



Confidential

DISCREPANCY INVESTIGATIONS – GUIDANCE NOTE

1. PURPOSE

- 1.1 The aim of this guidance note is to assist the Dispute Resolution Teams – Tier 2 and Tier 3 – in resolving accounting disputes in good faith and ensuring that Post Office complies with its contractual obligations including the need to investigate any apparent or alleged shortfalls properly, fully and fairly.
- 1.2 In particular, this note will focus on:
 - 1.2.1 identifying whether an alleged or apparent shortfall is an Established Loss which the postmaster is responsible for under the contract, thus allowing Post Office to take steps to recover the Established Loss from the postmaster (where appropriate); and
 - 1.2.2 the approach to be taken in identifying whether a positive Discrepancy is an Established Gain.
- 1.3 In this guidance note, "postmaster" means the person or entity (which may be a company, sole trader or partnership) contracted with Post Office. In Locals/Mains contracts the contracting party is referred to as the "Operator" and in the Standard Subpostmaster (SPMC) contracts they are referred to as the "Subpostmaster".
- 1.4 This guidance note focuses on the investigation undertaken by Tier 3 and the Dispute Policy Checklist that is completed as part of the Case Investigation Report provided to postmasters after an investigation is concluded by Post Office.
- 1.5 This guidance note will:
 - 1.5.1 assist the Dispute Resolution Teams to better understand some of the terminology and concepts arising from the Common Issues Judgment that are now embedded into the Postmaster Accounting Dispute Resolution Policy and Post Office working more generally;
 - 1.5.2 provide guidance on making judgements when investigating a Discrepancy to establish if there is a genuine loss or a gain to Post Office;
 - 1.5.3 enable the Dispute Resolution Teams to better understand and confidently discharge Post Office's contractual obligations when undertaking an investigation.
- 1.6 The legal principles underlying this guidance are often nuanced; therefore the Dispute Resolution Teams may need to escalate to the Review Committee where necessary and further legal advice may be needed regarding some Discrepancies and Post Office's ability to establish a genuine loss or a gain.

2. DEFINITIONS

- 2.1 Taken from the Postmaster Accounting Dispute Resolution Policy:

- 2.1.1 “Discrepancy” - Any difference between (i) the actual cash and stock position of a branch and (ii) the cash and stock position shown on Horizon as derived from transactions input by branch staff into the branch's terminals.
- 2.1.2 “Established Gain” - An event that causes a positive Discrepancy (i.e. the situation where the branch has more cash and/or stock than the derived figures for cash and/or stock on Horizon), which has been investigated by Post Office, or agreed by the postmaster, and found to be a genuine gain to Post Office.
- 2.1.3 “Established Loss” - An event that causes a negative Discrepancy (i.e. the situation where the branch has less cash and/or stock than the derived figures for cash and/or stock on Horizon), which has been investigated by Post Office, or agreed by the postmaster, and found to be a genuine loss to Post Office.

3. IMPACT OF THE COMMON ISSUES JUDGMENT

- 3.1 The Common Issues Judgment altered the contract between Post Office and the postmasters quite fundamentally as the Court found that the contract was relational and implied a duty of good faith into it.
- 3.2 This means that Post Office must exercise any contractual right or obligation in good faith and not arbitrarily or capriciously. The duty of good faith includes requirements of transparency, fair dealing, co-operation and trust and confidence. Post Office must not act in a way that would be regarded as commercially unacceptable by reasonable and honest people.
- 3.3 Post Office’s right to recover a shortfall is set out in the contracts with postmasters and, accordingly, it is impacted by the duty of good faith implied into the contract.
- 3.4 Under the contracts, the postmaster is responsible for all losses caused through his or own negligence, carelessness or error and also for all losses caused by the negligence, carelessness or error of his or her assistants. The Common Issues Judgment imposed a series of obligations that Post Office must comply with before it can recover any apparent shortfall from the postmaster.
- 3.5 Post Office is contractually obliged to undertake a reasonable and fair investigation into the causes of a shortfall to ensure that it is an Established Loss which is properly attributed to the postmaster under the terms of the contract. In this regard, the Common Issues Judgment implied a number of terms into the contracts between Post Office and the postmasters¹. Post Office cannot recover an alleged or apparent shortfall from a postmaster until it has complied with these terms (or some of them):

