

IN THE MATTER OF

THE POST OFFICE LIMITED COMPLAINT REVIEW AND MEDIATION SCHEME

INSTRUCTIONS TO LEADING COUNSEL
JONATHAN SWIFT QC TO ADVISE IN CONSULTATION
AT 430PM ON 8 OCTOBER 2015

Introduction

1. Since 2009, Post Office Limited ("POL") has been responding to allegations that the "Horizon" point of sale IT system has been responsible for unexplained shortages in Post Office branch accounts.
2. In a letter dated 10 September 2015, Parliamentary Under Secretary of State Baroness Neville-Rolfe (acting on behalf of the Government as POL's sole shareholder) asked POL's incoming Chairman Tim Parker to determine whether "any further action is necessary" by POL to respond to the concerns about Horizon raised by individuals and MPs. These concerns include that POL's reliance on Horizon has resulted in miscarriages of justice.
3. With the assistance of POL's General Counsel Jane MacLeod, the Chairman considers this to be a request:

"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 systems, and determine whether the processes designed and implemented by Post Office Limited to understand, investigate and resolve those complaints (including through the Complaints Review and Mediation Scheme), were reasonable and appropriate." ("Review")

4. In order to be credible, the Review will need to be carried out independently of the team which has been managing POL's response to these concerns to date. The Chairman therefore requires the assistance of Leading Counsel to provide him with advice on:
 - 4.1 the scope of the Review and how this is framed;

- 4.2 the process by which the Review should be conducted (including what materials should be reviewed and who should be interviewed); and
- 4.3 the nature of his final report to the Minister.

5. The Chairman would like to complete the Review by Christmas 2015.

Documents

- 6. Substantial documentation has been produced by POL and third parties in connection with the concerns raised about Horizon, including material which is commercially confidential and/or subject to legal professional privilege.
- 7. In order to give an overview of the concerns which have been raised about Horizon and POL's response, attached with these instructions are:
 - 7.1 the letter from Baroness Neville-Rolfe to Tim Parker dated 10 September 2015;
 - 7.2 a PowerPoint presentation prepared by POL for a meeting held with Baroness Neville-Rolfe on 6 August 2015; and
 - 7.3 the "*Interim Report into alleged problems with the Horizon system*" published by Second Sight Support Services Limited dated 8 July 2013. ("*Interim Report*")
- 8. A "Schedule of Related Documents" is provided with these instructions. Leading Counsel is invited to contact Jane MacLeod or POL in-house solicitor Rodric Williams if he would like copies of any further documents prior to the 8 October 2015 consultation (see contact details at end).

Post Office Limited

- 9. POL is a limited company incorporated under the Companies Act 2006. Since 1 April 2012, POL has been separately owned and managed from Royal Mail. Royal Mail Group was privatised during 2012 and the two companies are run as completely independent businesses.
- 10. POL's shareholder is the Secretary of State for Business Innovation and Skills. Although owned by the Government, POL does not act under ministerial control, but has its own Chairman and Board of Directors who are responsible for setting the company's strategic aims.

11. POL's activities are governed by its Articles of Association. POL has no statutory public service duties or functions. Its only statutory duty, under section 11 of the Postal Services Act 2011, is to lodge an annual report with the Secretary of State. It does however have a "public purpose" for which it receives State Aid.
12. There are currently around 11,500 Post Office branches in the Post Office Network, providing a range of mails, telephony, government and financial products and services to the public. POL also sells Post Office products and services online and over the telephone.
13. Only 350 Post Office branches are operated directly by POL (the "Crown" branches), with the rest being run on an agency basis. Traditionally, these agents are independent business people ("subpostmasters") who operate the Post Office branch alongside their own retail business, such as a newsagent, general store or small supermarket. Subpostmasters are not POL employees.
14. Each Post Office branch holds on site an amount of POL cash and stock (e.g. stamps) necessary for it to conduct Post Office trade. POL's agents are required by the contracts for services they enter into with POL, and as a matter of general agency law, to account to POL for the transactions they undertake and the POL cash and stock they hold in branch.

Horizon

15. Horizon is the point of sale IT system used in all 11,500 Post Office branches to record transactions. Horizon has been used since 2000, and was upgraded to the current "On Line" version in 2010. Horizon processes approximately 6 million transactions each day, with some 70,000 users currently having access to the system from approximately 30,000 terminals in branches.
16. Horizon is essentially a double entry book keeping system in which every transaction is recorded along with a corresponding and opposite entry to balance the account, e.g. if a branch sells a product for cash, this should reduce the branch's stock of that product and correspondingly increase the amount of cash recorded as being held at the branch.
17. Subpostmasters account to POL through Horizon for the transactions they undertake and the POL cash and stock they hold. Subpostmasters are required by their contracts

and as agents to make good any cash shortfalls identified in the accounts. Serious irregularities in branch accounts may lead (and have led) to POL terminating subpostmasters' contracts, and subpostmaster prosecutions where theft, false accounting and/or fraud is suspected.

