

Post Office Mediation Scheme

Second Sight - Case Review Report

Case Reference: M071

Applicant: David YATES

Advisor: Robert Holland (James Cowper)

15 December 2014

This report and accompanying documents are confidential and are not to be disclosed to any person other than a person involved in the processing of the Applicant's claims through the

Scheme

Introduction

- 1.1. This report has been prepared by Second Sight, which is the trading name of Second Sight Support Services Limited, the company appointed to conduct an independent investigation of a number of matters raised by Subpostmasters, or former Subpostmasters.
- 1.2. This report should be read in conjunction with the following:
 - a) the documents submitted by the Applicant and his Professional Advisor;
 - b) Post Office's Investigation Report ('POIR') including attachments;
 - c) comments by Post Office on the previously issued draft of this report;
 - d) Second Sight's Briefing Report - Part One; and
 - e) Second Sight's Briefing Report - Part Two.

The Applicant has not provided any comments on the previously issued draft of this report.

- 1.3. The Terms of Reference for Second Sight as set by the Mediation Working Group for this work are as follows:
 - a) To investigate the specific complaints raised by each Subpostmaster who has been accepted into the Scheme with the aim of providing:
 - i. an assessment of points of common ground between Post Office and that Subpostmaster;
 - ii. an assessment of points of disagreement between Post Office and that Subpostmaster;
 - iii. where there is disagreement, a logical and fully evidenced opinion on the merits of that Subpostmaster's complaint where it is possible to do so;
 - iv. a summary of any points on which it is not possible to offer a fully evidenced opinion due to a lack of evidence/information;
 - v. a view on whether a case is suitable for mediation; and
 - vi. assisting with any reasonable requests made by the Working Group and/or Post Office.

- 1.4. Second Sight has been provided with the following documents:

- a) the Initial Application to the mediation scheme submitted by the Applicant;

- b) the Case Questionnaire Response ('CQR') submitted by the Applicant's Professional Advisor; and
- c) Post Office's Investigation Report ('POIR'), prepared in response to the above mentioned documents.

1.5. The following are the issues raised by the Applicant:

- a) responsibility for direct losses that total £359,325.71;
- b) transaction anomalies associated with Cash and Stock Remittances (REMs);
- c) adequacy of training and support, including Helpline and Audit;
- d) process issues at the end of each Trading Period;
- e) Post Office's Investigations and Prosecutions processes; and
- f) other consequential losses, not dealt with in this report, but which may be raised if the case progresses to mediation.

1.6. Given that the main issue here is financial loss, this report focuses primarily on the overall direct loss of £359,325.71. Other issues, not all of which are dealt with in detail in this report because we could not find a causative link to the financial loss, may however be relevant to the mediation process.

1.7. The main drivers of the losses are alleged by the Applicant to be the lack of competent and adequate Helpline support, and the inability to 'park' differences in order to allow time for them to be fully investigated.

1.8. The Applicant was in post as Subpostmaster of the Walton on Thames branch from September 1993 to 7 March 2003.

1.9. On 7 March 2003, an Audit took place which revealed a cash shortage of approximately £350,000. In interview, the Applicant admitted to theft and false accounting over a three to five year period. He said that the money had been used to pay staff wages and general living expenses.

1.10. The Applicant pleaded guilty to theft and was sentenced to three years imprisonment, of which he served 13 months in custody, and 13 weeks on Home Detention Curfew.

1.11. The Applicant maintains that he has since repaid the sum of £41,000, which he states has been accepted by Post Office in full and final settlement. In its comments on the previously issued draft of this report Post Office states that "*there is no evidence that the sum of £41,000 was ever repaid by the Applicant. There is no evidence that Post office accepted any sum in full*

and final settlement of the losses suffered. There is insufficient evidence available to establish the result of the civil recovery proceedings were or to what extent sums remain outstanding to Post Office". We observe from this surprising statement that Post Office is not able to state how much it considers as being due from the Applicant.

2. Points of common ground between the Applicant and Post Office

- 2.1. It is common ground that an Audit of the Applicant's branch was carried out on 7 March 2003 and that it revealed a cash shortage of approximately £350,000. It is also common ground that the Applicant was prosecuted for theft, and received a sentence of imprisonment.

