and it is only an accusation) that the Post Office brought concurrent charges of theft and~~
 51 ~~false accounting against sub-postmasters when there was no sufficient evidence for a charge of theft, and the theft charge was only brought to put pressure on the sub-postmaster concerned to plead guilty to the false accounting charge. As a result of the review I have decided to take the following steps.~~

52 ~~(1) I will take advice from specialist criminal counsel as to whether the decision to charge theft and false accounting could undermine the safety of any conviction for false accounting if (a) the conviction was on the basis of a guilty plea, following which and/or in return for which the theft charge was dropped, and (b) there had not been a sufficient evidential basis to bring the theft charge.~~

53 ~~(2) If the advice received is that such a conviction could be undermined in those circumstances, I will ask counsel to review the prosecution file in the cases concerned to establish whether, applying the facts and law applicable at the relevant time, there was a sufficient evidential basis to conclude that a conviction for theft was a realistic prospect such that the charge was properly brought~~

54 ~~may not have had enough evidence justifiably to bring concurrent charges of theft and false accounting against individuals. In this respect, I have determined to seek further specialist advice from a leading criminal barrister to ascertain whether this practice would, in and of itself, undermine a conviction on either one of those charges. Depending on the result of that advice, further work to review specific prosecutions files may become necessary.~~

ii) Horizon

55, 56, 57 | ~~The~~My review report recognised team notes that, in a system of the age, size and complexity of
 58, 59 | Horizon, it wais unremarkable that occasional bugs, errors or glitches were should be uncovered and
 60, 61, 62 | addressed periodically. A limited number of instances of specific problemerrors with the potential to
 63, 64, 65 | together with as were details of the way in which the Post Office had addressed these matters's-
 66 | handling of these. Based on the review it has become apparent that these bugs were capable of having
 66 | a generic impact (i.e. of affecting all users of the Horizon system and not only those who had raised
 66 | complaints about them). However, the review did not disclose any evidence to suggest that any of
 66 | these bugs had been the cause of loss to any sub-postmasters other than those who had raised the
 66 | problem. In the context of this review exercise, the team has concluded that there is no basis on which
 66 | to recommend further action in relation to these known, specific, errors.

67, 68, 69 | ~~However, Nevertheless, the while my~~ review report suggested that consideration should be given to
 67, 68, 69 | whether it would be possible, by analysis of the transaction logs of sub-postmasters who made
 67, 68, 69 | complaints, to determine whether or not the matters complained of by each sub-postmaster could
 70 | show the existence of some other generic bug within the system. team found that the Post Office's
 70 | investigations in relation to the possible existence of unknown errors were thorough, they did consider
 70 | whether it would be possible to perform additional testing to rule out that possibility more
 70 | comprehensively. Work is now underway to assess if such testing is possible, and if so, to scope the
 70 | work that would need to be done.

Further work is also underway to address suggestions that branch accounts might have been remotely altered without complainants' knowledge. In particular the security controls governing access to the digitally sealed electronic audit store of branch accounts over the life of the Horizon system, will be reviewed.

iii) Training and Support

71 | A consistent theme of the complaints against the Post Office is the allegation that sub-postmasters
 71 | were provided with insufficient training to operate the system effectively and/or did not receive an
 71 | appropriate level of support while in post.

72 | ~~A Here, my team notes that their ability to reach a definitive conclusion in relation to these matters is~~
 72 | hampered by a number of factors, including the lack of specificity in the allegations made and the
 73 | relative paucity of available training records, made it very difficult for the review to determine the
 73 | merits of these complaints.

I have concluded that these issues have already been addressed as comprehensively as is reasonably possible by both the Post Office and by Second Sight through their investigations of all complainants' cases. However, I am taking forward one further line of enquiry in relation to the very limited number of cases where allegations were made of misleading advice being provided by the Post Office's helplines.

iv) Investigation of Cases

74 | ~~The review also looked at My team has concluded that~~ the Post Office's investigations of the
 75, 76 | complaints as part of the Mediation Scheme process. It has concluded that the investigations made
 77, 78, 79 | were detailed and thorough, and leaving no more than very limited gaps which might now reasonably

be filled by further work. There is, only one further accounting exercise recommended by the review team, which consists in an examination of the extent of any relationship between unmatched balances in the Post Office's general suspense account and branch discrepancies, and independent experts have been instructed to undertake this examination.

80 | Next steps Taking forward the Recommendations and Timings

81, 82 | ~~Following discussions with my review team,~~ I have commissioned independent persons to undertake
83, 84 | the necessary work. ~~I forward, and~~ am satisfied that they meet the standards of expertise and
independence appropriate to the tasks.

85, 86 | I do, of course, share your ~~ambition that matters should be drawn to a conclusion as soon as~~
87 | ~~possible~~ consistent with reach a conclusion to this exercise as soon as is possible while having regard
88, 89 | ~~to~~ the need for the work that remains to be done to a high standard. ~~I hope you~~ However, you will
90 | understand that, particularly in relation to the further testing of the Horizon system, this work may
take some time. I ~~anticipate am hopeful~~ that I will be in a position to report back on the outcome of
this further work during May

91b, 92 | I believe am hopeful that the focus and scope of my review to date, together with the further work
93 | which I have now commissioned, will at that time allow me to confirm that the processes designed and
94 | implemented by Post Office Limited to understand, investigate and resolve those complaints were
reasonable and appropriate, and that there are no further enquiries which need to should now be
undertaken.

95, 96, 97 | Finally, may I mention two other matters. First, and aAs I have noted above, and as you are aware, a
98 | number of sub-postmasters complainants have made applications to the Criminal Cases Review
99 | Commission for the circumstances of their convictions to be looked into with a view to those cases
100 | being brought back to the Court of Appealinvestigated. That work is on-going and the Post Office
101 | continues to co-operate fully in the process. ~~Second, in addition, you will also be aware that~~ the Justice
102, 103 | for Sub-postmasters Alliance is reported to have received funding to instigate investigate civil
104, 105 | proceedings against the Post Office. ~~However, although,~~ at the time of writing, no claim has been
106 | issued. [has any letter before claim been received?]

91a | ~~I am hopeful that the focus and scope of my review to date, together with the further work which I~~
~~have now commissioned, will allow me to confirm that the processes designed and implemented by~~
~~Post Office Limited to understand, investigate and resolve those complaints were reasonable and~~
~~appropriate, and that there are no further enquiries which should now be undertaken.~~
107 | I hope that the above sets out matters satisfactorily. If you would like to discuss the review report with
108, 109 | me, I would be happy to do sodiscuss this report with you should that be of assistance. [Would you
like to offer to provide a copy of the review report? If so, consider whether or not you wish to
maintain privilege in the report]

Yours etc

[ENDS]

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