Second Sight

18. In Spring 2012, POL appointed Second Sight Support Services Limited (SS), a firm of forensic accountants, to undertake an independent review of a number of cases in which subpostmasters claimed that losses incurred in their branches were the product of a fault with Horizon.
19. The SS review was initiated following a meeting between senior POL personnel (including the Chief Executive and previous Chairman) and Members of Parliament convened by James (now Lord) Arbuthnot representing a group of mainly former subpostmasters, some of whom had been prosecuted. These subpostmasters claim to have "experienced major problems with the Post Office and its Horizon system since it was first rolled out in 2000", and have been led by the "Justice for Sub-Postmasters Alliance" ("JFSA", see www.jfsa.org.uk). JFSA is not a trade union body.
20. On 8 July 2013, SS published its Interim Report which included, in section 8, a number of "preliminary conclusions".
21. In response to the Interim Report, amongst other things, POL:
 - 21.1 worked with JFSA and SS to consider all cases brought forward by the JFSA and MPs, together with any new themes which emerged from the cases;
 - 21.2 in consultation with that working group, established in August 2013 the Initial Complaint Review and Mediation Scheme ("Scheme") "to help resolve the concerns of Subpostmasters regarding the Horizon system and other associated issues";
 - 21.3 established a Working Group comprising POL, SS, JFSA and chaired by former Lord Justice of Appeal Sir Anthony Hooper. The purpose of the Working Group was to oversee the progress of cases through the Scheme;
 - 21.4 established a "Branch Support Programme" to review current business processes, operational procedures and ways of working to support branches, identify the gaps and produce recommendations to rectify the issues;
 - 21.5 (privately and confidentially) undertook a review of past criminal prosecutions to determine whether further disclosure was required following

the Interim Report's publication, in accordance with POL's continuing duty of disclosure as prosecutor; and

21.6 (privately and confidentially) reviewed its approach to subpostmaster prosecutions.

22. Documents relating to each of these activities are referenced in the Schedule of Related Documents.

Scheme

23. By the time the Scheme closed to applications on 18 November 2013, it had received 150 applications of which 136 entered the full Scheme. Those cases progressed through the Scheme as follows:

- 23.1 Applicants to the Scheme submitted a summary of their complaint to SS and POL. POL agreed to contribute £1,500 (plus vat) so that applicants could obtain independent professional advice to help articulate their complaints;
- 23.2 POL investigated each complaint afresh and produced a report of its findings ("Post Office Investigation Report");
- 23.3 POL's reports, along with available supporting evidence, were then passed to SS for review. Second Sight made a recommendation as to whether the case was suitable for mediation;
- 23.4 The Applicants would receive both POL's and SS's report;
- 23.5 The Working Group considered SS's review and recommendation before voting on whether a case was suitable for mediation¹;
- 23.6 Cases recommended for mediation (and accepted by POL) were passed to the Centre for Effective Dispute Resolution to arrange mediation. POL agreed to meet the costs of mediation, including providing up to £1,250 (plus vat) to enable an applicant's professional advisor to prepare for and/or attend mediation;
- 23.7 Cases not recommended for mediation, or cases where a party did not agree to mediate, would be closed, with the applicant free to pursue any other avenues of redress which might be available.

¹ It is POL's position that it was understood and accepted that this was not binding on the parties to the dispute (POL and the individual applicant), who alone could decide whether or not they would actually mediate (i.e. the Working Group could not compel a party to mediation)

24. The Working Group monitored each complaint's progress through the Scheme, with decisions about their suitability for mediation being made as and when each complaint reached that stage of the process.
25. By the time POL had completed its final investigation report in March 2015, 106 complaints remained in the Scheme awaiting SS's review, mediation or a Working Group decision on suitability for mediation. Following criticism of delays to the Scheme (see para 31), POL decided to mediate all complaints remaining in the Scheme other than those cases which had been subject to a previous Court ruling. POL stated that such cases would be considered on a case-by-case basis, informed by the nature of the particular court ruling. 37 applicants to the Scheme have been subject to a previous Court Ruling, however upon review none have been determined to be suitable for mediation.
26. As at 6 October 2015, 26 cases have been mediated and a further 41 are now scheduled for mediation.

Additional Background - Litigation

27. In 2011, the national law firm Shoosmiths LLP threatened civil claims against POL on behalf of subpostmasters, ultimately issuing proceedings for one subpostmaster which were promptly struck out on limitation grounds.
28. Since that time POL has not heard anything further from Shoosmiths', nor has it been served with any civil proceedings or received any Letter of Claim threatening proceedings from any other firm of solicitors.
29. POL is not aware of any application having been made to the Court of Appeal for permission to appeal a conviction of a subpostmaster which was secured with the support of Horizon evidence.
30. The Criminal Cases Review Commission ("CCRC") has however been asked to review 20 such prosecutions (16 of which concern a Scheme applicant). The CCRC has issued to POL a number of notices under s.17 of the Criminal Appeal Act 1995, requiring POL to preserve and produce materials connected to individual prosecutions, the Scheme, and the review of past criminal prosecutions referred to in para. 21.5 above. POL is responding to those Notices.

