

POST OFFICE BRIEFING NOTE

WORKING GROUP

01 MAY 2014

WORKING GROUP 30 APRIL BRIEFING NOTE

Meeting Objectives

- To ensure that we make and land any points that we might later need to rely on when handling SS and JFSA.
- To ensure our points are on the record and should the Working Group accept the letter contains inaccuracies get a clear undertaking as to how the inaccuracies will be corrected.
- Challenge Second Sight's Part one report where it makes non factual and evidenced statements, making clear this is unacceptable to Post Office. Throughout the report Second Sight should be pushed to evidence their statements with numbers.
- Challenge the M022 report for its poor quality, where it fails to make evidenced statements, for its unacceptable tone and partial addressing of issues.
- Review the Alan Bates letter line by line and challenge the factual inaccuracies

In general the concerns with Second Sight can be grouped as follows:

- Quality of product being delivered – they are not delivering an expert product
- Failure to deliver reports to time (or at all) – they are not delivering as you would expect from a professional service firm
- Failure to act as an impartial expert- their language is emotive both in reports and in meetings
- Failure to evidence their work – they have repeatedly failed to evidence their statements even after very detailed feedback from the Working Group

In general the concerns with JFSA can be summarised as follows:

- Broken the confidentiality of the Working Group
- Sent to the minister and to an MP a factually inaccurate letter
- Made a number of unevidenced and untrue allegations about Post Office
- Have threatened to go to the courts and/or the media undermining the mediation approach.

COMMENTARY ON THE ALAN BATES LETTER

Date of the Letter

The letter was sent on 16 April the day before the weekly conference call.

At that conference call the following issues were discussed:

- Status of overdue CQRs
- New CQRs
- Reports uploaded by Post Office for Second Sight's review
- Quality of POL reports was raised by SS – it was agreed that SS should document this in their reports.
- Discussed that Post Office was “reviewing” previously submitted reports
- Noted that SS had not yet started work on the bulk of the reports provided by POL

The letter was not raised by Alan Bates nor did he raise the issues contained in it. We have had over 20 hours of Working Group meetings this year where Alan could have raised his concerns.

Page 1

Timescales

POL target of 4 weeks is accurately reflected BUT

- The Working Group has accepted that even with professional advisor articulating the case there is a lot of work to be done – that is why Second Sight have been involved in “hardening” the CQRs which is normally taking weeks. Most of the performance Alan is commenting on is on unhardened CQRs
- POL made clear at Working Group that these were aspirational targets and that cases might well take substantially longer. NB this is not minuted.
- JFSA blocked the attempt to set realistic deadlines for the POL investigations at the Working Group on 1 April 2014.

Second Sight target of eight weeks is not accurate:

- Second Sight were set an internal target of 4 weeks – this target date has been reported on in all Working Groups and not challenged by Second Sight or JFSA
- Second Sight have not delivered any report within 4 weeks
- The 8 week timeline is probably reached by taking the 4 weeks for POL away from the 12 week target in the published Scheme documentation.

Page 2**Mediators' Briefing Pack**

- The pack would be produced by Second Sight
- To assist Second Sight they were provided with a POL draft and offers of meetings to take this forward on the following dates:

Thursday 13 March	First draft of Factfile sent to SS.
Wednesday 19 March	Initial comments received from SS
Friday 21 March	Proposed meeting to discuss factfile - cancelled by SS
Thursday 27 March	Re-arranged date for meeting to discuss factfile – cancelled by SS.
Monday 31 March	POL responses to SS initial comments sent to SS (via a revised version of the Factfile being uploaded on to huddle in advance of the WG meeting on 1 April)
Wednesday 16 April	Revised factfile with new sections sent to SS + invitation to meet with SS to discuss
Tuesday 29 April	SS submit Part 1 Report

Scheme Documentation agreed in August 2013

- Scheme documentation was agreed in August 2013.
- Process set out in the documentation is not that in the letter.
- Documentation included FAQ:

“Is it possible that the structure of the Scheme may change over time?”

