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POST OFFICE RESPONSE TO CRR ON M029

Second Sight

By email only

05 September 2014

Ref: M029

Dear Sirs

Post Office's Response to Second Sight's Case Review Report on case M029

This letter sets out Post Office's response to Second Sight's draft Case Review Report dated 27 August 2014 for application M029 (the **CRR**).

Post Office agrees with the overall content of the CRR. However, there are a number of points that we would ask Second Sight to consider when drafting the final report which are set out below and in the attached appendix.

The Applicant's Criminal Conviction

The Applicant has been convicted of false accounting and is therefore responsible for the losses in his branch as explained below.

The Applicant has previously pleaded guilty to a charge of false accounting. A plea of guilty to a charge entails a complete admission to the offence.

The plea was voluntarily entered after the Applicant had the opportunity to take legal advice. Post Office is not responsible for any advice that the Applicant may or may not have received. If the Applicant considers that they were wrongly advised, then that is a matter between them and their lawyer.

Post Office does not consider that there are any new circumstances in this case that would justify a change of plea and therefore maintains that the Applicant's guilty plea is good evidence that he submitted false accounts.

As stated in the original Scheme Documentation, Post Office has no power to overturn a conviction. The proper forum for this is an appeal through the Courts. Neither the draft CRR nor the Post Office investigation identifies any information or evidence which Post Office considers would make the applicant's conviction unsafe. However, it remains open to the applicant to appeal their conviction through the Courts.

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False accounting

Due to the false accounting, any small operational losses were not shown in the branch's accounts.

As daily cash declarations were made falsely (by declaring that there was more cash in the branch than there actually was) then it was impossible for Post Office, and will have been very difficult if not impossible for the Applicant, to have:

- Known if cash was missing;
- Identified the days on which cash went missing;
- Identified which member of staff may have been the source of errors; or
- Located the erroneous transactions that were the cause of the loss.

Daily accurate cash declarations are the most critical aspect of branch accounting, without which losses of cash go unchecked.

The false accounting in this case means that it was not possible at the time of these events, and it remains impossible now, to precisely identify all the errors in branch which have caused a shortfall. Post Office primarily relies on reviewing the branch accounts to help subpostmasters identify errors but because the accounts in this case have been falsified, it is not possible to distinguish between genuine errors and intentionally false entries.

Notwithstanding that this is a criminal offence, operationally Post Office insists on daily accurate cash declarations. The Applicant's negligence is why he is liable (under the terms of his Contract) for any losses hidden or caused by his inaccurate record keeping. It is also an established principle of the Law of Agency, that agents like Subpostmasters are liable pay to Post Office (as principal) any cash sum declared in their accounts even if that declaration is false.

Post Office therefore considers that the Applicant is liable for the losses in the branch due to his false accounting

Consequential Losses

Paragraph 1.5(g) of the CRR notes that the Applicant has raised consequential losses "*which may be raised if the case progresses to mediation*". As stated in the CRR, it is outside the scope of the Scheme and Second Sight's role for it to assess or comment on any consequential losses claimed by an Applicant.

However, in the interests of transparency, Post Office notes that it does not consider the losses claimed by the Applicant to be recoverable. The relationship between Subpostmasters and Post



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Office is governed by a contract which makes it clear that the relationship between parties is one of agent and principal, permitting Post Office to recover branch losses from the Subpostmaster.

Post Office has considered the circumstances of this case very carefully and, on the basis of the information provided by the applicant, in its own investigation and in the draft CRR, does not consider that it has acted in breach of contract or caused the Applicant the harm now claimed as consequential loss.

Summary

All available information lends itself to the view that the Applicant is the cause of the losses, in particular:

- Post Office records show that the Applicant made on average one call a month to the helpdesk between November 2004 and November 2005 (rather than one call a week as claimed by the Applicant);
- Post Office records show that no requests for additional training were made by the Applicant to the NBSC indicating that the Applicant was adequately trained on how to operate Horizon;
- The Applicant advised during an interview that he thought that the losses at the branch were due to basic mistakes on Horizon, him not understanding Horizon and his concerns regarding zero entries on Card Account withdrawals (in respect of which customers had received money). However, Post Office investigations conducted in 2005 on zero entry transactions conducted over a twelve month period revealed that all of the transactions examined had valid reasons for their nil value;
- The Applicant stated in his Initial Application that he "*could not properly operate the computer system*"; and
- The Applicant admitted to making false entries on Horizon meaning that even if the records in question were available, it would not be possible to distinguish between genuine errors and intentionally false entries.