Additional Background - Other Activity

31. POL's use of the Horizon system has also been subject to the following scrutiny which may be relevant to the Review:

31.1 Parliament:

- Westminster Hall Debate 17 December 2014
- Business, Innovation and Skills Committee evidence session on Tuesday 3 February
- Adjournment Debate 29 June 2015
- Prime Minister's Questions 11 March 2015 and 1 July 2015
- Early Day Motion tabled on 10 September 2015

31.2 There has been significant media coverage including from Computer Weekly, The Daily Mail, Private Eye, The One Show, Inside Out, The Today Programme and Panorama:

31.3 Data Subject Access Requests

- 45 simultaneous requests (of which 42 are applicants to the Scheme)

Instructions

32. Leading Counsel is therefore asked to consider these instructions and enclosed documents prior to meeting POL's General Counsel at 430pm on Thursday 8 October 2015.

33. The aim of the meeting is to settle the Review's scope and agree a process for conducting, concluding and reporting on the Review within the desired time frame. A further meeting will then be arranged at which Leading Counsel would present this scope and process to POL's Chairman for his consideration.

34. In addition to any requests for further documentation, Leading Counsel is invited to contact Jane MacLeod or Rodric Williams if he would like to discuss any issue arising from these instructions generally prior to the consultation on 8 October 2015.

Jane MacLeod, General Counsel

GRO

Rodric Williams, Solicitor

GRO

**Post Office Limited
Finsbury Dials
20 Finsbury Street
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6 October 2015

Schedule of Related Documents

A. Process Related Documents

1. Communication to Subpostmasters regarding raising concerns with Horizon for initial Second Sight Investigation
2. Post Office's statement on Second Sight's Interim Report (8 July 2013)
3. Press Release announcing the establishment of the Scheme (26 August 2013)
4. Branch Support Programme Paper
5. Letter to Subpostmasters about the Scheme
6. Second Sight's terms of engagement
7. Scheme Application Pack
8. Mediation Pack
9. Press Release announcing the appointment of Sir Anthony Hooper (October 29 2013)
10. Working Group Terms of reference
11. Second Sight's revised terms of engagement (15 April 2015)

B. Scheme Reports

1. Second Sight's Interim Report into alleged problems with the Horizon system (8 July 2013)
2. Complaint Review and Mediation Scheme 'Fact File'
3. Second Sight's Briefing Report – Part One (25 July 2014)
4. Second Sight's Briefing Report – Part Two (21 August 2014)
5. Reply of Post Office Limited to Second Sight's Briefing Report – Part Two (22 September 2014)
6. Scheme Report (10 March 2015)
7. 'Thematic Issues' and Post Office Responses
8. Second Sight's Briefing Report – Part Two (9 April 2015)
9. Reply of Post Office Limited to Second Sight's Briefing Report – Part Two (April 2015)
10. CEDR Mediation Process Guidance notes prepared for the Initial Complaint Review and Mediation Scheme Working Group (May 2014)
11. Model Mediation Procedure: Initial Complaint Review and Mediation Scheme ('The Scheme') Edition 2014
12. Model Mediation Procedure: Initial Complaint Review and Mediation Scheme ('The Scheme') 2nd Edition 2015
13. Feedback from CEDR to the Post Office on the mediations that have taken place to date (24 February 2015)
14. Feedback from CEDR to the Post Office on the mediations that have taken place to date (31 July 2015)
15. CEDR Mediation Agreement: 2014 Edition
16. CEDR Mediation Agreement: 2015 Edition
17. POC 4: About CEDR

C. Political & Media Interest

1. Hansard: House of Commons Debate – 'Post Office Horizon System' 9 July 2013
2. Hansard: Westminster Hall Debate – 'Post Office Mediation Scheme' 17 December 2014
3. Post Office Response to the Westminster Hall Debate (17 December 2014)
4. Mediation Scheme: What You Need to Know (January 2015)
5. Transcript of Oral Evidence: Business, Innovation and Skills Committee (3 February 2015)
6. Post Office Supplementary Evidence to the BIS Select Committee
7. Hansard: Prime Minister Questions 11 March 2015 (James Arbuthnot)
8. Letter from Adrian Bailey to Vince Cable (16 March 2015)
9. Letter from Vince Cable to Adrian Bailey (26 March 2015)
10. Hansard: House of Commons Debate – 'Post Office Horizon System' 29 June 2015
11. Hansard: Prime Minister Questions 1 July 2015 (Andrew Bridgen)
12. BBC 1 Panorama Programme 'Trouble at the Post Office' – 17 August 2015
13. Post Office's statement in reply to the Panorama Programme – 17 August 2015
14. Early Day Motion 'Post Office Horizon Computer System' tabled in Westminster 10 September 2015

D. Advice

Post Office Limited has sought and received legal advice and support on:

1. Criminal Law matters from Brian Altman QC and Cartwright King LLP
2. Civil Law matters from Bond Dickinson LLP and Linklaters LLP
3. Public Law matters from Tom Weisselberg QC and DAC Beachcroft LLP
4. Media Law matters from CMS Cameron McKenna LLP

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