

DRAFT REBUTTALS DOCUMENT (November 2014): In strictest confidence

Background: Our public stance will be that we will not comment directly on any documents or individual cases that are confidential to applicants because applicants are assured of confidentiality under the Scheme's terms of reference.

Rebuttals below are primarily intended for **non-attributable** or **off the record** use against allegations that might arise and will be reviewed against the nature of enquiries.

<i>Allegation</i>	<i>Rebuttal (all non-attributable)</i>	<i>comments</i>
The Scheme is a sham – Post Office is showing bad faith and was insincere about addressing cases	<p>The fact that during 2.5 years of investigations and with the majority of individual cases now examined, there is no evidence of fault with Horizon, is welcome reassurance for everyone who works in or uses the Post Office network. Post Office has gone to great lengths to establish the facts. Following the independent review that Post Office instigated, the scheme was designed collaboratively with JFSA and Second Sight, with JFSA nominating the Chair of its Working Group. Post Office provided funding for scheme applicants to obtain professional advice in building their cases against the company.</p> <p>The scheme involves rigorous and painstaking re-investigation of each and every case and subjecting this to external review by Second Sight.</p> <p>The remaining cases are being treated with the same rigorous approach. Each and every one is being considered on its facts.</p> <p>Post Office continues to act in good faith responding to the questioning of the integrity of the system which millions of</p>	

	<p>people rely on every day. But, just as it would be wholly wrong to fail to respond to any evidence of flaws in Horizon, Post Office cannot be expected to ignore clear evidence that directly contradicts accusations made.</p> <p>Given that some people may have been expecting that a fault with Horizon would be found, it is perhaps not surprising that they may be disappointed and make accusations about the scheme itself. But it is hard to see what more any company could do and those making allegations have had ample time to substantiate them.</p>	
Post Office deploys lawyers at every meeting, which suggests hostility to mediation	<p>Post Office's input to the scheme sits within the responsibilities of our General Counsel. This does not imply a legalistic approach or any hostility to mediation. The Post Office's representation on the Working Group is drawn from senior staff, some but not all of whom are lawyers. The fact that Post Office asks for evidence to support allegations or conclusions is reasonable, not legalistic.</p>	
Post Office is not interested in the truth and is still blaming the subpostmasters involved	<p>With investigations and independent reviews into Horizon now spanning 2.5 years, Post Office has gone to great lengths to establish the truth. It instigated an overall independent review as well as an impartially-chaired scheme for the re-investigation of individual cases, with Post Office providing funding for people to obtain professional advice to help them build cases against the company. No evidence of a fault with Horizon has been found but there is no complacency and the remaining cases are being treated with the same rigorous approach. Each and every one is being considered on its facts.</p> <p>But, just as it would be wholly wrong to fail to respond to any evidence of flaws in Horizon, Post Office cannot be expected to ignore clear evidence that directly contradicts accusations</p>	

	made and which provides welcome reassurance for everyone who works in or uses our network.	
Post Office still ignore the fact that they failed to correct Horizon system and its associated issues	Post Office cannot be expected to accept responsibility where there is no evidence of any fault. We cannot discuss individual cases but each and every one is being examined afresh and independently reviewed – none have shown there to be fault with Horizon. We are also investigating all associated issues raised, such as training and support, and no systemic issues have been found to date.	
Some applicants are withdrawing from the Scheme – demonstrating there is no confidence in it	We cannot discuss individual cases but it is inaccurate to paint this picture. There have been mediations that have resolved cases and there have also been some cases resolved outside of the scheme through a meeting to discuss the concerns raised.	
Post Office is not providing all the documentation (including from court cases) that it should	This is a very serious and untrue allegation. Post Office provides all the documentation that is relevant to each case to Second Sight to review, along with its own investigation report. This includes documentation from court cases where we still have it in our records and are able to legally provide this. Court documentation is also of course for applicants to provide. As part of the investigation and review of individual cases Post Office has provided [hundreds of thousands] of pages of documentation, for example transaction logs, telephone logs, emails and other evidence for Second Sight to review. In criminal cases we are legally obliged to disclose any new evidence and we take our responsibilities in this regard extremely seriously.	
You are trying to force people who want to sell their Post Offices and move on (under current changes) out of the scheme – if they accept a	Any subpostmaster in this situation can accept a leavers payment and remain in the scheme.	

