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

Branch Name:	Gaerwin
SPMR Name:	Mr Hughie Noel Thomas

1.

Heading	Text
Executive Summary	The Applicant was the Subpostmaster of Gaerwen Post Office from June 1994 until he was suspended following an audit on 13th October 2005. The audit revealed a shortage of £48,454.87 and a cheque discrepancy of £1,803.02 resulting in a final shortage figure of £50,257.89.
CK Response	
1. This is a case that predates the migration to Horizon on Line.	

2.

Heading	Text
Executive Summary	The sentencing report (Doc 010) states that the Applicant appeared at Caernarfon Crown Court on 6 th November 2006 and was sentenced on the charge of 'False Accounting' (to which he had pleaded guilty at an earlier hearing on 29 th September 2006) The Applicant was sentenced to 9 months in custody and ordered to pay £750 costs.
CK Response	
1 This defendant pleaded guilty on legal advice. There is no suggestion that this plea was on a basis 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 with a view to gain for himself or with intent to cause loss to another, falsified a document required for an accounting purpose." (The exact wording of the indictment is not available but the above is from the specimen indictment for false	

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accounting in Archbold)

- 3 The defendant was sentenced to an immediate term of imprisonment of 9 months which clearly suggests the serious view of the evidence taken by the sentencing judge. There is no evidence that this sentence was appealed as being manifestly excessive.

3.

Heading	Text
Executive Summary - Training	Although there is no evidence of the Applicant requesting further training on Horizon operational issues, it is recognised that had these events happened today, then under Post Office's current practices, the issues encountered by the Applicant may have been dealt with earlier.
CK Response	
1. This concession should not be made. There is no evidence that he requested further training. The evidence is that he was falsifying his accounts and would have been highly unlikely to have made such a request. 2. This Applicant was operating an earlier Horizon system and under an earlier POL training regime. To concede that this was inadequate in circumstances where there is no supporting evidence for the defendant's claim is extremely unwise.	

4.

Heading	Text
Executive Summary – Installation of a new Horizon System	Although no documentation has been located regarding the outcome of these tests, it could be concluded that those tests did not reveal any issues as the Applicant's prosecution continued as planned.
CK Response	
1. There should be no doubt in this sentence which ought to read “should be concluded”. The possibility that POL would have continued with the prosecution having found that the Horizon apparatus was defective in the way alleged by the Applicant is outrageous.	

5.

Heading	Text
Executive Summary - Summary	Overall, there is nothing to suggest from the available documentation that Horizon malfunctions caused the loss incurred by the

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	Applicant. The evidence points to user error by the Subpostmaster (or his assistants) which, had this occurred today, may have been dealt with differently under Post Office's current operating practices.
CK Response	
1. The evidence in this case, including this Applicant's guilty plea, points to dishonesty by the sub postmaster. 2. The concession should not be made that this case may have been dealt with differently had it occurred today. If we received a case today where the sub postmaster had incurred a loss of some £50,257.89 we would certainly investigate it as a potential criminal case. In this case we do not have the Applicant's interviews and do not know what explanations were put forward at the time. We do know that, following legal advice, he admitted falsifying his accounts to such an extent that a Crown Court Judge was satisfied that only an immediate custodial sentence could adequately meet the case. 3. Whilst we have not seen the interviews in this case we have seen correspondence from J Emlyn Hughes, the applicant's contract manager, dated 24th October 2005 dealing with the applicant's suspension on the grounds of; "your admitted falsifying of the weekly cash account by inflating the cash on hand figure for a prolonged period."	

6.

Heading	Text
Response to issues raised by the applicant 4. Horizon transaction anomalies – nil value balance following cash withdrawals	Analysis was undertaken prior to the court proceedings by the Investigation Manager on nil value transactions for 3 separate periods at the branch to test the integrity of the system (Doc 007). The results categorically showed Horizon was operating correctly and all nil value transactions appeared with valid reasons with no failures being due to system integrity or data. If cash had been paid out on nil value transactions this would suggest operator error, rather than Horizon failure.
CK Response	
1. The last sentence should read; "If cash had been paid out on nil value transactions this would suggest theft or operator error rather than Horizon failure."	

Conclusion.

1. The reality in this case is that this defendant pleaded guilty on legal advice and was sentenced. That sentence was not the subject of a successful appeal.
2. The most generous interpretation of this conviction is that the defendant had a loss which he covered up in order to avoid his contractual liability with Post Office to make good. The

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reality is that the immediate custodial term imposed indicates that that was not the basis for sentence.

3. 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.

10th February 2014