Yes – the Working Group is tasked with making sure that the Scheme is operating effectively. It may therefore be necessary to revise the Scheme as appropriate.”

During the time the Scheme was open 150 applications were accepted

- Not accurate. 147 applications were received in time. 3 late applications were considered on 1 April.
- Of the 150 applications in total 4 were rejected and 9 withdrew.

Others would have applied if they had been aware of the Scheme

- This is the Second time Alan has tried this approach the first time being after the raising concerns with Horizon.
- There has been extensive coverage of the Scheme including in national media.
- Scheme was publicised by JFSA and POL.
- To date only one application has come through from an MP (Oliver Heald case).

Stats breakdown on page 2

Serving SPMRs

- Alan states:

“As POL became aware of serving SPMRs submitting application forms, POL requested these cases to be held back from fully entering the Scheme until such time as POL had had an opportunity to discuss those cases directly with the SPMRs. Some of these cases remain in that position.”

- This is not an accurate reflection of events. Page one of the Scheme documentation (agreed with JFSA and hosted on their website) states:

“If a serving Subpostmaster wants to use the Scheme, he or she must have already raised their case with Post Office and have completed all Post Office's internal complaint processes”

- Further the Scheme documentation FAQs state:

“What are the eligibility criteria for the Scheme?”

You must meet both the following criteria.

First, your case must relate to a financial loss or unfair treatment that you believe you have suffered as a result of the Horizon system or any associated issues. Secondly, if a serving Subpostmaster wants to use the Scheme, he or she must have already raised their case with Post Office and have completed all Post Office's internal complaint processes. For example, a Subpostmaster who wishes to dispute a transaction or series of transactions in their branch should first raise this matter with NBSC and assist with any subsequent Post Office enquires. If a currently serving Subpostmaster needs advice on how to raise a matter internally with Post Office they should email branch.support.team@postoffice.co.uk.”

- Further there is a weekly review call (implemented post July 2013) across POL business unit to which issues with branch accounting is escalated

particularly horizon related. These calls are not seeing substantive horizon related issues from within the SPMR population

Page 3

POL have provided no reports to Second Sight.

- POL submitted first report to SS on 28 November 2013 (M009).
- POL invited feedback on report content (AVDB email of 28 November 2013)

I'd appreciate your comments on the format, style and content of these documents. We're trying to produce these documents in a way that is of most use to you and, in the future, Spmr's – hence the short delay in providing these documents. In particular, these documents have been prepared to assist with identifying:

- *Points of common ground between POL and the Spmr.*
- *Points of disagreement.*
- *Where there is disagreement, the foundation for a logical and evidenced opinion on the merits of the SPMR's complaint.*
- *And ultimately, by pulling together the above 3 points, a recommendation on whether the case is suitable for mediation.*

I'm of course very happy to discuss how to review and refine our approach to meet these objectives so that the Working Group will be able to reach a decision when the case is presented to it for a decision on whether mediation is appropriate."

- SS commented:

"Wow, this looks really good....

Really appreciate the work done to pull this together.

Let's discuss in a few days time

With best wishes

*Ian R Henderson CCE CISA FCA
Advanced Forensics - London, UK"*

- SS produced reports on three case M001, M009 and M014 for the WG meeting on 7 March 2014.
- TH provided detailed feedback on structure of reports SS have delivered the first report in the new structure on 30 April 2014.

- SS did not raise quality of POL investigations as a concern with James Arbuthnot MP when they briefed him for his meeting with Paula Vennells and Alice Perkins on 28 January 2014.
- SS commended Post Office investigators at MPs meeting on 24 March 2014
- On 17 April the day after the letter was despatched the Working Group noted that Post Office had sent 20 investigation reports to Second Sight (source case tracker).
- On the 17 April 2014 call Post Office agreed to take these reports down while the format of the executive summary was tweaked. This follows a direction from the Chair to review the Post Office reports in order to ensure appropriate focus on the losses.
- By the date that Alan sent the letter he had downloaded eight POL investigation reports:

Case	AB (JFSA)
M009	Downloaded 27.2.14 at 08:47
M014	Downloaded 27.2.14 at 11:00
M017	Downloaded 21.3.14 at 20:20
M019	Downloaded 21.3.14 at 20:23
M021	Downloaded 21.3.14 at 20:27
M022	Downloaded 21.3.14 at 20:30 Then again 27.3.14 at 19:29 Then again 29.3.14
M028	Downloaded 20.3.14 at 11:16
M054	Downloaded 29.3.14

Advisor Costs

- Levels of funding were made clear to applicants in the Scheme documentation:

“Post Office will pay up to £1,500 + VAT towards the reasonable costs of a professional advisor assisting you during Second Sight's investigation (i.e. gathering information, completing the Case Questionnaire, responding to Second Sight's questions, etc.).”

What if I need more financial support?

It is for you to manage your professional advisor's costs.

Advisor timeliness

- Some CQRs have been submitted within the timelines BUT
- As the paper on outstanding CQRs it is not true that in general CQRs are being submitted within 6 – 8 weeks

POL report quality insufficient to allow Second Sight to undertake their work

- First time raised by JFSA – no clarity over their quality criteria or how they are judging POL product
- This issue has been raised by Second Sight (commentary above)

POL have a contractual obligation to investigate where they believe a crime has taken place

- No such obligation exists

It seems POL did not investigate in any of the 150 cases

- This is not true.
- Approximately 1/3 of the case load have some form of criminal conviction.
- We have discussed on numerous occasions cases that are under investigation and the Chair has provided updates to the Working Group on these case.
- Further we have discussed in detail case M001 with Alan including a detailed discussion of the 5 day High Court Civil trial and the 30 page judgement.

“POL in these two cases, as they have done with so many others, went straight to prosecution using a fall-back contractual clause that the SPMR is liable for all losses regardless of how they occurred, without ever bothering to investigate the cause behind the incidents”

- This is not true.
- The two cases Alan refers to were not prosecuted. (M054 and M022)
- Not clear how the generalisation is arrived at.

- Alan had only downloaded eight reports at this point and Post Office had completed twenty reports it is unclear how this judgement on a caseload of 150 has been reached.
- The clause is a core part of the SPMR contract.
- Prosecutions for false accounting do not rely on the contract which is focussed on the recovery of losses but on the hiding of losses by the SPMR.

Page 4

Current investigations are only an articulation of already known issues

- Not true.
- Large quantities of evidence being gathered and reviewed by the Post Office Investigators and Second Sight
- Complete failure to articulate the POL commitment, and resource deployed to investigate these cases etc

Allegations of causal links to “suicides, attempted suicides, numerous medical conditions”

- Post Office only aware of one (tragic) suicide (this is claimed by JFSA to be a suicide incident however there has been no coroner’s inquest to date and whilst Alan Bates advised us that there was a suicide note left we have no knowledge of this from any other source or any indication of the content of this letter.
- No causal links to any issues.

Allegation that imprisonments, bankruptcies, destroyed family lives and businesses are caused by POL’s failure to address Horizon associated issues.

- Not caused by failure to address Horizon associated issues.
- Alan has brought forward no evidence of these linkages.
- Cases have had impact on family lives, businesses and bankruptcy but no evidence that this has been caused by Horizon associated issues.

Protection of public purse as last line of defence

- Not accurate.
- Value for money is an important consideration for any publicly funded body
- There is not an unlimited amount of money available for the Scheme
- Money spent needs to be reconcilable to a clear set of principles.
- This point was made to James Arbuthnot on 28 January:

“AP pointed out that in terms of any spend by Post Office they are a publicly funded organisation and the Post Office Board would wish to consider whether any further work by Second Sight was good value for money given the amount of money being spent on the scheme and the need to be able to assure external parties such as the NAO that good value for money was being obtained.”

