

From: Pike, Richard [GRO]
Sent: 07 May 2015 13:25
To: Martin Smith
Cc: Parsons, Andrew; Rodric Williams; [GRO]
Subject: RE: Draft CRRs: M012

Martin,

Thank you for the update - we will await Counsel's further thoughts.

I have copied in Lorraine Lynch who I believe is coordinating the CRR responses in case she has any comments regarding the deadline for finalising the CRR response.

Kind regards

Richard

Richard Pike
Associate

for and on behalf of Bond Dickinson LLP

Bond Dickinson

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Office:

GRO

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From: Martin Smith [GRO]
Sent: 07 May 2015 12:13
To: Pike, Richard
Cc: Parsons, Andrew; Rodric Williams
Subject: RE: Draft CRRs: M012

Dear Richard,

Many thanks for your e-mail.

The draft CRR and CRR Response have been considered in detail by Mr. Simon Clarke of Counsel who has previously reviewed the Misra case for the purposes of our File Review Process.

Mr. Clarke has made the following comment:-

"I have considered the M012 CRR and POL's response thereto. I am not happy with the silence, both in the CRR and POL's Response, on the topic of Balancing Transactions.

In the CRR, SS report the Applicant as having asserted that "...figures on the system can be changed remotely by POL without my knowledge or authority." Had this issue arisen at trial, and had the information CK is now possessed of then been known, that material might have been disclosable to the defendant. That is not to say that the information would have made any difference to the outcome of the trial, particularly given the then defendant's repeated changes of defence and admissions to false accounting, but rather the point is that disclosure is never about what effect the material might have but merely whether or not the material meets the test for disclosure.

I have therefore determined that I must consider fully the import of AP's response to my questions on the topic of BT's and advise on the M012 Response in the light of my conclusions on the BT issue."

I will revert to you once Mr. Clarke has considered the position further.

Kind regards,

Martin.

Martin Smith

[Redacted]
[Redacted]
[Redacted]
Tel: [Redacted]

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From: Pike, Richard [Redacted]
Sent: 16 April 2015 16:47
To: Lorraine Lynch; Jane MacLeod; Jessica Barker; Rodric Williams; Melanie Corfield; Angela Van-Den-Bogerd; Shirley Hailstones; Kathryn Alexander; Patrick Bourke; Tom Wechsler; [Redacted] Parsons,

Andrew; Brooks, Victoria; [REDACTED] GRO Teece, Charlie
Subject: RE: Draft CRRs: M010,M012,M088,M106,M040,M044,M094 [BD-4A-LIVE.FID25886904]

Dear all,

Please find attached the Draft CRR response and Settlement advice for M012 (Seema Misra).

Kind regards

Richard

Richard Pike
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for and on behalf of Bond Dickinson LLP

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Direct: [REDACTED]
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Office: [REDACTED] **GRO**

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From: Lorraine Lynch [REDACTED] GRO
Sent: 13 April 2015 15:25
To: Jane MacLeod; Jessica Barker; Rodric Williams; Melanie Corfield; Angela Van-Den-Bogerd; Shirley Hailstones; Kathryn Alexander; Patrick Bourke; Tom Wechsler; [REDACTED] GRO Parsons, Andrew; Brooks, Victoria; [REDACTED] GRO Lorraine Lynch; Teece, Charlie
Subject: Draft CRRs: M010,M012,M088,M106,M040,M044,M094

Hi everyone

Second Sight have uploaded the draft CRRs for cases M010,M012,M088,M106,M040,M044,M094.

Bond Dickinson will prepare the PO draft responses as well as the settlement advice, which they will circulate by midday on Thursday 16th April (Victoria / Charlie, please confirm). Please therefore 'reply to all' with any comments on the draft CRRs by midday tomorrow.

I will schedule a meeting to discuss the draft responses.