- 3.5.1 Clause 2.3A of Part 2 of the Standard Conditions for Main and Local branches:

Post Office Ltd shall provide adequate training and support, including through the provision of training materials, to the Operator, particularly if and when the Post Office Ltd imposes new working practices or systems or requires the provision of new services.

- 3.5.2 Clause 3.1A of Part 2 of the Standard Conditions for Main and Local branches:

Post Office Ltd shall provide the Horizon system, which shall be reasonably fit for purpose, including any or adequate error repellency.

¹ These references are to those in the Standard Conditions for the operation of Main and Local branches. The applicable clauses in the Standard Subpostmasters Contract are set out at clause 20 of Section 12.

3.5.3 Clause 3.7 of Part 2 of the Standard Conditions for Main and Local branches:

Post Office Ltd shall:

3.7A1 properly and accurately effect, record, maintain and keep records of all transactions effected using Horizon;

3.7A2 properly and accurately produce all relevant records and/or explain all relevant transactions and/or any alleged or apparent shortfalls attributed to the Operator;

3.7A3 co-operate in seeking to identify the possible or likely causes of any apparent or alleged shortfalls and/or whether or not there was indeed any shortfall at all;

3.7A4 seek to identify the causes of any such apparent or alleged shortfalls, in any event;

3.7A5 disclose possible causes of apparent or alleged shortfalls (and the cause thereof) to the Operator candidly, fully and frankly;

3.7A6 make reasonable enquiry, undertake reasonable analysis and even-handed investigation, and give fair consideration to the facts and information available as to the possible causes of the appearance of alleged or apparent shortfalls (and the cause thereof);

3.7A7 communicate, alternatively, not conceal known problems, bugs or errors in or generated by Horizon that might have financial (and other resulting) implications for the Operator;

3.7A8 communicate, alternatively, not conceal the extent to which other operators of Post Office® branches are experiencing problems relating to Horizon and the generation of discrepancies and alleged shortfalls;

3.7A9 not conceal from the Operator Post Office Ltd's ability to alter remotely data or transactions upon which the calculation of the branch accounts (and any discrepancy, or alleged shortfalls) depend; and

3.7A10 properly, fully and fairly investigate any alleged or apparent shortfalls.

3.6 More generally, in relation to both losses and gains, and in respect of its relationship with postmasters generally, a number of overriding duties were implied into the postmaster contacts.

These are set out at Clause 2, Part 1 of the Standard Conditions for Main and Local branches².

2.1 Each Party shall:

2.1.1 at all times in the performance of its obligations and exercise of its rights under the Agreement act in good faith;

2.1.2 take reasonable care in performing its functions and/or exercising its functions within the relationship, particularly those which could affect the accounts (and therefore liability to alleged shortfalls);

2.1.3 refrain from taking steps that would inhibit or prevent the other Party from complying with its obligations under or by virtue of the Agreement; and

² These references are to those in the Standard Conditions for the operation of Main and Local branches. The applicable clauses in the Standard Subpostmasters Contract are set out at clauses 20 and 21 of Section 1 of the Standard Subpostmasters Contract.

2.1.4 provide the other Party with such reasonable cooperation as is necessary to the performance of the other Party's obligations under or by virtue of the Agreement.

2.2 Post Office Ltd shall:

2.2.1 not take steps which would undermine the relationship of trust and confidence between the Operator and Post Office Ltd;

2.2.2 exercise any contractual, or other power, honestly and in good faith for the purpose for which it was conferred;

2.2.3 not exercise any discretion arbitrarily, capriciously or unreasonably; and

2.2.4 exercise any such discretion in accordance with the obligations of good faith, fair dealing, transparency, co-operation, and trust and confidence.