leavers' payment they waive their rights		
Mediation		
Post Office have reneged on the terms of the Scheme and are refusing to mediate some cases, even when this is recommended by Second Sight / Working Group	<p>It was never envisaged or stated that all cases would automatically pass to mediation. Mediation is the potential second part of the process – the first being re-investigation and independent external review of each and every case. Post Office never rejected any eligible case at any stage, accepting all for investigation even when there appeared to be little substance to the cases. We look at every case on its merits. Where we think a case is suitable for mediation we will mediate.</p> <p>Mediation is a consensual process and designed to get agreement and compromise. It would be wrong for Post Office to mediate where neither the applicant, Post Office nor Second Sight have found evidence to suggest that the applicant was not responsible for the loss. That is not a matter for compromise.</p>	
You allowed criminal cases into the scheme but you are not mediating them and are essentially telling people they can go back to the courts – for many that is too late	<p>We are considering every case on its merits. However mediation cannot overturn a conviction and if an applicant considers their prosecution unsafe they need to appeal that. Where an applicant has been prosecuted and convicted and the new investigations have revealed nothing which calls that conviction into question, it is simply not appropriate to engage in mediation about it. Applicants can still, at all times, decide to appeal their convictions following the normal and established court processes.</p> <p>To date we have seen nothing in the cases we have investigated that suggests any conviction is unsafe. If we did we would make the appropriate disclosure. We take our responsibilities in that regard very seriously.</p>	

	It was made very clear at the start of the scheme that convictions can only be overturned through court process and indeed the JFSA advised that affected applicants should “enter a parallel scheme with a firm of criminal lawyers who will look into your case with a view to consider using the appeals court to overturn the findings against you.”	
Some people have suffered terrible as a result of Post Office actions but you refuse to accept that	There are some genuinely harrowing stories that have arisen from the investigations and we know that some people have suffered illness, accident and bereavement. However that does not mean that Post Office was responsible for any of these unfortunate events. However sad the case is for the individual concerned and indeed anyone connected with it, it is not Post Office’s responsibility to insure people it enters into contracts with against life events, however difficult, where Post Office has no responsibility.	
But it is surely wrong to deny people a chance to be heard and to get closure	Every case is thoroughly investigated and applicants are given a full report. Post Office is prepared to discuss and explain where it is possible to do so (false accounting by its nature frustrates this process) how losses occurred. A conversation of this nature can be more appropriate than mediation.	
You are refusing to even consider compensation and in some cases intend to chase disputed debts	This is not and never has been a compensation scheme. The scheme is two parts – firstly, re-investigation and independent external review of each and every case and secondly, mediation where it is appropriate. Mediation is a consensual process and designed to get agreement and compromise. Every case is different and considered on its own merits. It is very important that we are fair and consistent, in the interests not only of the applicants but also the many thousands of serving and former subpostmasters. It would be	

	wholly wrong for Post Office to ignore evidence and facts in cases put forward into the scheme and it must act in the context of these.	
You have no intention of paying consequential losses to people who have lost their businesses and homes	Every case is considered on its merits. We cannot comment on individual cases but Post Office cannot be expected to take responsibility where there is no evidence that it is at fault. [Background re legal position: A sub-postmaster cannot recover consequential losses where Post Office has reasonably exercised its legal rights, and recovered branch losses from the sub-postmaster as agreed in their contract.]	
Contracts		
Sub-postmasters' contracts are unfair and biased in POL's favour	The investigations and reviews are about Horizon and associated issues and it is not part of this work to look for alternative issues to target simply because no issues have been found with Horizon. The terms of the contract are broadly similar to those used in franchising arrangements across the UK and reflect the basis on which Post Office and thousands of sub-postmasters have successfully conducted business for decades. The terms of the sub-postmaster contract are jointly drawn up by the Post Office and the National Federation of Sub-postmasters, which represents the majority – 80% - of our independent agents.	
Many sub-postmasters have not signed or been given a copy of their contract	Sub-postmasters are business people and have the opportunity to review the contract before signing, as well as the opportunity to take legal advice if they wish to do so.	
Post Office does not provide legal advice before sub-postmasters sign the contract or even advise sub-postmasters they should obtain it	Sub-postmasters are independent business people, with a similar position to franchisees and therefore obtain legal advice as they see fit on any aspect of running their business.	