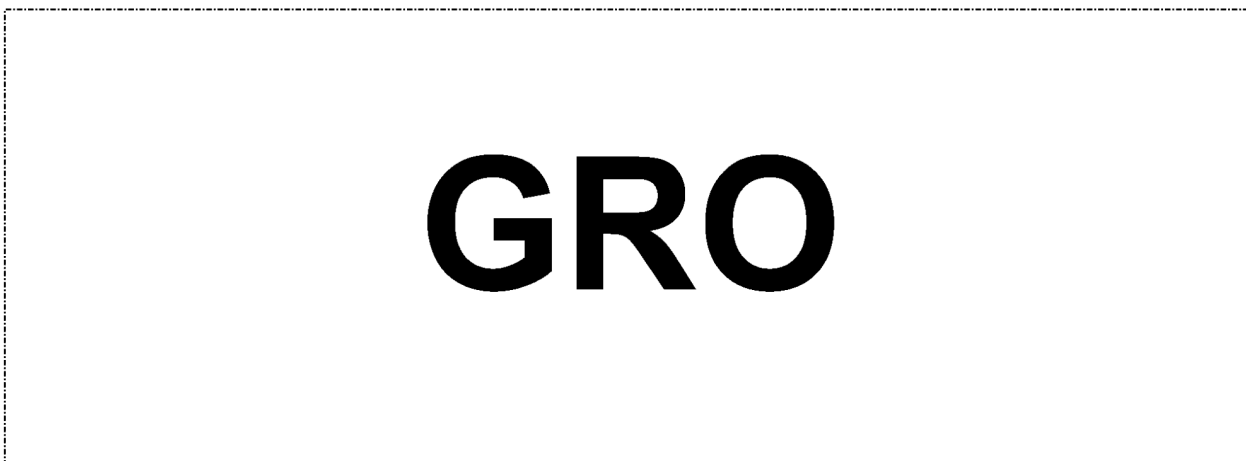
Kind regards.

Lorraine Lynch | Mediation Scheme



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Lorraine Lynch | Mediation Scheme



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POST OFFICE RESPONSE TO CRR ON M012
[TO GO ON POST OFFICE LETTERHEAD]

Second Sight
By email only

[DATE]

Ref: M012

Dear Sirs

Post Office's Response to Second Sight's draft Case Review Report on case M012

This letter sets out Post Office's response to Second Sight's draft Case Review Report dated 11 April 2015 for application M012 (**the CRR**).

At the outset, Post Office notes its firm disagreement to the CRR's conclusion that the case is suitable for mediation, given the Applicant's conviction for theft and false accounting.

Not only did the Applicant plead guilty to producing false accounts, she was found guilty of theft by a jury following a contested criminal trial at which she was legally represented. Although the CRR refers to issues such as the Applicant's suitability for the role and inability to learn the basic skills as matters which are capable of being addressed at mediation, none of those issues have anything to do with the Applicant's decision to: a) steal from Post Office; and b) knowingly falsify her accounts to conceal losses.

The appendix to this letter has Post Office's line-by-line comments on the CRR.

Summary

1. As acknowledged by the CRR, there is compelling evidence that the losses incurred at the Applicant's branch were caused by theft on the part of the Applicant (and potentially her staff).
2. In the event that part of the losses were not caused by theft, the CRR accepts that they are likely to have been caused by operator error.
3. It appears to be accepted by Second Sight (although not expressly) that there was no fault on the part of Horizon. However reference is made in the CRR to the fact that the expert witness used by the Applicant to defend her prosecution was unable to rule out errors with Horizon as one possible explanation for the losses. Since a jury faced with that expert evidence found the Applicant beyond reasonable doubt to be guilty of theft, the evidence of the Applicant's expert that suggested Horizon was a potential cause had been considered and dismissed by the jury in deciding that the Applicant was guilty.
4. The CRR challenges Post Office's appointment of the Applicant on the basis that she was unsuited to the role and overly dependent on her existing staff. Post Office does not accept that the Applicant was necessarily unsuited to the role and Post Office took all reasonable steps to satisfy itself that she was capable of operating as a subpostmaster.
5. In any event, it was the Applicant's responsibility to ensure that she was capable of operating as a subpostmaster and was capable of taking responsibility and exercising appropriate control over her employees. Post Office disagrees entirely with any suggestion that subpostmasters are somehow 'trapped' in the role once they have entered into the subpostmaster contract in the way that the CRR suggests. Any subpostmaster can resign on 3 months' notice and in exceptional circumstances Post Office could agree to waive that notice period. Arrangements can be made for temporary or relief subpostmasters to run the branch whilst a purchaser for the business is found, thereby enabling the subpostmaster to preserve the value of their investment. There

have been a number of cases where subpostmasters have given up the role after discovering that it was not for them.