The original Scheme FAQs (at page 5) make clear that old cases, where little information is available, may not be suitable for mediation. Given that the CRR could not reach a conclusion, there is little that can be discussed at mediation as there is no information for the parties to consider.

Given the lack of information, that the Applicant has previously pleaded guilty to false accounting and that the CRR does not set out any conclusion about the cause of the loss, Second Sight is invited to reconsider its recommendation that this case is suitable for mediation.



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If you have any questions about this response, please do not hesitate to contact me.

Yours faithfully



Angela Van Den Bogerd

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Appendix

Line-by-line comments

Paragraph in CRR	Post Office comment
1.11	<p>The CRR states that:</p> <p><i>"The matters raised by the Applicant occurred in the period 1994 to 2005 and therefore fall outside the Post Office document retention period. Although some evidence has been provided by Post Office and the Applicant, including his chronology of events covering the period June 1994 to October 2005, the source documents are so limited, that it is now impossible to establish the real cause of the losses that arose."</i></p> <p>However, the Applicant admitted to making false entries in Horizon (and consequently the Applicant's accounts were falsified) meaning that even if all applicable documents were available, it would not be possible to distinguish between genuine errors and intentionally false entries.</p>
1.13	<p>The CRR states as follows:</p> <p><i>"In regard to how the shortfall arose, the Applicant states that he received inadequate training in handling problems and a lack of support when he needed it, despite his numerous requests to the Helpdesk, especially given the remote location of the branch."</i></p> <p>Although the Applicant claims that he received inadequate training in handling problems and a lack of support when he needed it, there are no calls recorded on the NBSC helpdesk call logs from the Applicant requesting any additional training.</p>



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1.13	<p>The CRR states as follows:</p> <p><i>"In regard to how the shortfall arose He also refers to the potential impact of power failures, hardware problems and to the possibility of 'nil transactions' being the cause. The latter is further developed and considered below".</i></p> <p>However, on 13 October 2005 (i.e. the day an audit of the Gaerwen branch revealed a cash shortage of £48,454.87), the Applicant was asked during an interview with Post Office Security as to what he thought was causing the losses in the branch. The Applicant replied by stating that the losses were due to basic mistakes on Horizon and not understanding it (rather than the potential impact of power failures and hardware problems as claimed by the Applicant in his CQR). The Applicant did state during the aforementioned interview that he was concerned over the number of zero entries on his Card Account withdrawals summary and although the report showed nil entries on some of the transactions, he had handed the money over the counter to the customer.</p> <p>The Applicant also stated in his Initial Application in response to the question <i>"What is your explanation for the events forming the main issue or issues you are now reporting?"</i> as follows:</p> <p><i>"I could not properly operate the computer system".</i></p>
2.1	<p>The CRR states as follows:</p> <p><i>"It is also agreed that documents, including personal items, were removed from the branch during the Audit, as it is "Post Office policy to remove items that are believed to be pertinent to any investigation".</i></p> <p>It is not agreed that <i>"documents, including personal items, were removed from the branch during the audit"</i>. There is no documentation available relating to items taken by Post Office personnel during the branch audit. Post Office records do show that the Applicant removed personal belongings from the branch on the day following the audit of the branch.</p>