	The majority of Post Offices are run on this 'agency' basis, frequently within another business, such as a shop.	
Crown Offices		
Crown Office staff are exempt from any losses – it is only subpostmasters who bear responsibility	Post Office does take action against staff at Crown branches if illegal activity is suspected. Staff at Crown branches are directly employed by Post office. The vast majority of the network is operated by subpostmasters who are not employees – they are independent business people operating under a contract with Post Office. Under this arrangement, which is similar to franchise arrangements, subpostmasters have responsibility for their branch accounts, for employing and training their staff and ensuring the proper running of their branch. They are paid and incentivised (partly) according to the amount of business they undertake for POL. The terms of the subpostmaster contract are broadly similar to those used in franchising arrangements across the UK and reflect the basis on which Post Office and thousands of subpostmasters have successfully conducted business for decades. The terms of the subpostmaster contract are jointly drawn up by the Post Office and the National Federation of Subpostmasters, which represents the majority – 80% - of subpostmasters.	
Training and Support		
Subpostmasters were not trained properly	We look at the evidence on a case by case basis. To date there is no evidence of systemic fault with Horizon or related issues (such as training). Thousands of subpostmasters have been successfully operating Horizon for years having received training from Post Office. We provide comprehensive training, which we have continued to improve and which includes classroom and on-	

	<p>site sessions. We also offer follow-up support and visits. Nearly half a million (456,202) subpostmasters and employee have used the Horizon system since its introduction in 2001. Around 2.5 billion transactions are processed every year. We will always of course strive to continue to improve and have undertaken further initiatives since the publication of Second Sight's report in 2013. Post Office created a new Branch User Forum as a way for subpostmasters and others to raise issues and insights around business processes, training and support, directly feeding into the organisation's thinking at the highest level. One of the tasks for this forum is to review support processes and training to ensure the meet the standards expected of the Post Office.</p>	
Your Helpline gave poor, inaccurate or contradictory advice to subpostmasters	<p>Horizon has been used successfully by almost half a million (456,202) subpostmasters and employees since its introduction in 2001. Our Helpline for subpostmasters, alongside a service for technical enquiries, is available to support them with any queries. If these are not quickly resolved, further expertise is available, including visits to Post Offices if necessary.</p>	
Audit trail/ Investigations		
Post Office controls Horizon and back office systems so subpostmasters have to pay for 'losses' they can't investigate	<p>Subpostmasters are enabled with the information they need to run their accounts – and the overwhelming majority do this successfully. Horizon tracks every transaction made in a Post Office branch and logs the levels of stock and cash held. Branches have always had access to line by line transaction data each day.</p>	
Default to seek evidence for false accounting/ not open-minded/ flawed approach/ does not	<p>Post Office investigations are conducted on the facts of each case.</p>	