Conclusion

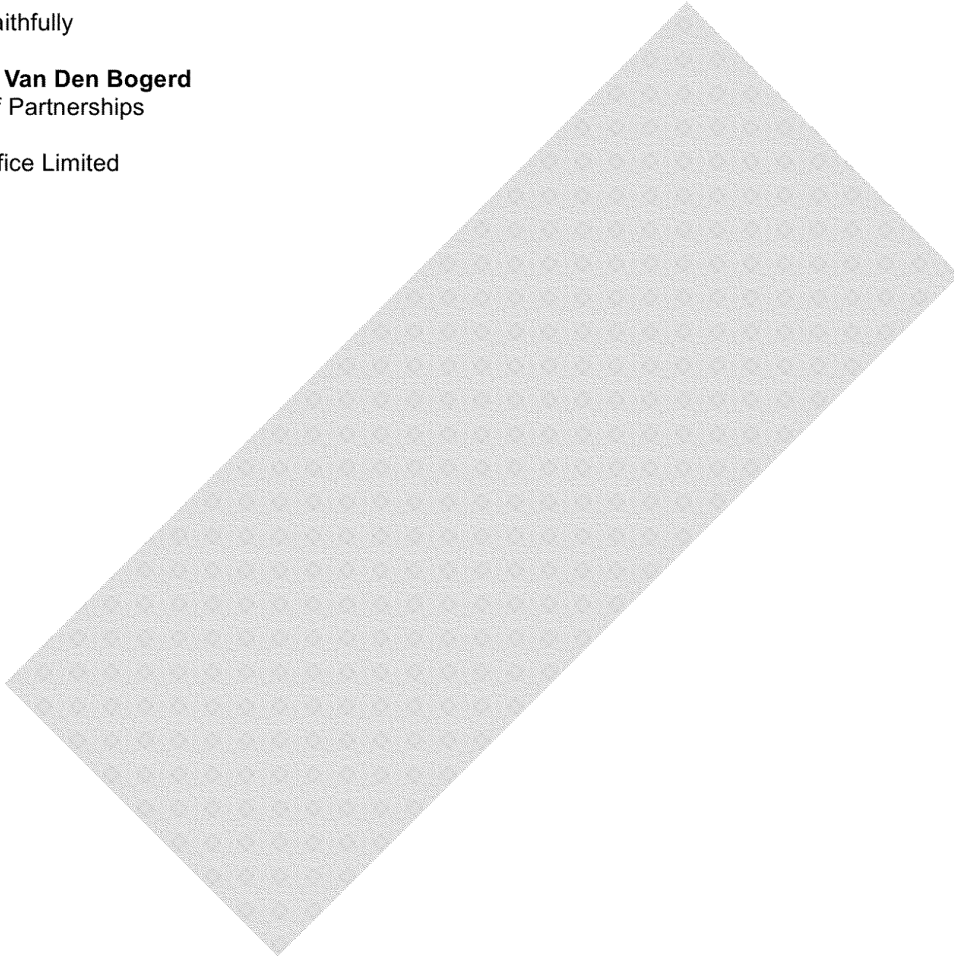
Post Office does not consider this case to be at all suitable for mediation for the reasons detailed at the beginning of this letter.

If you have any questions about this response, please do not hesitate to contact me.