4. WHAT IS A DISCREPANCY?

4.1 A Discrepancy is any difference between (i) the actual cash and stock position of a branch and (ii) the cash and stock position shown on Horizon as derived from transactions input by branch staff into the branch's terminals. A Discrepancy could be negative or positive.

4.2 A negative Discrepancy could take one of three forms:

4.2.1 An accounting entry on Horizon that causes a shortfall on Horizon. For example, where a customer hands over the correct amount of cash but the transaction is incorrectly recorded on Horizon.

4.2.2 An accounting entry that does not cause a shortfall on Horizon but still causes a financial loss to Post Office. For example, completing a transaction in branch without remitting the correct paperwork to Post Office meaning that Post Office cannot then recover payment for that transaction from a client.

4.2.3 A loss of physical cash or stock from a branch.

4.3 Positive Discrepancies may take the following forms:

4.3.1 An accounting entry on Horizon that causes a gain. For example, where a customer hands over the correct amount of cash but the transaction is incorrectly recorded on Horizon;

4.3.2 An accounting entry that does not cause a gain on Horizon but causes a financial gain when the transaction is completed with the client. For example, incorrect paperwork is remitted that may result in Post Office recovering incorrect payment from a client;

4.3.3 It could be a customer handing over too much physical cash or not taking stock that they have purchased with them from the branch.

4.4 For a negative Discrepancy to be recoverable from a postmaster, Clause 4.4 of Part 2 of the Standard Conditions states that³:

4.4 *Post Office Ltd shall not seek recovery from the Operator unless and until:*

4.4.1 *it has complied with its duties under clauses 2.3A, 3.1A and 3.7A of Part 2 of the contract (or some of them);*

4.4.2 *it has established that the alleged shortfall represents a genuine loss to it; and*

4.4.3 *it has carried out a reasonable and fair investigation as to the cause and reason for the alleged shortfall and whether it is properly attributed to the Operator under the terms of the Agreement.*

4.5 These contractual obligations translate into the Dispute Resolution Checklist completed by Tier 3 as part of their investigation which is expanded upon at section 8 of this guidance note.

4.6 For a positive Discrepancy, there are fewer specific requirements in the contract, but Clause 3.7A of Part 2 of the Standard Conditions⁴ states that:

3.7A *Post Office Ltd shall:*

3.7A1 *properly and accurately effect, record, maintain and keep records of all transactions effected using Horizon;*

3.7A2 *properly and accurately produce all relevant records and/or explain all relevant transactions [.....]*

This means Post Office also needs to investigate positive Discrepancies, although the contract does not prescribe the scope or nature of the investigation. Some of the procedural steps may be the same as for a negative discrepancy but it's important that Post Office acts in a timely way to identify if any repayment is due to the postmaster, in accordance with Post Office's duty to act in good faith towards the postmaster.

5. PROVING THE EXISTENCE OF A NEGATIVE DISCREPANCY

5.1 In most cases, Post Office can seek to prove the existence of a shortfall by comparing:

5.1.1 the cash and stock on hand as stated in Horizon ("the derived figures"); and

5.1.2 the actual physical cash and stock in the branch.

5.2 The derived figures can be seen most readily from a branch trading statement. If the shortfall arises midtrading period then the derived figures may need to be compiled from the underlying branch accounts.

5.3 The actual cash and stock position can be determined by either:

³ These references are to the Standard Conditions for the operation of Main and Local branches. The applicable clause in the Standard Subpostmasters Contract are set out at Clause 13A of Section 12.

⁴ These references are to the Standard Conditions for the operation of Main and Local branches. The applicable clauses in the Standard Subpostmasters Contract are set out at Clauses 20.3 and 20.4 of Section 12.