Need to resolve the issue through the media and the courts

- Disagree and feel this is an unfortunate stance.
- Goes against the confidentiality of the Working Group, undermines mediation and could be construed as a threat.

So much more has come to light

- Unclear what Alan is referring to (if Alan is referring to evidence to support the claims within the Scheme cases then we've not seen this yet)

2nd Sight are probably the only company presently able to offer an independent professional and reasoned insight into what has been going wrong within POL and Horizon over the years.

- No evidence of SS providing this kind of insight
- No reason that SS are the only company who could provide this service

The only one refusing to accept the truth is POL

- Unclear what the "truth" Alan is referring to is.

SECOND SIGHT CONCERNS

1. Failure to deliver

- a. Concern: SS have consistently failed to deliver work to the required standard or on time.
- b. Impact: impossible to plan resourcing of Scheme; difficult to manage stakeholder expectations; unable to commit to completion of Scheme due to escalating cost of SS work.
- c. Examples:
 - i. POL have paid SS £500k but only received one published document in the last year.
 - ii. SS have had the first POL report since November 2013 but not yet delivered a completed case report
 - iii. No sign of the thematic report.
- d. Objective: Seek commitments that work will be delivered on time and to conditions otherwise there will need to be changes to SS funding (ie. fixed cost per case).

2. WG Confidentiality

- a. Concern: it appears that SS (and AB) are communicating WG discussions to Applicants / Third Parties.
- b. Example: In the letters from Aver and Howe – they both reference that POL was receiving repeated extensions – this could only have come from inside the WG.
- c. Objective: Reiterate the need for WG discussions to be confidential.

3. Objective of investigation process:

- a. Is the objective to "build a foundation for resolution at mediation" or "find the truth".
- b. The former is quicker and more practical.
- c. The latter requires SS to become a decision maker – much more onerous in terms of resourcing / time / etc.
- d. Also the latter is impossible – SS has no power to test credibility of evidence (ie. no cross examination of witness testimony; no criminal sanctions for lying; etc.) and therefore will never find the truth.
- e. Objective: Agreement to limit investigations to practical conclusions that help mediation process

4. Scope creep

- a. SS are not looking at safety of convictions and the fairness of the contractual structure between POL and SPMRs.
- b. Example: this issue has been raised in drafts of both the thematic report and individual reports.
- c. Both items are outside SS' expertise and so they should not be commenting.
- d. These are also not "Horizon related" and are therefore arguably outside the scheme.
- e. Objective: Direction from the Chair to narrow scope of investigation.

5. SS investigation process

- a. Should this be based only on the information provided by POL and in the CQR, or
- b. Should SS be free to ask questions of applicants?
- c. If option "B", what impact will this have on the timetable.
- d. Objective: push for option "A"

6. SS communication with PAs / Applicants

- a. No transparency of SS' interactions with PAs or Applicants
- b. Impacts on managing workflow if mixed messages are being relayed.
- c. Objective: greater transparency of communications from SS.

7. SS "hardening of CQRs"

- a. What does this entail?
- b. Are SS maintaining impartiality or are they now helping Applicant's to construct cases?
- c. How is this impacting on the timings of the process?
- d. Could the questioning process at 5(b) be integrated here?
- e. Objective: Get greater clarity on what SS are doing to warrant this work.

8. Lack of SS interaction with POL.

- a. SS are not directing any questions to POL.
- b. If not getting info from POL then there is a one-sided flow of info from applicants.
- c. Example: no engagement on factfile despite offers of meetings.
- d. Objective: Encourage SS to pro-actively consult POL on issues rather than raising matters in front of the WG.

