

CARTWRIGHT KING**Response To
Initial Complaint Review & Mediation Scheme Post Office Preliminary Investigation
Report**

Branch Name:	Tovil
SPMR Name:	Mr Kangasundaram Prince

1.

Heading	Text
Executive Summary	The Applicant initially indicated a not guilty plea to an offence of Fraud by False Representation. However, when the case was committed to Maidstone Crown Court in May 2012, the Applicant entered a guilty plea and in Jun 2012, he was sentenced (Doc 02 refers) and a compensation order was made to repay the shortage (Doc 03 refers).
CK Response	
1. Mr. Prince first appeared before the court on the 12th January 2012 where he indicated a plea of not guilty. On the 11th May 2012 at the Maidstone Crown Court he entered a guilty plea to a single offence of Fraud by False Representation. On the 15th June 2012 Mr Prince was sentenced as described. 2. A plea of guilty to a charge entails a complete admission of the offence to which the plea is entered, in this case an unqualified admission to having “...dishonestly and intending thereby to make a gain for himself or to cause loss to another, made a representation which was and which he knew was untrue or misleading, namely that a cash declaration of £48,010.00 was a true figure....”	

2.

Heading	Text
Executive Summary	Examination of the investigation file identified that the investigation was carried out appropriately and was proportionate to the suspected offence. Contrary to section 2.8.3 of the CQR, which suggests that the interview concluded when an admission was made, no admissions were made, therefore questions around the theft of funds would

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	not have been appropriate. However, it has identified a missed opportunity, with the Security Team not being made aware of key information from the Contracts Manager in relation to the overnight cash holdings.
CK Response	
1. In her statement of the 15th February 2012 Ms. Ballan, the Contracts Manager, makes no reference to correspondence between her and Mr Prince. 2. Given that this letter could have assisted Mr Prince in his defence it is surprising that his lawyers did not draw attention to it during the course of the investigation or prosecution, other than that they were not provided with it or told of its existence. We do not understand why it is only now that Mr Prince chooses to reveal it. 3. If the contents of the letter are as asserted then it is certain that, had CK known of it they would have advised further investigation, although in many cases it is a pattern of returns which prompts the audit. 4. Whilst we agree that the Contracts Manager ought to have been canvassed prior to this Applicant's interview, and that if it were the case that the Contract Manager had been alerted to ONCH issues at an earlier date, that information might have triggered an earlier intervention, the concession "...a missed opportunity..." should not be made, and certainly not without sight of the original letter. The suggestion that an opportunity to intervene earlier in this case was missed is speculative; further, it does not absolve this Applicant from his culpability in falsifying his figures. It is to be recalled that, in so doing, this Applicant's very purpose was to hide his wrong-doing from POL for as long as possible. 5. The fact that the opportunity to catch this defendant earlier was missed does not excuse his offending.	

3.

Heading	Text
Executive Summary	In conclusion there is no evidence to support the Applicant's complaint that problems with Horizon caused the issues experienced at this branch. There is, however, evidence to suggest that a lack of proper controls being in place at the branch and user error resulted in a significant level of debt suggesting issues with the competence of those working at and managing the branch.

CK Response	
1.	The concession that there is “...evidence to suggest that a lack of proper controls being in place at the branch and user error resulted in a significant level of debt...” should not be made.
2.	To do so may well open up an argument that the Defendant’s sentence was manifestly excessive, for the sentence imposed is intended to reflect and punish the defendant’s culpability. If we were to concede that the loss was as a result of user error then that goes to reduce his culpability in the eyes of the court and opens up the question whether his sentence was too heavy. Thus to make such a concession may prompt this Applicant to lodge an appeal against sentence with the Court of Appeal.
3.	Further, if it were conceded that part of this loss was the result of error then the Confiscation order made against this Applicant too becomes a live issue; it is not beyond the bounds of possibility that monies paid by him in Confiscation may have to be refunded to him.
4.	This concession also gives rise to wider implications: we would be bound to disclose the fact of the concession to other, similarly placed, defendants. And again, such disclosure may result in appeals to the Court of Appeal against conviction and/or sentence, and the potential for the re-opening of Confiscation Proceedings.
5.	The position as presently stated is absurd. In interview this Applicant asserted that he had placed £48,010.00 in physical cash in the safe on the Monday and could not explain why it was not there the next morning when audited, save to impugn the honesty of the auditors. Such an explanation is sufficient evidence to convict him of the theft of that sum and he was fortunate not to be sentenced on the basis that he had stolen the money in breach of trust.

4.	
Heading	Text
Response to issues raised by the Applicant	
1. Horizon generated shortages	The volume of transaction corrections would suggest an element of user error and a lack of proper controls around processing Lottery sales conducted through the retail counter. The production of multiple cash declarations also suggests user error or could be the result of the user manipulating cash declarations.
CK Response	
1.	It is unfortunate in a case where a defendant has pleaded guilty to Fraud that the paragraph reads that the TCs suggest user error or “could be” the result of the user manipulating cash declarations. We would suggest that the words “could be” should be deleted as the latter suggestion is more likely in this case and should not be qualified.

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5.

Heading	Text
Response to issues raised by the Applicant Horizon generated shortages 9. The Post Office Investigation	The Applicant claims that the business failed to mitigate potential losses if it was known from 14 Mar 2011 that the Over-night cash holdings (Onch) information had been inflated. The Onch information (Doc 20 refers) was collated as part of the conduct enquiry after the audit at branch, and was subsequently used by the Contracts Manager in the conduct charge letter (Doc 16 refers). However, as detailed previously, key areas of financial risks are monitored during the production of the Financial Branch Performance Profile which is what triggered the audit response. There is no evidence in the investigation case file to suggest that the Security Manager was aware of the Onch inflation charges made by the Contracts Manager in the conduct charge letter. This identifies a missed opportunity within the investigation process.
CK Response	
1. See Response 2 above. 2. To suggest that, with hindsight, that this Applicant's wrong-doing <i>may</i> have been detected earlier is both speculative and counter-intuitive: the whole purpose of his falsifications was to defeat the possibility of detection. 3. Again, the suggestion that this Applicant might have been caught stealing earlier cannot and does not mitigate his position or reduce the amount of the loss caused to the Post Office.	

Conclusion.

1. The reality in this case is that this defendant pleaded guilty on legal advice and was sentenced on a very favourable basis.
2. The evidence was extremely strong and assisted by the defendant's absurd lies in interview.
3. He now tries to blame the conduct of the Post Office Investigators, his own Federation Advisor and his legal team.
4. Much of what he argues in his CQR has only been recently produced and has not been seen by Cartwright King.

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5. The "Initial Complaint Review and Mediation Scheme Post Office Investigation Report" document fails to adequately reflect what was in fact a very strong prosecution case. To make the concessions suggested therein would be to invite both an appeal against sentence and the refund of monies paid by the Applicant in Confiscation proceedings. Perhaps more seriously, such concessions would undoubtedly require disclosure to other, similarly placed, applicants, thereby giving rise to the risk of further appeals against conviction, sentence and Confiscation Orders. Given that the suggested concessions are neither warranted nor appropriate, we advise against them being made.
6. It seems to us that all liability in this case lies with the Applicant and his fraudulent activities and this report should make that clear.

Harry Bowyer
Barrister
Cartwright King Solicitors.

6th February 2014