3. Points of disagreement between Post Office and the Subpostmaster

- 3.1. In his CQR the Applicant says that unexplained differences only started to occur after the Horizon system was installed in branch. He says that the Helpline advice was to make good the difference, but that the differences increased to a point where it was impossible for him to do that. Post Office responds to this by noting that Horizon was introduced in July 2000 yet the Applicant admitted to the shortfall building up since 1998.
- 3.2. He says that the lack of competent Helpline support meant that he was not able to resolve the differences he encountered, and that there was no facility to 'park' the differences whilst he continued to investigate them.
- 3.3. Post Office responds that there is no evidence to suggest that the Applicant was not adequately supported, or that an inability to resolve the differences contributed to the loss, and concludes that the Applicant stole cash amounting to £359,325.71.

4. Where there is disagreement, a logical and fully evidenced opinion on the merits of that Subpostmaster's complaint where it is possible to do so

- 4.1. We find that there are no areas of the Applicant's complaint that are sufficiently substantiated for us to be able to provide an evidenced opinion.

5. A summary of any points on which it is not possible to offer a fully evidenced opinion due to a lack of evidence/information

- 5.1. The Applicant says six or seven weeks after Horizon was installed in his branch, he started experiencing unexplained differences. He says he cannot remember the precise details, but believes it was mostly cash rather than stock differences. The Applicant provides no more detail in support of his complaint. Post Office's response is set out in section 3.1 above.
- 5.2. Post Office says that there is no Horizon data available for this period, and that therefore it is not possible to show how the shortfall occurred, by reference to accounting data. They also say that, even if accounting data was still available from that period, the Applicant's admitted falsification of the branch's books would mean that it would have been almost impossible to

establish the causes of loss. The false accounting would have meant that the branch's cash declarations were incorrect and that it would have been impossible for Post Office or branch staff to have determined on which days differences occurred.

- 5.3. Due to a lack of available information, we are unable to offer an evidenced opinion as to how the shortfall occurred.
- 5.4. The Applicant says that when he contacted the Helpline for support they *"effectively told me to make good the difference myself"*.
- 5.5. He says that he 'abandoned' contacting the Helpline thereafter, as the advice was to make good the losses, but they *"grew to the point where this was no longer possible"*.
- 5.6. In answer to this point, Post Office says that despite 'numerous' calls to the Network Business Support Centre (NBSC), the Applicant made no complaints about Error Notices or the investigation of shortfalls.
- 5.7. In relation to the Applicant's complaint regarding process difficulties at the end of each Trading Period, he says that there was no option to 'park' the differences while he investigated how they had arisen. He says that he was simply asked to make them good without any investigation, and that no other options were made available to him.
- 5.8. Post Office responds by saying that, during the period of the Applicant's tenure, paper Error Notices were issued to correct discrepancies. The 'settled centrally' process was introduced in 2005 and so would not have been available to the Applicant at that time. He would have been able to hold the discrepancy in the branch suspense account until the end of the Trading Period, when it would have been necessary to remove it by processing an Error Notice, or by making the discrepancy good. Post Office adds that the Applicant could have contacted the Finance Service Centre (FSC) for further assistance if necessary, but that there is no evidence that he complained to NBSC about the issue of 'parking' and investigating shortfalls.
- 5.9. Having read the transcript of the Applicant's recorded interview under caution, we accept that the Applicant made an unequivocal admission to having inflated the Cash on Hand figures for three to five years before his final Audit in order to conceal a growing discrepancy, which finally amounted to £359,325.71. The Applicant admitted that he used the cash to pay staff wages and for general living expenses.
- 5.10. Whilst we note the Applicant's suggestion that he experienced inexplicable differences immediately following the installation of Horizon in his branch, we also note that in addition to his false accounting, he acknowledged that, during an Audit carried out at his branch in November 2002, he lied to the Auditor to cover the cash shortfall. The Applicant also lied to the Auditor on 7 March 2003, in an attempt to cover up the final shortfall. We conclude that the shortfalls experienced by the Applicant were relatively minor in comparison to the sums the Applicant admitted to stealing in order to pay staff wages and general expenses over the three

to five year period. Had the Applicant alerted Post Office to the shortfall at an earlier stage, or at the earlier Audit, the loss may not have reached the level it did.

6. Is this case suitable for mediation?

- 6.1. In our opinion this case is not suitable for mediation, due to the Applicant's unequivocal admission to, and conviction for, theft.