



29th October 2021

CWU response to Post Office Horizon IT Inquiry Notice of Preliminary Hearing on 8th November 2021

Introduction

The Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing approximately 192,000 members. We are the recognised trade union for all non-managerial employee grades in the Post Office Limited (POL), where we have members in all sections of the business. The CWU has over 350 Subpostmasters in CWU membership, but POL continues to refuse to grant the CWU recognition on their behalf.

The CWU welcomes the opportunity to respond to the Inquiry on the four themes identified following the provisional list of issues consultation.¹ We support the suggestions raised by respondents in relation to each of these themes and we agree that the Inquiry should carry out a detailed investigation of:

- The events surrounding Second Sight;
- The extent to which Royal Mail and POL acted on legal advice;
- The strategy of POL during the Group Litigation;
- Any divergences in the policies and practices adopted by Royal Mail Group and POL within the four countries of the UK when taking action against Subpostmasters.

A. Second Sight Investigations Limited (“Second Sight”)

(i) To what extent should the Inquiry examine the events surrounding Second Sight?

The CWU believes it is imperative the Inquiry carries out a thorough examination of the events surrounding Second Sight.

It has been reported that POL refused to accept or publish reports produced by Second Sight after it revealed serious problems with Horizon technology and processes. Instead POL issued counter-reports and denials. POL sacked Second Sight shortly before the consultancy’s final report was circulated in 2015, and terminated the complaint and mediation scheme for

¹ Notice of preliminary hearing on 8th November, PO Horizon Inquiry, accessed on 25th October 2021 at: <https://www.postofficehorizoninquiry.org.uk/key-documents/notice-preliminary-hearing>

Subpostmasters.² It then reportedly ordered Second Sight to hand over or destroy all material it had accumulated in the course of its two-and-a-half-year study.³

The CWU understands that Second Sight were dismissed when they had informed POL of the levels of compensation they could potentially face together with the scale of the underlying Horizon errors that had significantly impacted on so many Postmasters and as a consequence requested further information to inform their investigation. There remains no clarity around the real reason(s) behind POL's termination of Second Sight's investigation and the CWU believes that the Inquiry should investigate in detail the motives for these actions and who actually made the decision to terminate Second Sight's involvement.

We therefore support the suggestions from other respondents that the Inquiry should examine the following topics: (a) the scope of the investigation undertaken by Second Sight; (b) the adequacy of the information provided to Second Sight; (c) the response of Post Office Limited to Second Sight's findings; (d) the decision to terminate Second Sight's engagement; and (e) the role of government in decision-making relating to Second Sight.

(ii) Is it sufficient for the Inquiry to investigate the reasons for the decision to terminate the Post Office Complaint Review and Mediation Scheme?

While this is certainly a central question and one that must be addressed as a priority by the Inquiry, it is not sufficient to focus on this alone. As previously mentioned, it is also important that the Inquiry looks at the reasons for the decision to sack Second Sight and order it to hand over or destroy all of the material it had gathered throughout its investigation.

(iii) Should the Inquiry examine whether and to what extent the scope and findings of, and the disclosure made in relation to, the independent investigation(s) undertaken by Second Sight were appropriate?

Yes, we believe it is important for the Inquiry to investigate whether the scope and findings of Second Sight's investigation and the information provided to Second Sight were appropriate. This will help the Inquiry to uncover the full facts surrounding this issue, and to establish what, if any, reasonable grounds POL had for terminating its contract with Second Sight.

B. Reliance upon legal advice

(i) Is it necessary for the Inquiry to investigate whether and to what extent Royal Mail Group and Post Office Limited acted upon legal advice when they:

a. formulated policies and guidelines on the civil and criminal liability of SPMs, managers and assistants for shortfalls shown by Horizon; and

² Second Sight's Ron Warmington breaks his silence, Post Office Trial, 18th December 2019, accessed at: <https://www.postofficetrial.com/2019/12/second-sights-ron-warmington-breaks-his.html>

³ Post Office IT, Crash Test Dummies, Private Eye, March 2015

Yes, it is clear that even though many SPMs believed there to be faults with the Horizon system, POL were completely uninterested in and seemingly in denial of any systemic problems and single-mindedly pursued SPMs for supposed liabilities. POL's strategy seemed to be geared towards getting "confessions" from SPMs. It is unclear where or from whom this approach to deflect the blame initiated.

b. brought civil and / or criminal proceedings against SPMs, managers and assistants alleged to be responsible for shortfalls shown by Horizon?

Yes, the CWU is convinced that senior officials within the POL were aware of problems with Horizon throughout civil / criminal proceedings against SPMs, managers and assistants. POL, through the successful prosecution of individual SPMs, must have gained confidence and as such decided to continue with the prosecution strategy of individual SPMs (rather than admit to problems with Horizon) as they had presumably been led to believe via legal advice that they would continue to be victorious in court. It is clear that Second Sight were seeking to expose this situation.

(ii) If so, should the nature of the legal advice received be investigated?

