

Post Office Mediation Scheme

Second Sight - Case Review Report

V3.
as per

Case Reference: M029

Applicant: Hughie THOMAS

Advisor: Emma Porter (Aver)

2 April 2015

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.

1. 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 Part 1 Briefing Report; and
- e) Second Sight's Part 2 Briefing Report.

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 amounting to £50,257.89;
- b) transaction anomalies associated with:
 - I. telecommunications and power failures
 - II. hardware
 - III. stamps/postage labels/phone cards
 - IV. GIROs and cheques
- c) adequacy of training and support;
- d) limitations in the Transaction Audit Trail;
- e) the contract between the Post Office and Subpostmasters;
- f) Post Office's investigations and prosecutions process; and
- g) other significant, 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 direct losses of £50,257.89. The other issues listed in paragraph 1.5. above, not all of which may necessarily be linked directly to responsibility for the financial loss, and not all of which are therefore dealt with in detail in this report, may however be relevant to an overall consideration of the case.

1.7. The Applicant and his wife purchased the Gaerwen branch in May 1981, which his wife operated until 1994. After previously working as a Post Master at another branch until his retirement in 1991, the Applicant assisted his wife in running the branch. Following his wife's illness he formally became the Subpostmaster at the Gaerwen branch on 9 June 1994 and remained in post until his suspension following an Audit on 13 October 2005, which revealed a cash shortage of £48,454.87 and a cheque discrepancy of £1,803.02, resulting in a final shortage of £50,257.89.

1.8. Following the Audit and after the Applicant had been interviewed under caution, Post Office pursued prosecution on a charge of False Accounting to which he pleaded guilty. He received a custodial sentence, was ordered to pay costs and was subject to a Proceeds of Crime Act application under which he was ordered to pay approximately £19,000. As a consequence of this, the Applicant, in January 2008, petitioned for and was declared bankrupt.

- 1.9. Post Office did not pursue a claim in the Applicant's bankruptcy as they were advised that there was no prospect of any distribution and consequentially wrote off an amount of £44,250.91.
- 1.10. This £44,250.91 appears to be the net amount outstanding following a payment of £5,996.68. It is not clear what became of the £19,000 payment by the Applicant under the POCA order nor whether the £5,996.68 was some form of 'part payment' to Post Office of the £19,000. This is further confused as the payment and amount written off total £50,247.59 rather than the total losses of £50,257.89.
- 1.11. 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. Post Office comments that as the Applicant admitted to making false entries in Horizon it would not be possible, even if records had been maintained, to distinguish between genuine and intentionally false errors.
- 1.12. The Applicant states that at the time of the Audit in October 2005, which he comments was the only 'support' visit by Post Office throughout his tenure, all of the documentation in the branch, including personal papers and a calendar containing details of differences and other information, was removed and never returned.
- 1.13. 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. Post Office notes however that there were no calls recorded in the NBSC helpdesk call logs in which the Applicant requested additional training. As referenced in paragraph 2.3. below it would appear that the Applicant had a weak understanding of how to properly operate the Horizon system which introduces the possibility that errors made at the counter could have caused some of the losses.
- 1.14. He also refers to the potential impact of power failures and hardware problems (as referenced in our Part Two Report) and to the possibility of 'nil transactions' being the cause of some of the losses. This latter point is further developed and considered below.
- 1.15. This report was originally completed in September 2014 but was not issued pending finalisation of our Briefing Report - Part Two that will now shortly be released, allowing the finalisation of this report. In addition, completion of the report was delayed pending receipt and review of documentation, relating to the Applicant's prosecution, in addition to that which Post Office had already supplied. We have been advised by Post Office that there are no further documents to be provided beyond those already supplied to us as part of the investigation and POIR production process. We have therefore now completed our report.

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

- 2.1. It is common ground that an Audit took place on 13 October 2005 and that discrepancies totalling £48,454.87 were revealed although the cause of the discrepancies has never been established. A cheque discrepancy of an additional £1,803.02 was also subsequently identified. 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"*. Post Office now claim that there is no documentation to support this and therefore do not consider it common ground that they removed the Applicant's personal items. Post Office also state that the Applicant was allowed access to the branch after the Audit to remove any remaining personal documents.
- 2.2. It is also common ground that there were problems with the Horizon hardware and that all of the equipment was replaced prior to the branch re-opening in January 2006 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 to show the results of any such testing.
- 2.3. 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"*, although Post Office consider that these averaged approximately one per month. These call logs confirm the frequency of reported hardware problems and may also indicate a weak understanding by the Applicant of the basic operations of the Horizon system and how some important aspects were meant to operate.