5.3.1 the postmaster's own declaration of the cash and stock on hand (if that declaration is not disputed by the postmaster); or

5.3.2 a Branch Assurance Visit to a branch by Post Office.

5.4 These steps could also be used to indicate whether there is a positive discrepancy.

6. PROVING THE CAUSE OF A NEGATIVE DISCREPANCY

6.1 Having undertaken a fair investigation process, Post Office is entitled to recover a shortfall based on the balance of probabilities. The balance of probabilities is the standard of proof that applies in civil cases (i.e. not criminal cases).

6.2 The balance of probabilities means that Post Office needs to be satisfied that it is **more likely than not** that the postmaster is liable to compensate Post Office for the shortfall. In practical terms, this means it is more likely than not that the shortfall was caused by an error of the postmaster or their assistants.

6.3 Generally, the causes of shortfalls fall into two categories:

6.3.1 Single incidents: this is where the shortfall is caused by a single incident or small number of connected incidents.

6.3.2 Amalgamated shortfalls: where the shortfall only presents itself in the branch accounts after a period of time (typically the end of a trading period) and is an amalgamation of smaller errors over time.

6.4 **For single incidents**, Post Office may be able to determine through a forensic examination of the branch accounts and discussions with the postmaster and/or their assistants what actually happened in branch. Where there is reasonable evidence available that shows the actual error made by the postmaster or their assistants this may be sufficient proof that the postmaster is liable for the shortfall.

6.5 **For amalgamated shortfalls**, it is unlikely that Post Office will be able to identify each of the errors made by the postmaster or their assistants as Post Office is not present in the branch and does not have first-hand knowledge of the transactions undertaken. In this scenario, Post Office is left with proving the postmaster is liable for the shortfall by eliminating all other possibilities. This means eliminating the possibility that the

shortfall was caused by Post Office or a client so that it is more likely than not that the cause was an error by the postmaster or their assistants. Post Office would also be required, as part of the investigation, to eliminate the possibility that the Discrepancy is not genuine and is caused by an error in Horizon.

7. INVESTIGATION PROCESS: GENERAL PRINCIPLES

7.1 In order to discharge Post Office's contractual obligations, Post Office needs to undertake a fair investigation into any shortfall before it seeks recovery. It is important that the investigation undertaken into gains is also fair, even where the investigation may be more limited. The investigation process therefore must:

7.1.1 be proportionate in scope to the value of shortfalls or gains and complexity of the issues under investigation;

7.1.2 be transparent to the postmaster, giving them fair access to information and fair opportunity to comment; and

- 7.1.3 be reasonably documented, including recording the investigations undertaken, factual findings made and conclusions reached.
- 7.2 Through Post Office working to ensure that its investigations are fair, reasonable and transparent it is more likely to be able to meet its contractual obligations and be able to evidence the steps it has taken in doing so.
 - 7.2.1 Transparency – sharing information with the postmaster , ensuring the postmaster is updated on timescales, explaining the reasons for the decision;
 - 7.2.2 Fairness and Reasonableness– ensuring information provided by the postmaster is properly considered as part of the investigation, giving the postmaster the opportunity to review and understand the information Post Office has used as part of its investigation, giving fair consideration to the evidence and facts available in reaching a conclusion.
- 7.3 Each investigation will be different and will need to be adjusted to the circumstances, including whether a loss or a gain is being investigated.