Yes, it is unclear whether POL's vindictive approach originated in house (with the Board of Directors, for instance) or whether they were advised as such by external lawyers. The Inquiry should fully investigate how POL came to decide on this approach and whose decision it was as it not only demonstrably ruined the lives of many SPMs but ultimately led to significant time elapsing due to the tactics displayed and deployed in court by POL's legal team (for example, through the failure of POL's recusal application), at the cost of the taxpayer.

We therefore support the suggestions from other respondents that the Inquiry should investigate the following issues: (a) the nature of any legal advice obtained to inform policy decisions about the civil and criminal liability of SPMs, managers and assistants for shortfalls shown by Horizon; (b) the action (if any) taken upon receipt of that legal advice; (c) whether legal advice was sought in proceedings brought against SPMs, managers and assistants; (d) the nature of the legal advice obtained.

C. Conduct of the Group Litigation

(i) Do the Inquiry's Terms of Reference permit an investigation of the conduct of the Group Litigation?

The Terms of Reference do not include a specific question on the Group Litigation but we believe this is a crucial issue and therefore must be investigated by the Inquiry. We would suggest that the Terms of Reference permit such an investigation under the questions relating to prosecution as well as support and redress for Subpostmasters. Question 147 is especially relevant, which asks '*What (if any) policies or strategies were adopted by Post Office Limited in response to the efforts of SPMs...b) to obtain redress for the wrongs which they suffered as a result of those failings*'.

(ii) If so, should the conduct of the Group Litigation by Post Office Limited (and others) be investigated?

Yes, we think it is extremely important that POL's holistic approach to the Group Litigation, including the financial settlement that primarily addressed the legal costs incurred by the JFSA, should be investigated, together with the paucity of the compensation arrangements for the former SPMs involved in the Group Litigation Order. In particular, the Inquiry should be investigating how the Board of Directors reached the decision to make an application to remove the High Court Judge in the Horizon Trials. The Inquiry should establish who gave POL the advice to pursue this strategy; how those advisors were appointed, informed and directed; who was involved in the decision making process and to what extent they influenced that process.

Had POL's application to recuse the Judge been accepted, it would have increased the costs exponentially for both sides and extended the length of the litigation into several years in the event of appeals. Indeed, there is every possibility, had POL been successful, that further funding for the JFSA claim in these circumstances would have been withheld and legal proceedings collapsed due to POL's legal tactics.

POL had already spent millions of pounds of taxpayers' money on its legal defence, with its accounts for the year to March 2020 alone showing litigation costs of £74m, including the £58m settlement of the Group Litigation. This does not account for the legal costs incurred between 2017 when the trials began and 2019. Furthermore, POL's 2020 accounts show that money put aside to cover the issue could increase to more than £300m.⁴

All the signs are that POL's strategy was to keep throwing taxpayers' funds at the case until the claimants ran out of money. Judge Fraser referred to this strategy in his 2019 Horizon judgment, saying the Post Office "*has resisted timely resolution of this Group Litigation whenever it can*", and used the word '*attrition*' in describing the Post Office's approach to litigation.⁵

We support the requests from other respondents that there be an investigation into the following topics: (a) the strategy of Post Office Limited during the Group Litigation; (b) the identity of those responsible for formulating that strategy; (c) the reasons for, and the appropriateness of, that strategy; (d) the nature of the legal advice received by Post Office Limited; (e) Post Office Limited's approach to its disclosure obligations.

D. Divergences across the United Kingdom

(i) Should the Inquiry investigate whether and to what extent there existed divergences in the policies and practices adopted by Royal Mail Group and Post Office Limited within the

⁴ Taxpayers left with £254m bill for Post Office Horizon scandal, Insider, 25th March 2021, accessed at: <https://www.insider.co.uk/news/taxpayers-left-254-million-bill-23789386>

⁵ Blighty's most trusted brand? Yeah you wish, judge tells Post Office in Horizon IT ruling, The Register, 16th March 2019, accessed at: https://www.theregister.co.uk/2019/03/15/post_office_horizon_it_system_initial_judgment/

four countries of the United Kingdom when taking action against SPMS, managers and assistants alleged to be responsible for shortfalls shown by Horizon?

If the Inquiry has any clear indication that there were differences in POL's systems of investigation within the devolved union then we would agree this should be thoroughly investigated.

However, in the CWU's experience, victims of the Horizon scandal are based across all four nations of the UK and we have not been alerted to any bias by geographic area. POL operates as a national organisation with no differences in contract between Subpostmasters in different parts of the UK. We believe that POL's system of investigation on Horizon was a generic policy which was consistently applied to Subpostmasters across the UK. We have not come across any difference of procedure, which was broadly that victims would be hauled before an investigation branch, a case would be prepared against them which would then be put to POL's legal department who would refer charges and take the case to court. The evidence we have seen indicates that POL pursued Subpostmasters with vigour wherever they were and there is no evidence to demonstrate they shied away from prosecutions anywhere.

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