consider root causes	But false accounting, by its nature, deliberately prevents Post Office from being able to identify and investigate transactions that might have caused discrepancies. It hides any genuine errors.	
Subpostmasters were under pressure to falsely account/ had to false account or not be able to trade	There are no circumstances capable of justifying committing the criminal offence of rendering a false account. It is simply not true to suggest that any subpostmaster needed to do this to continue trading. All Post Office asks is that at the end of each month a subpostmaster physically counts the cash in their branch and records that figure in the branch accounts. So long as this is done the branch may continue to trade. False accounting occurs when a false number is entered into the branch accounts.	
Sub-postmasters had records and diaries taken from them and not returned when they were suspended so were unable to prove innocence	Branch records are the property of Post Office and may be taken away for investigation in the event of a sub-postmaster being suspended. In addition, there is no evidence that any sub-postmasters who have been suspended have been prejudiced by POL taking their records away for investigation.	
Post Office has no incentive to investigate & correct discrepancies because sub-postmasters carry the risk and POL & customers benefit from surpluses	Post Office has every incentive to make sure the system works as efficiently and smoothly as possibly. We take discrepancies extremely seriously, whether they result in shortages or surpluses. Both are investigated and there is a robust process for correcting errors.	
POL deleted files for cases instead of operating a "litigation hold" policy	Post Office normally holds information and files for 7 years [which is normal business practice] where it is legally able to do so. In some circumstances documents might be held longer, again where legally possible.	
Prosecutions policy		
The number of prosecutions has reduced in	All cases of potentially criminal conduct are thoroughly	FOI October 2014

<p>recent years – this demonstrates you are not confident in Horizon/ do not want evidence about Horizon tested in court</p>	<p>investigated and decisions about appropriate courses of action are taken on the facts. Decisions whether or not to prosecute are taken on a case by case basis.</p> <p>[If pushed on whether we have taken Horizon investigation into account eg dropped cases etc in recent times and whether that reduced number of prosecutions]: Whilst there remains no evidence of any systemic flaws in Horizon it has been right and fair not to prejudge the investigations and, where that is relevant to any case, it is of course considered.</p> <p>[If asked for background about prosecutions policy:]</p> <p>In deciding whether a case should proceed to criminal prosecution the Post Office must be satisfied that it meets both of the two stages of the test set out in The Code for Crown Prosecutors. The first is whether there is sufficient evidence to justify a prosecution and the second is whether the prosecution would be in the public interest. A criminal prosecution will only be pursued by the Post Office if both stages are satisfied.</p>	
<p>Horizon system</p>		
<p>Subpostmasters' accounts can be amended in Horizon without subpostmasters or their staff</p>	<p>The system is designed to prevent any access, either remote or direct that would allow individual branch transactions to be</p>	<p>FJ to be consulted before answer provided.</p>

knowing about it	<p>altered.</p> <p>[If pressed further:] The system has been designed to prevent any access, either remote or direct, that would allow individual branch transactions to be altered. Fujitsu has controlled access to the Horizon system for software updates and maintenance purposes. This is of course strictly controlled with security processes in place, but could not, in any event, be used to alter individual branch transactions - there is no facility within the system for this.</p>	Under discussion – to be aligned with revised P2 [Keep aligned with FOI from 2011]
System generated entries can be made under subpostmaster ID	This is not true. All users of Horizon have individual IDs and there is always a 'digital footprint' for every user	FJ to be consulted before answer provided. To be aligned with revised P2
Subpostmasters have been bearing losses that could have been designed out of the system	This is simply not the case at all. The vast majority of subpostmasters have been successfully using Horizon for many years. Post Office regularly reviews and improves Horizon and makes enhancements based on user experience and feedback.	
Horizon is not fully fit for purpose/ there is still evidence of “bugs” in the system	This is untrue. Horizon is operated by thousands of subpostmasters, the majority of whom have not had any issue with the system or the effectiveness of it. There are currently more than 78,000 users of the system and six million transactions are processed by subpostmasters and Post Office staff every working day. During investigations and independent review that have now continued for 2.5 years, the evidence remains that Horizon is working correctly.	
ATMs		
ATMs can easily be “out of synch” with Horizon	Post Office has more than 2,000 ATMs at branches throughout its network, successfully operated by sub-	