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2.2	<p>The CRR states as follows:</p> <p><i>"2.2. It is also common ground that there were problems with the Horizon hardware, including the need for a new base unit in December 2001, and that all of the equipment was replaced prior to the branch re-opening after the suspension of the Applicant. The suggestion by the Applicant that this indicated that there were faults with the system and that these could have been the cause of differences suffered is however disputed by Post Office which maintains that the old equipment was removed for testing, although there is no record available as a result of any such testing."</i></p> <p>A new Horizon base unit was installed in the re-located Gaerwen branch prior to its opening in January 2006 (rather than 2001).</p>
2.3	<p>The CRR states as follows:</p> <p><i>"The Applicant states that he made frequent calls to the Helpline, averaging approximately one per week over an extended period. The Post Office notes that the Horizon Helpdesk call logs are no longer available but that such of the NBSC call logs that could be accessed "show a high volume of calls from the office on a variety of subjects".</i></p> <p>However, the witness statement of Andy Paul Dunks of Fujitsu Services which was produced as part of the Applicant's prosecution (which the Applicant exhibited to his CQR – see Tab 3) states as follows:</p> <p><i>"I have reviewed the helpdesk calls pertaining to this office and during the period 1st November 2004 to the 30th November 2005 there were 13 calls from Gaerwen Post Office – FAD Code 160601 to the Helpdesk. I am of the opinion that none of these calls relate to faults which would have had an effect on the integrity of the information held on the system".</i></p> <p>Although call logs for the period in question are no longer available, it is clear that the Applicant's calls between November 2004 and November 2005 averaged one call a month, rather than one call a week.</p>
3.3	<p>The CRR states as follows:</p> <p><i>"The Applicant maintains that the problems with the hardware, including screen freezing, power cuts, transfer interruptions and the need for remote rebooting of the system, of which he kept comprehensive records, could have been the underlying cause of the discrepancies but Post Office disputes this".</i></p> <p>However, during the Applicant's interview with Post Office Security which was held on 13 October 2005 (i.e. the day an audit of the Gaerwen branch revealed a cash shortage of £48,454.87), the Applicant did not raise any of the aforementioned issues and instead advised that the losses were due to basic mistakes on Horizon and him not understanding it.</p>



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3.4	<p>The CRR states that:</p> <p><i>"The Applicant comments in his CQR on the limitations on the extent to which he could review the audit trail and compare data in order to determine the source of the differences, which appeared to have accumulated over a period of time."</i></p> <p>However, it is of note that due to the Applicant's false accounting, it would not have been possible at the time of the erroneous transactions to distinguish between genuine errors and intentionally false entries.</p>
3.7	<p>The CRR states as follows:</p> <p><i>"3.7. A further possible cause for the discrepancy is stated by the Applicant as being problems with cheques 'doubling up' on the system and the process for 'cutting off' Giro deposits".</i></p> <p>However, during the Applicant's interview with Post Office Security which was held on 13 October 2005 (i.e. the day an audit of the Gaerwen branch revealed a cash shortage of £48,454.87), the Applicant did not raise either of the aforementioned issues and instead advised that the losses were due to basic mistakes on Horizon and him not understanding it.</p>
3.13	<p>The CRR states as follows:</p> <p><i>"In his CQR the Applicant also refers to a difference of approximately £3,000 that arose in 2003/4 and that, although he did not know why the difference arose, he maintains that it was settled on a 50:50 basis with Post Office. Although Post Office notes that an amount of approximately £1,200 was written off in the immediate months after migration to Horizon, as part of an exceptions process, they have no record of any 50:50 agreement or payment."</i></p> <p>It is of note (and is not detailed in the draft CRR) that an incident involving the Applicant's daughter – Sian Thomas ("Sian") – resulted in the Applicant repaying Post Office the sum of £11,000. The terms of the Applicant's settlement with Post Office included a commitment that Sian would no longer work in or have access to the branch. However, at the audit of the branch on 13 October 2005, Sian was still listed as a user on Horizon.</p>



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6.1	<p>The CRR states as follows:</p> <p><i>"In our opinion and notwithstanding the Applicant's guilty plea, this case is suitable for mediation and the following issue should be considered:</i></p> <p>a) <i>whether Post Office or the Applicant is responsible in part or whole for the overall loss of £50,257.89."</i></p> <p>The content of the draft CRR does not support this view on mediation. Principally, the findings of the draft CRR are that there is insufficient information on which to form a logically reasoned view on the cause of the losses in this case.</p>
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