SECOND SIGHT PRODUCTS

The Second Sight Initial Complaint Review and Mediation Scheme Branch Operating Procedures (The Factfile / Part 1)

Summary

There are a number of issues with this report, most notably relating to scope and purpose: the basis of this report is to assist the mediation process and not, as this report claims, to underpin the unfinished *Thematic Issues* report. As a fundamental part of its purpose in assisting mediation, the Part 1 report was intended to be a neutral factual statement. Despite this, there are at least 14 points in the report which are based on Second Sight's opinion and are not supported by either logical reasoning or evidence. These opinions would be better presented in the Thematic Report but even then they would require proper justification based on evidence. As well as these issues, the report also: contains a number of factual errors; "facts" taken from CQRs which have not yet been investigated/tested for credibility; includes statements based on conjecture (rather than fact); omits some crucial information; includes some statements phrased in a misleading / confusing manner; has a minor structural issue which requires amendment, and; contains an unnecessary, irrelevant and time-consuming request for information. These issues are all detailed below.

Purpose and Scope

- Second Sight state that the basis of the factfile is to provide a factual underpinning of their *Thematic Issues* report, but the factfile is not connected to the *Thematic Issues* report. Rather, the basis of the factfile is to assist the mediation process, namely by providing the mediator and parties with factual information regarding Post Office processes and terminology. Ref: 1.1.

Factual errors

- The report refers to the Post Office charging SPMRs a fee before allowing them to operate a branch, which is no longer correct. This point also seems irrelevant. Can Second Sight confirm which case this relates to, as it does not seem to be referred to in any CQR? Ref: 3.5
- "Similarly, if there is an interruption to the communication channel and/or a failure to automatically connect to the mobile backup device during a customer transaction, Horizon will *try* to prompt the user with on-screen messages explaining what to do to and whether to cancel or retry the transaction". System does not 'try' to do this, it 'will' do it. Ref 5.19

- “If however an investigation is not fully conclusive then the onus reverts to the Subpostmaster to determine the source of the error and deficiency and to personally settle any amounts due”. Not correct e.g. if the cause of a lost cheque cannot be determined, PO absorbs this loss. Ref 8.17

Facts based on untested allegations from CQRs

- “Representation and guidance is available to Subpostmasters from the NFSP in the event of disputes, although the extent and quality of this assistance has been questioned by a number of applicants”. Ref 3.27
- Referring to ‘Branch Support’ process: “It is however clear from cases reported to us, that this procedure has, on occasions, either not been followed, or did not work, or did not produce the needed results”. Ref 4.17
- “Despite this description of an apparently extensive support mechanism, feedback during the Complaint Review process has indicated a lack of consistent, constructive advice being provided, especially from the Horizon Service Desk and from the NBSC”. Ref 4.22
- “[**Settle centrally and dispute the shortage** - if the Subpostmaster believes that the shortage was not his/her fault or could be resolved through other means, then the debt will be suspended to allow time for the shortage to be investigated and remedied. The Subpostmaster can dispute a shortage by contacting the Network Business Service Centre, Cash Centre (for remittance disputes) or the Finance Service Centre at Post Office to have the debt suspended pending an investigation]. It would appear that not all Subpostmasters are aware of this third option”. Ref 8.16

Opinion, rather than fact-based, content

- “The [SPMR] contract also (unusually in normal commercial terms) provides the right for a Subpostmaster to withdraw and retain any surpluses that arise in the normal course of business (*contract clause 12(14)*)”. Referring to ‘normal commercial terms’ is opinion. Ref 3.13
- “Although the focus of this review relates principally to the operation of “Agency” branches, there are other types of branches within the Post Office network, which are staffed in a different manner, more akin to a normal commercial operation. These include “Crown” branches and “Multiples” as described below”. Not only is this opinion, it also suggests that the position with agency branches is abnormal, which is not correct. Ref 3.20
- “We understand that the performance of the NBSC staff is (unusually) measured solely on the time advisors take to answer the phone”. The phrase

"unusually" is opinion without justification. Ref 4.8 Spmr Engagement survey undertaken in Sept 2013 recorded 83% satisfaction rate of NBSC