	<p>postmasters and staff.</p> <p>Both the ATM owner (Bank of Ireland) and POL have records for ATM transactions and there are robust processes for reconciliation.</p>	
It was easy for sub-postmasters to make mistakes with ATMs and poor advice was given by the Helpline	Post Office has more than 2,000 ATMs at branches throughout its network, successfully operated by sub-postmasters and staff. This supports the fact that operating practices for ATMs are clear, understood and work in practice.	
ATMs could cause loss of data/ corruption if affected by power cuts or telecommunications failure	<p>We are confident that no data is lost or corrupted from communication failures. The recovery process was process was reviewed in detail by Second Sight and found to work.</p> <p>We successfully manage and operate more than 2000 ATMs throughout our network.</p> <p>[If asked about power cuts/ telecommunications causing data loss/ corruption more generally:</p> <p>After some two and a half years of investigation, including by independent forensic accountants, there remains no evidence of any system-wide flaws in Horizon, including that power or telecommunications failures cause losses in branches.</p> <p>The system is designed to ensure that data is protected from such events].</p>	
Post Office has not treated the possibility of ATM external fraud seriously enough	Sub-postmasters are not liable providing correct procedures and accounting processes are followed. We treat fraud extremely seriously and work with our sub-postmasters and staff to prevent it.	
MVLs		
Misprinting of Motor Vehicle Licences barcodes could have caused significant losses for some Post Offices	This is completely incorrect. The barcode defines overall cost (not duration) and on scanning the code, Horizon invites payment at the level so there would be no discrepancy.	

	There have been no widespread issues at all from any DVLA misprinting of barcodes.	
Lottery		
POL did not finally eliminate the possibility of synchronisation errors re Lottery scratchcards until February 2012. There were serious and frequent problems between 2005 and 2010	There have been no issues raised that indicate any problems caused by the Horizon system. We've continued to improve procedures to help sub-postmasters, not because of any problems with the system. The vast majority of sub-postmasters have been successfully operating these services for years.	
Recent FOIs		
You are refusing under FOI to provide the number of transaction corrections made every year under FOI.	We abide by FOI rules. But it is important to understand the purpose of Transaction Corrections. They are primarily to initiate a correction where a branch has made an error in recording a transaction. They do not necessarily lead to a situation where a subpostmaster is required to put money in or take money out – so long as the branch took the correct money from the customer or paid the correct value out, there would be no advantage or disadvantage to the subpostmaster or Post Office.	From FOI enquiry
You are refusing to give the total cost of the P2 report under FOI but you must hold it	Post Office does not hold the information on the total cost of the report.	From FOI response
You are refusing to release P2 report but it has been leaked anyway	The scheme provides an assurance of confidentiality to applicants. A variety of documents have been produced to assist with individual mediations. The Working Group has not published these individual documents or passed them to anyone other than those involved in the mediation process. This is because the applicants are assured of confidentiality and the Working Group has made it clear in all	Email to Huw Irranca-Davies (also detailed FOI response to Pat Aspinall but only to be drawn on if necessary)

	<p>correspondence that all documents produced for the Scheme are subject to strict confidentiality. It is therefore unfortunate that a document produced for mediation appears to have been shown to a person or organisation not involved in the Scheme. This does not assist either individual applicants or the Scheme itself.</p> <p>[If necessary: Refer to FOI response]</p>	
Cost of Scheme		
You haven't included any potential liability costs in your Report and Accounts but you must be facing/ at risk of significant pay-outs overall	Post Office Limited prepares its Financial Statements in accordance with international accounting standards, which set out a clear definition of what constitutes a liability. Any potential liabilities for the business are discussed with external auditors who agree whether they meet the definition and are required to be recognised in the Financial Statements for any particular year.	This has also been given in FOI response
You've spent £xk on SS alone so the cost of this must so far be into millions of £s of public money	In circumstances where the integrity of the system which millions of people up and down the country rely on every day is being questioned, that requires an appropriate response. The scheme is not completed so it would not be appropriate to discuss costs at this time.	FOIs on costs ongoing – need to keep aligned
Post Office closures		
You closed some of the Post Offices after suspending subpostmasters to avoid paying compensation for their office closure	This is a very serious, baseless allegation. Our priority is to maintain services for our customers and there is a strict code of practice involving public scrutiny and consultation for changes to the Post Office network. The network is also governed by criteria to ensure customers have access to Post Office services.	

