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Baroness Neville-Rolfe  
Parliamentary Under Secretary of State  
Department for Business, Innovation & Skills  
1 Victoria Street  
London  
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7<sup>th</sup> September 2015

By Post and Email ([mpst.neville-rolfe](mailto:mpst.neville-rolfe)) **GRO**

Dear Minister,

**Post Office Complaint and Mediation Scheme**

At our meeting on 6 August 2015 we briefed you on the matters which we expected to be raised in the BBC Panorama programme and also discussed with you the various arguments being put forward for a government sponsored inquiry. Following the broadcast of the Panorama programme on 17 August, I wanted to respond to the allegations raised in that programme, and the subsequent calls that have been made for Government to act.

This letter and the "Panorama Rebuttal", sent to you via Richard Callard and Laura Thomson at the Shareholder Executive within Department of Business Innovation and Skills on 4 September 2015, refer to matters and material which is subject to legal professional privilege which belongs to Post Office Limited. We have provided these to you and the Shareholder Executive as our Minister and shareholder respectively given our common interest in understanding, responding and (where appropriate) rebutting allegations made about the integrity of the Horizon branch accounting system and Post Office prosecution practices. It is also in our common interest to maintain the confidentiality of this privileged material, and for that reason this letter and associated material must be treated as strictly confidential and subject to common interest privilege.

***Panorama***

The programme included a number of inaccurate statements, drawn selectively from limited information, to create a misleading and damaging impression of how and why Post Office undertook prosecutions. The programme presented these so as to invite the audience to be extremely concerned as to our handling of the three individual cases and inferred that these were representative of wider miscarriages of justice.

We had lengthy exchanges with the BBC over the three months leading up to broadcast. In the days immediately prior to its airing, we offered to share with the editorial team a number of documents which would have conclusively disproved the claims being made. This would have permitted the production of a more balanced piece of journalism. Regrettably, this offer was not accepted due to the Post Office imposed conditions affecting the use of the information we proposed to share (which included non-public as well as legally privileged information). As we discussed with you previously, Post Office believes that the public disclosure by it of sensitive

information relating to the individual cases would ultimately be counter-productive to the individuals concerned and hence why any such disclosure was subject to confidentiality restrictions.

We met the BBC's most senior news executive, James Harding, on Friday 4 September. At that meeting we acknowledged the legitimate public interest in scrutiny of the Post Office, including by the BBC. Nevertheless we made the point that the Panorama programme was unbalanced and misleading in its presentation of the facts, and that the BBC failed to take up the many opportunities we offered which would have facilitated a fairer programme. We have also reserved our right to make a formal complaint to the BBC Trust.

### ***Criminal Cases***

As we flagged to you at our meeting, no criminal conviction arising from a prosecution brought by Post Office has been appealed. Nevertheless, there are now 20 cases (16 of whom are applicants to the Scheme) under consideration by the Criminal Cases Review Commission ('CCRC') whose role is to consider whether any of these cases could have been the subject of a miscarriage of justice.

We are co-operating fully with the CCRC which has the ability to require production of all materials relating to these cases, including information that is subject to legal and professional privilege. We welcome the involvement of the CCRC and will abide fully by its conclusions. Nevertheless, having thoroughly reviewed these cases ourselves, together with a significant number of other criminal prosecutions brought by Post Office, we believe that these prosecutions were handled properly and in accordance with the Code for Crown Prosecutors.

In light of the CCRC's ongoing review, we believe that it would not be appropriate for the Government to sponsor a review or inquiry into Post Office's handling of these criminal prosecutions, until such time as the CCRC's review has been completed and its findings become public.

### ***Other Cases***

As you know, the Post Office is offering mediation in all cases other than those in which there has been a court ruling. Mediation cannot overturn a court ruling and therefore we do not believe that mediation will result in a mutually acceptable outcome in those cases. As at the date of writing, only 8 of those cases which are eligible for mediation, have not set a date for mediation with the independent mediator - the Centre for Effective Resolution (CEDR).