Yours faithfully

Angela Van Den Bogerd
Head of Partnerships

Post Office Limited



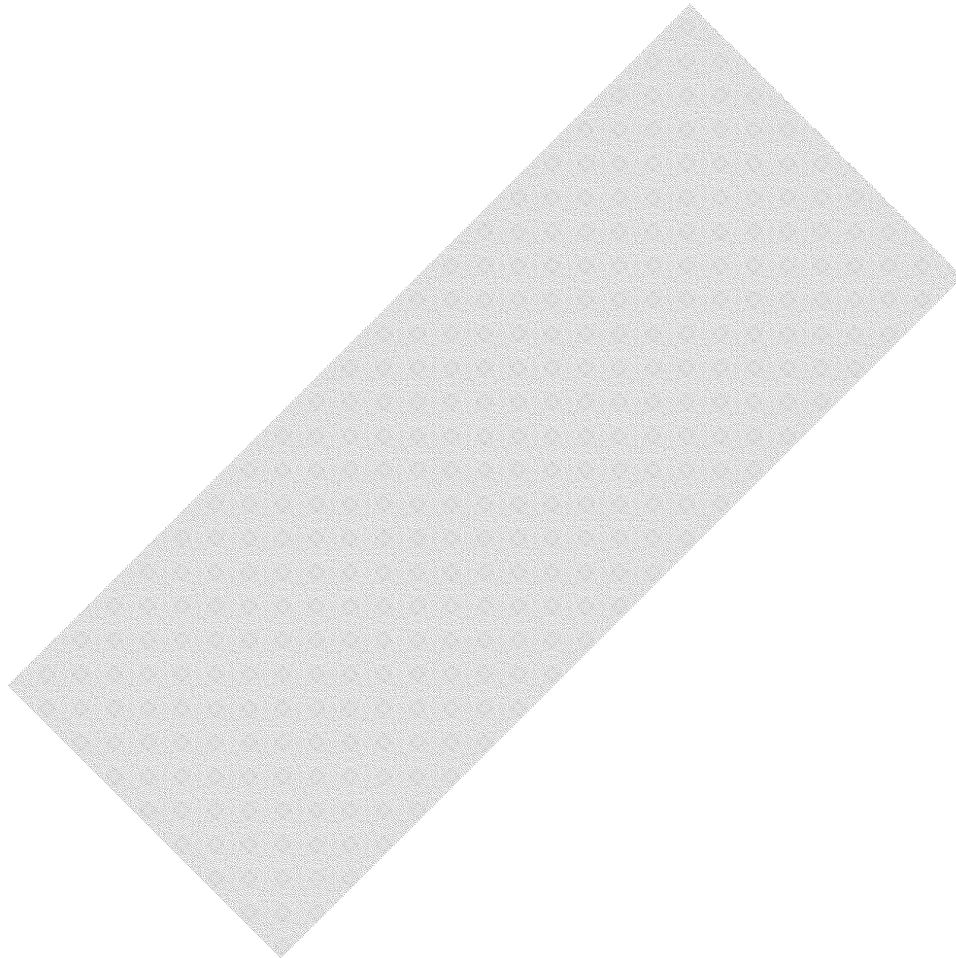
Appendix

Line by line comments

Paragraph in Draft CRR	Post Office comment
1.5(b)	The CQR does not include any complaint regarding: i) transactions seemingly not entered by the subpostmistress or her staff; iii) power failures; or v) MVLs.
1.5(f)	The CQR does not include any specific complaints regarding process issues at the end of each Trading Period.
1.5(h)	Paragraph 1.5(h) of the CRR notes that the Applicant has raised consequential losses " <i>which may be raised if the case progresses to mediation</i> ", but does not recognise the fact that the Applicant has by and large failed to quantify the additional sums claimed. As stated in the CRR, it is outside the scope of the Scheme and Second Sight's role for it to assess or comment on any consequential losses claimed by an Applicant.
1.7	This paragraph fails to note that the Applicant resigned in April 2008, some months after her suspension.
3.1 – 3.13	Whilst Post Office does not disagree with paragraphs 3.1 – 3.13 as an accurate summary of the Applicant's position in respect of the points of disagreement, this section of the report is completely unbalanced as it focuses entirely on the detail of the Applicant's position and fails to include any level of detail as to Post Office's position in response to each issue, save for a broad summary at paragraph 3.13 in which Post Office's overall conclusion is stated. Although much of the Applicant's position comprises un-evidenced assertions, the POIR does respond to each issue raised and Post Office's position in respect of each issue should be made clear in this section.
4.5	Although a voucher is mentioned by the trainer, that does not necessarily mean that he considered at the time that grounds may have existed for Post Office to agree to write off that loss. In any event, it is clearly recorded that the AIM subsequently made it clear to the Applicant that a TC would not necessarily be generated and if that was the case, the Applicant would have to make the shortfall good.
4.7	Post Office strongly disagrees with the conclusion reached in this paragraph. In keeping with any business owner, it was the Applicant's responsibility to ensure that she was fully conversant with the business she was running, as agent of Post Office. Although employment law requires staff to be transferred to her employment, at the point that they became the Applicant's employees she became responsible for their actions. Whilst incompetent or dishonest staff may well have increased the Applicant's difficulties in keeping the branch under control, it was nevertheless her duty as employer to be satisfied that they were competent and trustworthy employees and put effective controls in place. Ultimately, if any employees acted in breach of the terms of their employment, the Applicant could have terminated their employment.
4.8	Post Office disagrees with the implication in this paragraph that little or nothing in the way of written instructions or other communications regarding balancing procedure was provided to the Applicant. The Applicant would have been provided with handouts during the course of her training both in the classroom and on-site. A comprehensive office manual would also have been available in branch from the beginning of her tenure.