- "As set out below the nature of this training has evolved over time and although seemingly comprehensive, examples reported during the Complaint Review process have shown that the quality of the training may not be consistent or, in many cases, may simply be insufficient". Ref 4.25 Training satisfaction score has consistently been in the 95% range year on year
- "[Post Office has undergone a number of structure reviews which have influenced the support Post Office provides to Subpostmasters and their branches]. As a result, Post Office's approach to structuring its agency relationships with Subpostmasters has evolved over time with an increasing focus on business development and sales performance". Ref 4.32
- "The use of the term "*audit*" to describe a simple cash and stock count, even if supplemented by a Compliance Audit, is potentially misleading and has been challenged by many Subpostmasters. It also appears that associated training needs are not always consistently identified or delivered". Ref 4.41
- "Whilst this is how the system should operate, it would appear that the nature of these instructions is not always logical or clearly set out and there is a risk of transactions being lost. The steps which need to be taken (as directed by Horizon) will depend on whether the transaction is "recoverable" or "non-recoverable"". Ref 5.18
- "Whilst it might appear from the above that any errors should be easy to identify, the multiplicity of transactions and the lack, in some cases, of a clear and easily available audit trail may mean that the source of errors during a process is not always easy to determine". Ref 7.2
- "The problem with following this procedure is that the delivery may occur during branch opening hours and the only way to carry out this check in an effective manner is to close the branch for a period, which is normally impractical". Ref 9.24
- The entire Executive Summary is opinion-based and would be more appropriate in the Thematic Report. Ref 9.5 - 9.7

Conjecture, rather than fact-based, content

- "The adoption of these response driven rather than quality driven performance metrics [NBSC targets] may contribute to the concerns expressed by a number of applicants as to the quality of advice and support received from the NBSC and the Horizon Service Desk". Ref 4.10
- "A number of calls by Subpostmasters for support are made to the wrong helpline and have to be redirected. This may of course indicate a lack of clarity and understanding by Subpostmasters as to whether problems encountered are system or procedurally related, especially if calls are not promptly returned to the Subpostmaster as promised by either the HSD or the NBSC". Ref 4.13

Omission of information

- Second Sight have removed a reference to Temps paying rent to SPMRs, which should be included in the document as it explains why suspension without pay is justified. Ref: 3.8
- “Some Post Office transactions, for example, Camelot/(Lottery)/PayStation/Post& Go are not transacted through a Horizon terminal but instead via separate equipment”. This omits to say that the SPMR needs to check and approve the Transaction Acknowledgment - it is not forced on the SPMR by POL. Ref 7.55
- “In cases of hardware failure requiring the replacement of branch equipment there is a possibility that not all data will have been successfully replicated before the failure of the old hardware with a consequent possible loss of data. There are however checks and procedures available, that if properly followed, should allow such transactions to be identified”. For this error to have occurred, there would have to be a complete failure of the core Horizon terminal mid-way through a non-recoverable transaction. Therefore the possibility of this is very very remote. Ref 9.54

Misleading / confusing phrasing

- “Transactions on Horizon are entered physically on a terminal in a branch and can normally only be processed (and subsequently identified) by a valid, approved user with a user ID and an associated password”. Please explain what is meant by ‘normally’? Transactions can only ever be processed in branch if a user is logged on. Ref 5.7
- “Staff at each branch are required to count and declare the cash stored in each stock unit at the end of each day. The actual cash on hand is recorded in Horizon by the Subpostmaster or his/her assistants. Horizon should then show any "discrepancy" between the cash on hand and the amount of cash that should be in the branch in order for the branch to balance”. Horizon does show the discrepancy. SS uses of the word "should" indicates that there could be an error in Horizon doing this calculation - there is no evidence whatsoever that this error exists. Ref 8.2
- “Therefore, Subpostmasters can in theory ascertain what transactions have taken place in branch and the amount that has been recorded against each transaction”. What does “in theory” mean? Ref 8.4

Structure

- NBSC section on page 6: only makes sense if the report first explains what Horizon is. Needs re-ordering.

M022

1 Quality of analysis

SS' analysis does not reach the standard of a professional expert.