3. Points of disagreement between Post Office and the Subpostmaster

- 3.1. The Applicant raises several concerns relating to the extent and quality of training and support provided to him. He notes that training was limited to less than two days initial training immediately followed by three visits to provide specific assistance. All other training and assistance was provided via Operating Manuals, which he found difficult to interpret, and access to the Helpline, which he found to be *"insufficient"*. According to the Applicant, Horizon training was provided some six months prior to the installation of the system, which is clearly less than ideal and would appear to be different from what has been described by Post Office as the training that would normally have been carried out at that time.
- 3.2. Post Office notes that training records for the Applicant are no longer available but that *"had this case arisen today.....such training would have been offered"*.
- 3.3. The Applicant maintains that in addition to the possibility of making operator errors, 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.

- 3.4. 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.
- 3.5. The Applicant believes that the discrepancies might also have been caused by a number of 'nil transactions' in which the system shows a nil value for a Post Office Card Account (POCA) transaction but the customer receives cash. There are a number of valid reasons why the system would show a nil value including if the transaction was a 'balance only' enquiry; a PIN number change; if a withdrawal limit is exceeded; if there are insufficient funds in the customer's account or if multiple incorrect PIN numbers were entered.
- 3.6. Post Office advises that an analysis undertaken at the time of the prosecution covered 70 such transactions over an eight day period and revealed that all of them could be analysed as being one of the valid reasons set out above. Due to the lack of evidence, this cannot be further investigated nor can it be proven what the Horizon screen may have indicated at the time. Such evidence could have provided some rationale for the Applicant paying cash to customers without their accounts being debited.
- 3.7. In addition to a possible lack of understanding by the Applicant of how to properly operate the system, 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. The call logs that are available indicates that the Applicant made a number of requests for assistance with cutting off, which may suggest a lack of understanding of how the system was meant to operate since a failure to cut off should not, as such, cause errors or balancing problems if correctly manually processed.
- 3.8. The Applicant states that he was accused by Post Office of both Theft and False Accounting but that the charge of Theft would be dropped if he agreed to plead guilty to False Accounting.
- 3.9. Post Office's records indicate that there is no reference or explanation in any available documentation as to when, or why, the initial charge of Theft was dropped.
- 3.10. The Applicant considers that the approach taken by Post Office in relation to his prosecution was inappropriate and that he was subject to a criminal process before his concerns appeared to have been fully addressed, with the basis for the prosecution being "*inflation of the cash on hand figure for a prolonged period and failure to make good the losses*" although there is no documentation available to show the timing of the cash differences and the definition of the "*prolonged period*".
- 3.11. It is also perhaps noteworthy that the 'consideration of dismissal' letter from Post Office was issued just eleven days after the Audit. It is unclear what investigations were undertaken to establish the possible root cause of the differences and shortfalls that appeared to have accumulated over time.

- 3.12. Post Office believes that the investigation and subsequent prosecution were conducted properly and that a guilty plea was appropriate in the light of the admissions that were made by the Applicant.
- 3.13. 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.
- 3.14. In its POIR Post Office refers to an earlier incident involving the Applicant's daughter resulting in the Applicant repaying Post office a sum of £11,000 and agreeing that the daughter would no longer have access to the branch. Post Office further comments that at the time of the Audit she was still listed as a user on Horizon although there is no evidence as to whether this was being used.

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. Due to the length of time that has elapsed since the events of 1994 - 2005 few of the matters of disagreement can be further analysed.
- 4.2. Issues relating to Post Office prosecution policy and the conduct of any prosecution, fall outside our terms of reference.

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 expiry of document retention periods has resulted in it no longer being possible to offer a fully evidenced opinion on a number of the matters raised by the Applicant.
- 5.2. The inadequacy of the training provided to the Applicant is raised by him as a key issue of concern but the lack of training records now available makes it impossible to express an evidence based opinion on this matter. The Post Office statement of what the standard training would have been at the time and also what is normally now offered is not considered to be of particular relevance.
- 5.3. The Applicant maintains that he consistently noted his concerns with Horizon but in the absence of further evidence it is impossible to conclude whether these concerns were valid. The apparent number of calls to the Helplines, where he was reportedly passed between the Horizon Helpline and the NBSC support function, perhaps further demonstrates that the Applicant struggled to understand how to properly use the system, which is linked back to his comments on the significance of his inadequate training.

6. Is this case suitable for mediation?

6.1. In our opinion and notwithstanding the Applicant's guilty plea to the charge of False Accounting, this case is suitable for mediation and the following issue should be considered:

- a) whether Post Office or the Applicant is responsible in part or whole for the overall loss of £50,257.89.