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BRIEFING NOTE

MEDIATION OF WENDY BUFFREY

Factual Background

1. The applicant had been the sub post mistress of Up Hatherley sub post office since 25th March 1999.
2. The audit of 11th December 2008 revealed a total loss of £26,256.63 made up as follows:
    - £26,979.36 - Deficit in cash
    - £161.23 – Deficit in stock
    - £883.93 surplus in foreign currency figures
3. In interview she said that she and her husband had been GRO and she had not been concentrating on her role in the post office. There had been a catalogue of errors which resulted in losses. She accepted that she had been putting in incorrect figures onto the trading statements and she had been inflating the cash figures to cover losses. She denied that she had taken any money herself.

Progress of case

4. At the PCMH, on 8th October 2010 she served a defence statement admitting £5,000 of the loss. This loss accrued when a cash remittance bag, which should have contained £22,000, was found to contain £17,000. She was not able to meet this and adjusted the cash on hand figures accordingly.

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5. The Judge insisted that a count 2 of Fraud should be added to account for this figure and the defendant pleaded guilty on the basis that she was not responsible for the loss, but its covering up, and the matter then went off for trial on the remaining £21,000 . This, she contended, was a paper rather than an actual loss.
6. The defendant pleaded guilty to the remainder on the morning of the trial, 20th September 2008, on the same basis and following a meeting between her expert and the Officer in the case, Mr Brander.
7. She was sentenced on 18th October 2010 to a Community order with 150 hours unpaid work and the defendant made good the loss of £26,256.63.

Mediation

8. This defendant has applied for mediation (M041) and I have seen the POL proposed response which causes me concern.
9. The conclusion as stated in the response is, ***"Based on the evidence examined as part of the Mediation Scheme investigation, Post Office's firm conclusion is that the losses revealed by the audit on 10 December 2008 were caused by simple human error on the part of the Applicant. There is also no evidence that points to any error in Horizon or Post Office's processes."***
10. We are concerned as to both the nature and substance of this rather surprising concession given that POL has prosecuted this defendant to conviction.

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11. In order to make such a definitive concession, we would need to establish:

    i. Whether or not the £26,256.63 was an actual loss or a paper shortfall, as the defendant has contended throughout (which is doubtful). If it is a paper loss then a number of unfortunate consequences arise (not least being the requirement that POL repay to the applicant her £26,256.63), for POL could not be seen to have profited from her 'error'. However, a £26,256.63 'loss' being the result of mis-keying or some other human error input, then that is a substantial sum to lose and it is for this reason that we doubt the defendant's account.

    ii. If the loss was in fact a real loss, the making of such a concession, that it is the Post Office's firm conclusion that the loss was the result of simple human error, would in any event be both inappropriate and would undermine the very foundation upon which the original charge was mounted.

Count 2 – the £5,000 loss.

12. This aspect of the case causes more concern. The applicant pleaded guilty to Fraud on the basis that the money had been lost but that she had not taken it.

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13. According to POL records the applicant remitted £22,000 to Midway House Cash Centre on 24th September 2008. This was checked by the centre on 26th September 2008 and found to contain only £17,000 – it was short by £5,000 in £10 notes.

14. The branch trading statement for the period ending 8th October 2008 shows that stock unit 3 had made a £4,413.57 gain which should have virtually balanced out the £5,000 loss when the transaction correction came in for it on the 17th October 2008. This could not have caused the loss at the branch to rise to £25,000, as asserted by the applicant.

15. The figures seem to suggest that the £5,000 underpayment was an error and stock unit 3 had the funds to meet the transaction correction, which leaves the questions as to why this did not happen, what happened to the £5,000 and why the defendant admit her guilt to dishonesty by pleading guilty to count 2 on the indictment. Unless she or someone else had taken the £4,413.57 in stock unit 3.

Conclusion.

16. We would advise that there is some considerable danger in inserting the 'concession' paragraph into this response, for the following reasons.

"Paper loss"

17. If we accept that this is a "paper loss" then the applicant was convicted on two counts of Fraud where POL suffered no actual loss. As a law student's

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exercise, if there was no loss but she believed there was and cooked the books in order to avoid her contractual liability to pay it and to keep her business going, then she is guilty of what she has pleaded to.

18. However, as a practical exercise she has pleaded guilty to charges which POL would have been unlikely to have brought had they suffered no actual loss. She could have run, and in my opinion successfully run, a defence based on lack of dishonesty, acting as she did in the face of a huge loss, the potential accusations of theft and a draconian contract that would have economically destroyed both her and her sick husband.

19. If this concession were to be made, we condiser it likely that, if well-advised, this Applicant would have recourse to the Court of Appeal and it is my opinion that the Court of Appeal would quash her conviction. Again POL will be obliged to return her £26,256.63 with interest.

20. A further, and potentially more far-reaching consequence of a successful appeal lies with disclosure, for POL would be obliged to disclose to every defendant who had advanced a similar, 'inefficient operation' defence.

21. In the final analysis, to make the proposed concession may, in our view, lead to a flood of appeals to the Court of Appeal and the consequent return of many thousands of pounds of money paid by defendants in compensation/confiscation for losses that never actually occurred.

"Actual Loss"

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22. If we contend that the branch suffered an actual loss of £26,256.63 then it begs the question why it is our "firm view" that this arose from "simple human error on behalf of the applicant." If the losses arose through a course of appalling negligence rather than theft and the Applicant entered false figures to conceal the losses caused by her mismanagement, then the response should be phrased so as to say that; she was properly prosecuted and sentenced and held accountable for the money that she had cost POL.

Actions

23. This case should be investigated by an experienced officer who should ascertain:

    i. Whether the loss was "actual" or "paper.

    ii. How the losses were caused. The POL response to mediation refers to a "catalogue of human errors evidenced in the call records, evidence that the branch was being run without due care and attention." These should be explained.

    iii. The paper trail of the lost £5000 – the subject of Count 2. What happened to the transaction correction of the 17th October 2008?

Harry Bowyer **2nd July 2014**
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