4.9, 4.20	Post Office would question what, if any, weight can be given to the Applicant's expert witness in circumstances where she lost the case against her and was found guilty of theft by a jury. Post Office would remind Second Sight that a higher standard of proof is required in criminal cases than in civil cases, which is all the more reason why that expert evidence should be disregarded. The expert's conclusion that a 'persistent system failure' was one explanation for the losses should in any event be disregarded in its entirety as by the expert's own admission he did not properly scrutinise that claim.
4.10 and 4.11	Post Office considers that the appointment process and training programme it follows is appropriate and compliant with all duties it owes to prospective subpostmasters. Ultimately the decision to invest in a subpostoffice and become a subpostmaster is a commercial one. The relationship between Post Office and subpostmaster is a commercial contract and categorically not an employer / employee relationship. Post Office entirely disagrees with Second Sight's conclusion that there is "no easy way out of the job". The subpostmaster contract gives subpostmasters the option to resign on 3 months' notice for any reason. Furthermore Post Office would consider each resignation request on its own merits and may agree to a shorter notice period depending on the circumstances. Any investment made to buy the property / business is irrelevant to Second Sight's conclusion as a temporary or relief subpostmaster could be appointed in the Applicant's place who would assume the Applicant's duties and responsibilities to Post Office. This happens regularly throughout the network, for example in cases where a subpostmaster has a long term or terminal illness and has to cease his/her role suddenly.
4.14	Post Office disagrees with the conclusion reached in the final sentence of this paragraph. It should have been obvious from the very fact that the Applicant was called to an interview with the Security Team that tighter controls needed to be in place at the branch. Furthermore, the need for better controls would have been specifically discussed at the interview and the Applicant would have had the opportunity at that interview to seek clarification on anything that she did not understand.
4.17	It is not the case that the Applicant would have to fund a shortfall themselves whilst a TC credit was awaited. All subpostmasters have the option of settling discrepancies centrally which covers situations where TCs are awaited. This would have been explained to the Applicant during her training. The premises of the analysis of CRRs in this paragraph is therefore flawed.
4.21 - 4.26	Under the terms of the subpostmaster contract, it was the Applicant's responsibility, not Post Office's, to investigate any potential theft on the part of her employees and to raise any such concerns with the Police. The fact that theft was mentioned by Post Office as one possible explanation for the shortfall discovered at audit should have resulted in the Applicant taking precipitate action. Single tills were in place by that stage which would enable the Applicant to detect whether or not theft was taking place and to take whatever action was necessary to stop it. As noted in the CRR, there is no evidence that the Applicant made any reports to the Police regarding theft by her employees. As noted in the POIR, the Applicant's own theft from the branch presents a compelling reason why she did not pursue suspicions that her staff members were engaged in theft.
4.23, 4.24	The Applicant's false accounting meant that the branch's cash declarations were incorrect as more cash was stated to be in the branch than there actually was. As a result, it was impossible for Post Office, and will have been very difficult if not impossible for staff in the branch, to have identified the days on which there was a cash shortfall and / or the amount of the shortfall. A consequence of not accurately recording a cash shortfall on any given day was to deprive the Applicant of the ability to immediately review that day's transactions for errors by branch staff that could have been the cause of the shortfall. Had a review been

	undertaken on each day where there was a shortage of cash, it is likely that many errors would have been identified and remedied at the time as the day's trading would have been fresh in the Applicant's mind. Put another way, the Applicant's false accounting may have caused potentially remediable accounting and transaction errors in branch to become actual losses.
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Note Entry for Case 52576

Account Ref : P00830-319-0

User : MS2 Martin J Smith

Client Name : Post Office Ltd

Matter Desc : MedWork under Belinda's paymen

Note Category : NONE

Date : 07/05/2015 00:00

Summary

M012 - Discuss issues affecting the POIR, draft CRR and draf

Detail

M012 - Discuss issues affecting the POIR, draft CRR and draft CRR Response in the light of AP's e-mail in relation to Balancing Transactions. Considering the issue of disclosure. Agreeing with SC that this issue requires very careful consideration.

PREP & PERUSAL	1:30
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Total Time	1:30
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