We continue to explore options to provide further mediation dates for those (few) cases who have not contacted CEDR.

These mediations are entirely voluntary and Post Office bears the full cost. In addition, Post Office has advised that it will not use as a defence in any subsequent court proceedings, the fact that the 6 year time limit available in all contractual disputes has expired, where that time limit has expired while a case has been in the Scheme.

Reports from CEDR (which have previously been provided to you) confirm that Post Office does approach these mediations constructively with a genuine desire to seek an agreed outcome. Unfortunately however, it is apparent that many believe that the only appropriate

outcome of mediation is compensation payable to them by Post Office, and this means that not all mediations will achieve agreement.

Applicants to the Scheme are also entitled to seek legal redress through the Civil Courts should they have a legal basis to do so. To date, no such action has been brought by any applicant or group of applicants.

#### ***Individual Members of Parliament***

We continue to offer meetings to those Members of Parliament who have one or more constituents with cases in the Scheme. During these meetings and subject to the relevant applicant's consent, both sides are able to discuss their case. We believe that the meetings held to date have been constructive, with MPs having the opportunity to understand greater detail around the cases, together with the rationale for Post Office's position.

It is therefore regrettable that, despite your direct appeal to them in the meeting on 6 August 2015, neither Kevan Jones nor Andrew Bridgen has agreed to meet with us to discuss their respective constituents' cases.

#### ***Business Innovation and Skills Select Committee***

Post Office representatives will be meeting with Iain Wright MP, the new chair of the BIS Select Committee, on Tuesday 8 September.

Mr Wright has indicated on social media that the Post Office Scheme is a matter which the newly convened Committee may wish to examine, following on from its inquiry of 3 February earlier this year.

We hope that the meeting on 8 September will give us the opportunity to request a further briefing to ensure that he, as Chairman, (and through him, his colleagues) has the benefit of all relevant information necessary to enable an informed decision to be taken as to the utility, structure and parameters of any further Select Committee inquiry.

#### ***Public Inquiry***

As discussed, a number of calls have been made for some form of 'public inquiry' to be convened into the Post Office's handling of this issue. These calls have been repeated following the broadcast of the Panorama programme. No detail has been given as to the nature of such inquiry, who should sponsor it, who should be appointed to conduct it, or who should pay for it.

As stated above, the CCRC is already reviewing 20 criminal cases and in our view it would be premature to establish any other inquiry whose mandate includes a review of the criminal cases until such time as the CCRC has completed its work. Further, any other inquiry is unlikely to have as wide powers as CCRC to require production of all relevant materials.

As to the remainder of the cases in the Scheme specifically, and the Post Office's handling of similar cases more generally, it should be noted that these are essentially contractual disputes between the Post Office and former postmasters. As explained at our meeting in August, postmasters are agents of the Post Office who handle Post Office funds and therefore have a



fiduciary and contractual obligation to account to Post Office for the amount of those funds. All these cases have at their heart a failure by the agent to fully account for Post Office monies.

Accordingly, any Government sponsored inquiry will need to be funded. Given the substantial costs incurred by Post Office to date to investigate these claims (now in excess of £8m), that fact that the CCRC is already being funded by government to review the criminal cases, and that none of the existing legal remedies available through the publicly funded court system have been explored by applicants, we question the basis on which it would be appropriate to commit further funding resources to this matter at this stage. Moreover, given the private law nature of these contractual disputes, it is not immediately clear what the locus for any such inquiry might be.

### ***Way Forward***

At our meeting on 6 August 2015 you advised that you would ask the new Chairman, Tim Parker, to review the Post Office's position. Accordingly pending both his findings and those of the CCRC, the Post Office would welcome your Department's support in resisting the current calls for a 'public inquiry' which come from a small, if extremely vocal, number of stakeholders.

I am, of course, ready to discuss these matters you with you and your officials at any time.

The logo consists of the letters 'GRO' in a bold, black, sans-serif font, enclosed within a dashed rectangular border.

General Counsel  
Post Office Limited