

Legally Privileged and Confidential

Further lines for Jo Swinson MP – Westminster Hall Debate, 17 December 2014

1. Destruction of Documents relating to cases in the Scheme

- PO has not, and will not, destroy any documents relating to the cases in the Scheme
- The implied suggestion that it might is unwarranted
- PO goes to great length to conduct extensive searches of all records when investigating the cases in the Scheme
- Some cases are, however, extremely old and certain documents are no longer available either to Applicants to the Scheme or to Post Office
- PO has operates a default 7 year retention policy, common to organisations

POL has previously destroyed documents relating to cases in the scheme before the birth of the scheme due to its data retention policies.

Implied suggestion that this is unwarranted is incorrect. CK had to advise POL not to shred /destroy documentation after such an instruction was given in the security team and following publication of the interim 2nd sight report. It is my understanding that following the receipt of that advice POL withdrew that particular instruction. However it follows number of people are nevertheless aware such an instruction was provided and it may be that some of those people are no longer employees of POL. It may be better to simply point out that data retention policies have been displaced, in relation to POLs investigation and prosecution files.

2. Independent Review of the Independent Review

- The Government cannot and will not agree to some sort of Independent Review of a Scheme operated privately and at arms-length from Government by PO
- The Honourable Member will recall that he, along with PO, JFSA and Second Sight took great care to establish a system which had inbuilt guarantees of independent, notably through the Working Group and the appointment of Sir Anthony Hooper as its Independent Chair
- Indeed, he himself has on more than one occasion, expressed his confidence in the arrangements until very recently indeed
- Sir Anthony was appointed by POL but on JFSA's own recommendation
- An Independent Review would be a costly, and in the Government's view, unnecessary exercise likely to result in greater delays in the resolution of cases in the Scheme, to the detriment of those with cases within it
- It would also make Sir Anthony's position extremely difficult to say the very least

3. Waiving of Statute of Limitation by PO

- I absolutely cannot commit PO to anything such as this – that is properly entirely a matter for PO

- The Statute of Limitation protects all defendants against very old claims, for instance where claims are old and cannot properly be investigated
- I see no reason why PO should, uniquely, be deprived of its rights
- I would remind the Honourable Member that no time limitation was placed by PO in accepting cases into the Scheme
- The clear implication being that it was, and is, prepared to mediate such cases where there is genuine substance capable of being mediated
- In any event, there has never been anything preventing a Subpostmaster from bringing Court proceedings against PO before any applicable limitation deadline

4. Second Sight briefing MPs

- Honourable Members must understand that Second Sight are engaged by POL
- POL is paying all of Second Sight's fees
- Second Sight is an advisor to the Working Group and has no wider authority on the Scheme
- In any event, Second Sight is bound by the same obligations of confidentiality as are all those participating in the Scheme

5. PO to divest itself of its right to mount private prosecutions

- PO is not a prosecuting authority with special and/or particular rights and powers in this area
- Instead, like any organisation or person in the UK, it can mount private prosecutions
- These must, and I believe do, comply with all the requirements of the Code for Prosecutors
- Chief among these are that there should be sufficient evidence to mount a prosecution and that the prosecution itself is in the public interest
- As I say, these powers are not unique to Post Office but they represent an important deterrent against those who maybe contemplating fraud, theft or other crimes of dishonesty against it
- And they also represent an important tool in terms of legitimate revenue protection and enforcement when, regrettably, people do commit crimes against it
- There is simply no reason to remove these rights from the Post Office, again placing it in a unique position as compared to all other organisations, and to its detriment

Since POL separated from RMG (1/04/12) Prosecution decisions have been made by external lawyers .i.e solicitors and Barristers .This ensured POLs actions are considered independently by qualified legal personnel's.

POL has on-going duty of disclosure in respect of post convictions. Which it takes seriously.

6. Funding for Appeals

- I am glad that the Honourable Member recognises that the only forum in which appeals against conviction can be made is through the Courts

- Neither the Scheme, nor any mediations undertaken in relation to it, is a substitute criminal appeals systems and nor could it ever be
- The Honourable Member raises the issue of the costs involved in mounting an appeal against a conviction
- I am no expert, and I will make enquiries, but my understanding is that public legal assistance is available for appeals in certain circumstances
- However, I do not see any compelling reason for which Subpostmasters convicted of a crime should be placed in any different position to people from other walks of life who find themselves in identical circumstances

7. Criminal Cases Review Commission

- The Honourable Member has asked whether I would write to the CCRC in relation to the cases in the Scheme in which there is a criminal conviction
- He will, doubtless, be aware that the CCRC is principally concerned with matters which arise (for instance material new evidence) which comes to light after an Appeal has been made and been turned down by the Courts
- As such, I think it unlikely that the CCRC would accept jurisdiction for these particular cases at this juncture
- I remind the Honourable Member that no such appeals have yet taken place but that there is no bar whatever to any going forward
- SPMS with cases in the Scheme will have the benefit of all the documentation which results from the comprehensive investigations taking place to consider whether they have any grounds for mounting an appeal
- IN the circumstances, I must decline his request which I believe to be premature
- He is, of course, perfectly able to raise this matter with the CCRC himself if he so wishes