For shortfalls

- 7.4 For cases involving an amalgamated shortfall where a process of elimination is required, the various areas listed in the Tier 2 checklist and the Case Investigation Checklist (both contained in the Policy) will need to be considered and, if appropriate, reviewed and eliminated. Not all areas listed will need to be reviewed and eliminated depending on the shortfall being investigated.
- 7.5 A key area of investigation will be Horizon with the areas listed in the Tier 2 and the Case Investigation Checklist in respect of Horizon being explored by Post Office where necessary to ensure that Horizon as a potential cause of the shortfall has been considered and ruled out.
- 7.6 The investigation will involve Post Office seeking information from the postmaster, Post Office teams or clients about the various areas that have the potential to cause a shortfall. The information then needs to be considered and assessed to establish whether it is the cause (or likely cause) of the shortfall or whether a particular area can be eliminated from the investigation. This process of elimination will need to be followed for all of potential causes of the shortfall. The outcome will be that Post Office is either able to eliminate each potential cause or can identify the cause (or likely cause) of the shortfall.
- 7.7 In the event that Post Office is able, during the course of the investigation, to eliminate the various areas as a cause or likely cause of the shortfall then it is for Post Office to consider whether on the balance of probabilities it is more likely than not that the cause of the shortfall was due to the negligence, carelessness or error of the postmaster or their assistants.
- 7.8 If Post Office is unable to eliminate the various areas as a cause or likely cause of the shortfall then it will be more difficult for Post Office to assert that on the balance of probabilities the error of the postmaster or their assistants was more likely than not the cause of the shortfall.
- 7.9 Following this process will produce an audit trail of the areas that have been investigated and show, if appropriate, that Post Office's actions or inaction have not caused the shortfall in the branch accounts. This is an important factor in showing that Post Office has acted fairly, reasonably and transparently and not arbitrarily or capriciously as it can show the process that has been followed, that it has adhered to contractual obligations and the Policy, and that evidence is available in support of the decision made.

8. INVESTIGATING NEGATIVE DISCREPANCIES: CASE INVESTIGATION REPORT AND DISPUTE POLICY CHECKLIST

- 8.1 The Case Investigation Report is completed by Tier 3 to record the details and outcomes of the investigations

and contains a Dispute Policy Checklist which Tier 3 complete. Whilst it is not possible to provide a definitive guide to the steps that need to be taken, the points below are indicative of what may be considered to establish if:

8.1.1 The alleged shortfall has been properly, fully and fairly investigated in a timely manner

- (a) Post Office has examined the points in both the Tier 2 and Case Investigation Checklist where appropriate (not all points will be relevant for all shortfalls) with reasonable enquiries being raised;
- (b) Fair consideration has been given to any information that may negatively impact Post Office's ability to recover a shortfall;
- (c) The postmaster has been able to provide information to Post Office regarding the shortfall and this information has been given fair consideration during the investigation and any points raised by the postmaster explored;
- (d) The postmaster has been provided with the details and outcomes of the investigation and relevant documents and information have been shared with the postmaster (along with an explanation of the information) to allow the postmaster to investigate the shortfall themselves;
- (e) Post Office has carried out the investigation within the service levels set out in the Policy;
- (f) Where the investigation has gone beyond the service levels consideration has been given as to the reasons for delay and whether the postmaster has been kept informed. Some points to consider around timeliness will include: has the postmaster or their staff caused delay by not responding to requests for information in a reasonable timeframe or at all, have other Post Office teams caused the delay by not responding to requests for information quickly enough or at all, is there a good reason for any delay (such as Post Office promptly requesting information from a client but the information is not forthcoming or is not provided in a reasonable timeframe)?

8.1.2 The shortfall represents a genuine loss to Post Office properly attributable to the postmaster

- (a) A genuine loss means a real financial harm to Post Office. A shortfall in the branch accounts is not on its own sufficient grounds to recover.
- (b) For Post Office to have suffered a real financial harm, the shortfall must either be tied to a physical loss of cash or stock in branch or be traced through Post Office's back-end accounting systems to a real financial loss e.g. non-payment of money by a client to Post Office.
- (c) Post Office must still show it has suffered a genuine loss irrespective of whether the postmaster has already cleared the shortfall by making a payment into branch. A postmaster "making good" or "settling a loss" does not mean that Post Office has suffered a genuine loss and the postmaster is still entitled to request an investigation into the shortfall.