As these cases could end up in Court, parallels can be drawn with the English Court Rules for experts:

- *"Experts must state those facts (whether assumed or otherwise) upon which their opinions are based. They must distinguish clearly between those facts which experts know to be true and those facts which they assume."*
 - SS admit that they do not know whether POL was aware of the arrangements between the Applicant and the former SPMR (para 3.11) but proceed to reach their conclusion that POL should have provided more support / information to the Applicant about the former subpostmaster based on the assumption that POL was aware of these facts (para 4.2).
- *"Experts should assist [...] by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of advocates".*
 - The report uses emotive language – para 4.2 ("hopelessly optimistic"); para 3.11 ("fundamentally flawed").
 - The issues for mediation section (para 6) are not neutrally phrased but rather phrased on the assumption that POL is at fault.
- *"Experts should consider all material facts, including those which might detract from their opinion."*
 - SS have not placed any weight at all on the fact that had the SPMR been monitoring his branch the losses may not have occurred at all.
 - SS have not referenced a number of points in POL's reports (eg. POL's checks that ATM mechanical faults could not cause losses)

2 Lack of evidence and justification to support views

SS have not cross-referred to any documentary evidence in their report.

Justifications and full explanations are missing

- Para 3.19 – SS say that the errors were "obvious" and "extraordinarily odd" but do not explain why this would have been obvious to POL or would have been unusual (or even identify which errors they are referring to).
- Para 5.8 – SS say that POL's report is contradictory because it says that entering incorrect figures on Horizon could not cause a loss. They have not explained why this is contradictory.
- Para 5.11 – SS conclude that they think the loss of £87k in this branch was not a real loss at all. This conclusion is not explained and is not justified based on any information referenced in the report.

Conclusions are vague:

- Para 5.11 - "It is possible in our view..."
- Para 5.12 - 5.14 – pure speculation that third party theft from the ATM machine could have occurred.

3 SS report is not impartial but evidences bias against Post Office.

SS have assumed the role of advocates and this has led to ignoring possible avenues of investigation / challenge. This has resulted in confirmation bias where SS have only put forward matters that support their conclusions.

Examples:

- **Indemnity Agreement.** The fact that, unusually, the Applicant entered into an indemnity agreement with the former subpostmaster shows that (1) he was aware of the risks of using the former subpostmaster to run the branch and (2) accepted those risks.
- **Vetting of staff.** SS have not investigated why the Applicant did not vet the incumbent staff before engaging them. This would be standard practice on taking over a new business. See further below.
- **Untested logic.** SS concludes that because the SPMR was absent from his branch then POL had greater responsibility to support the Applicant. This logic is flawed. POL does not assume greater responsibility if the SPMR takes the risk of not attending his branch.

Taken to a logical conclusion, POL would owe greater duties to SPMRs every time they were on sick leave, went on holiday or took a lunch break as these are also all absences from a branch. Indeed, SS' logic would encourage greater absenteeism from branches.

- **Applicant's failure to investigate losses.** SS allege that POL failed to investigate the losses at this branch but offer no comment at all about the Applicant's failure to also investigate these losses or to request this support from POL.
- **Retention of records.** SS assert that POL did not retain records from the branch which hinder their investigation. However, they do not accuse the SPMR of this same failing even though the records in question would have been in his possession and control.

4 **Lack of expertise / scope creep**

SS have put forward opinions on matters where they have no expertise.

Court Rule: *"Experts should make it clear when a question or issue falls outside their expertise; and when they are not able to reach a definite opinion, for example because they have insufficient information."*

Examples:

- **Criminal law.** SS have asserted that the case could not now be criminally investigated (para 5.10) even though they have no expertise to make this judgment.
- **Contract law / franchising norms.** SS have no expertise to opine on whether it is standard practice that POL should have vetted the branch staff for the Applicant. They have also overlooked clause 4.11.1 of the standard subpostmaster contract which places responsibility on SPMRs to ensure the integrity of their staff.
 - Clause 4.11.1: *"The Subpostmaster must also seek information from each [prospective assistant] about mis-selling of any product or service or lack of integrity in any form of employment involving selling".*