8.1.3 A review of the Horizon system has been undertaken to ensure that it was not a contributory factor to the discrepancy

- (a) Horizon, or more particularly, the branch accounts recorded by Horizon, play two key roles in the investigation of shortfalls. First, the branch accounts are the primary evidence that a

shortfall exists. Second, a deeper review of the branch accounts may help determine the root cause of any shortfall.

- (b) It would not discharge Post Office's legal obligations to fairly investigate shortfalls to assume, without further checks, that Horizon is holding an accurate record of a branch's accounting position.
- (c) The level of checks required before Horizon's data can be reasonably relied upon depends on the nature of the investigation and its surrounding circumstances. The process of investigating Horizon is largely one of a process of elimination using the Tier 2 checklist and the Case Investigation Report Investigation checklist.
- (d) If reasonable enquiries are made into the data provided from Horizon, checks are taken to ascertain if there are any issues with Horizon (as set out in the Tier 2 checklist and Case Investigation Report Investigation checklist) that may have affected the branch or its accounts and the process of elimination has ruled out any issues with Horizon, then it is reasonable for Post Office to rely on the information taken from Horizon.

8.1.4 Any action (or inaction) by Post Office Limited has not been a contributory factor that led directly to the shortfall

- (a) Again, investigating this point will depend on the particular circumstances of the shortfall in question but the Dispute Resolution Teams should thoroughly investigate any circumstances where it appears that Post Office may have failed to support or assist the postmaster or their staff in relation to the shortfall or more generally.
- (b) Examples of failures that may have contributed to the shortfall: contact from the postmaster or their assistants requesting assistance in balancing or completing trading periods being ignored or responded to inadequately; requests for further or additional training being ignored or responded to inadequately; Post Office being aware of possible issues in branch but not taking any or adequate steps to address them or support the postmaster; Post Office having awareness of a possible issue with Horizon that may affect the branch but not taking any or adequate steps to address them or support the postmaster; Post Office having awareness of possible issues with stock or reconciliation of products or services but not taking any or adequate steps to address them or support the postmaster.
- (c) If the investigation suggests that there are circumstances where Post Office has not adequately discharged its contractual obligations to the postmaster, then this will need to be considered further to assess whether the failing has contributed to the shortfall.
- (d) There may be incidences where Post Office has not provided the postmaster or their assistants with adequate assistance or support, but such a failure did not contribute to the shortfall that is being investigated.

8.1.5 The shortfall has been caused through the postmaster's negligence, carelessness or error and/or the shortfall has been caused by the negligence, carelessness or error of their Assistant(s)

- (a) This reflects the contractual term in the postmaster contracts relating to the postmaster's responsibility for losses.
- (b) There is little distinction in practice between "carelessness, negligence or error".

- (c) As set out above, in practical terms this may be demonstrated based on the balance of probabilities i.e. that an error or errors by the postmaster or their assistants was, on the balance of probabilities, the most likely cause of the loss. If Post Office is unable to pinpoint a single incident or small number of connected incidents that led to the shortfall then it must be able to rule out all other possible causes for the shortfall (such as being caused by Post Office, its clients or Horizon) before it is able to conclude on the balance of probabilities that it was error by the postmaster or their assistants that has caused the shortfall.

9. LOSS ESTABLISHED

- 9.1 If, having carried out an investigation, Post Office is able to show that the shortfall is an Established Loss then Post Office may seek to recover the Established Loss from the postmaster and the matter will be referred to the Postmaster Account Support Team.

10. LOSS NOT ESTABLISHED

- 10.1 If, having carried out an investigation, Post Office is unable to show that the shortfall is an Established Loss then Post Office cannot make a recovery from the postmaster and a decision regarding writing off the shortfall will need to be taken in accordance with 5.4 of the Policy.

11. GAIN ESTABLISHED

- 11.1 If, having carried out an investigation, Post Office has established that a positive Discrepancy is an Established Gain then Post Office needs to ensure that this is corrected as quickly as possible and the matter will be referred to the Postmaster Account Support Team to enable this to take place.