

CONFIDENTIAL AND LEGALLY PRIVILEGED DRAFT
Draft response to Second Sight's Initial Complaint Review and Mediation Scheme Briefing Report
- Part 2 ("Report")

Introduction

Introduction

As part of the Initial Complaint Review and Mediation Scheme (**the Scheme**), Second Sight has been engaged as a firm of expert forensic accountants to provide, where possible, a logical and fully evidenced opinion on the merits of each Applicant's case.

On 21 August 2014, Second Sight released its Briefing Report - Part Two (**the Report**). Second Sight thought that this Report would be of use to the Scheme as they believed that there were certain "thematic issues" being raised by multiple Applicants. The idea was that the Report would describe these thematic issues and set out Second Sight's findings on each of them. The aim was to provide generic information that could then be applied in specific cases.

Regrettably, the Report does not fulfil these objectives. Therefore the Post Office has prepared this Reply in order to correct inaccuracies in the Report and to provide information that the Report omits.

The Report

Post Office considers that the Report does not meet these objectives as it does not provide any useful information to Applicants. Instead it puts forward un-evidenced speculation or views on topics that are outside the scope of the Scheme and Second Sight's remit.

Of the 19 sections in the Report, not one identifies a thematic issue on which an evidenced and expert opinion is offered:

- 2 sections reach views that are unsupported by evidence (section 5 and 10)
- 3 sections comment on issues that are beyond Second Sight's expertise as forensic accountants (sections 4, 18 and 22)
- 5 sections raise no thematic issue at all (sections 8, 9, 16, 17 and 21)
- 9 sections reach no conclusion at all (sections 6, 7, 11, 12, 13, 14, 15, 19 and 20)

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Absence of conclusions

As it stands, the Report references a number of themes where "*enquiries are on-going*". It is hard to see how this can assist an Applicant and who would expect to find information in the Report which would be of use in resolving their application.

A number of other sections simply set out the competing views of Applicants and Post Office. No view is offered by Second Sight on whether either parties' position is to be preferred.

Finally, many of the topics do not explain how they could have caused a loss to an Applicant. The majority of the cases in the Scheme turn on there having been a loss in a branch for which an Applicant was held liable. For a thematic issue to be of utility, it must help explain why a loss may have arisen or been attributed to a Applicant. The Report is largely silent on this critical issue.

Lack of thematic issues

It was reasonable to expect Second Sight to clearly articulate the "thematic issues" discussed in the Report; describe the method by which Second Sight investigated that issue; cite the number of instances when it has been referred to by Applicants and the number of cases where Second Sight has performed a detailed investigation; and provide an analysis of the evidence Second Sight has been provided with and considered. That would give Applicants and Post Office a clearer understanding of the "issue" as it might apply to them, which is essential if the Report is to assist in resolving applications. Unfortunately, this type of structured analysis is absent from the Report. It is therefore impossible in a number of sections to even identify a thematic issue which could be relevant to one or more applicants.

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Missing evidence

The Report appears to present and accept as "facts" allegations from Applicants but often lacks supporting evidence, source documents, examples or statistics - material one would expect from an investigation by forensic accountants - to substantiate the few speculative conclusions it draws. The Report does not describe the overarching methodology used by Second Sight to examine the weight of evidence from different sources - this is most important when much of the information provided by Applicants is anecdotal and needs to be carefully assessed for credibility and accuracy. Post Office considers that these are fundamental requirements for a report purporting to provide sound investigative analysis and conclusions. This is a reasonable expectation of a report produced by forensic accountants.

At the time the Report was released, Second Sight had only investigated 21 cases submitted to the Scheme and only rendered its final Case Review Report in 10 cases. One should also bear in mind that Second Sight is only receiving information from the approximately 150 Applicants to the Scheme, whereas the number of Subpostmasters who have used Horizon is over XX and in total there have been more than 450,000 users of Horizon since its inception in 2001. Second Sight has not canvassed the views of Horizon users who have not applied to the Scheme. The Report is therefore based on the tested views of only 0.00005% of all Horizon users and cannot therefore be said to reflect general user experience.

In preparation of its Report, Second Sight had only sought information from Post Office in connection with 4 of the 19 topics raised in the Report (being sections 5, 10, 15 and 19). Before its release, Post Office offered to meet with Second Sight to discuss the Report in detail but Second Sight declined this opportunity.

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Second Sight's approach is regrettable, as it has resulted in the few findings offered in the Report being based on very selective or no evidence and therefore little reliance can be placed on them.

Scope

The scope of Second Sight's investigation, and the matters which are within the scope of the Scheme, are matters "*concerning Horizon and any associated issues*". This is made clear on the Application Form and in Second Sight's letter of engagement.

Second Sight were specifically engaged as qualified and experienced accountants. Matters such as the Subpostmaster contract and criminal, or indeed any other legal, matters are not related to issues concerning Horizon and any associated issues, and it is inappropriate for Second Sight to comment on matters outside their expertise and outside the scope of the Scheme.

In the context of the Scheme, and the scope of Second Sight's investigation, the Subpostmaster's contract is relevant only to the extent that it is the benchmark against, and the legal framework within, which the actions of Post Office and Applicants must be assessed. It is not a legitimate, or indeed useful, part of Second Sight's investigations for it to seek to test that benchmark, or alter that framework, so as to retrospectively impose obligations on Post Office (or indeed an Applicant) which it did not and does not have.

Where the Report goes beyond its terms of reference, this has inevitably resulted in unsafe conclusions outside of Second Sight's expertise. Importantly, this is likely to impede rather than assist the resolution of Applicants' concerns, given the reliance Applicants are likely to place on Second Sight's incorrect views.

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This Reply

It is recommended that the reader familiarises themselves with Second Sight's Briefing Report – Part One (**the Part One Briefing**) which provides background information on Post Offices processes and procedures. This Reply builds on the information in the Part One Briefing.

Care should be taken when applying the Report and this Reply to individual cases. Not all the information will be applicable in every case. Several of the topics are themselves multifaceted so even where an Applicant has raised a topic, not all aspects of that topic may exist in that case. Also, the specific circumstances of a case may show that a topic did not in fact have any effect on an Applicant.

In this Reply:

- References to paragraphs and sections are to paragraphs and section of the Report unless stated otherwise.
- "Applicant" means an applicant to the Scheme whereas "Subpostmaster" means subpostmasters in general, whether or not they have applied to the Scheme.
- For ease of reference, where reference is made below to "Subpostmasters" or "Applicants" taking action in a branch, this action could, in most circumstances, also be taken by a Subpostmaster's assistant.
- All capitalised terms are defined in the Part One Briefing.

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Overview of Post Office's position

Nearly all Applications to the Scheme centre on there being a loss of cash from a branch that the Applicant does not consider that he/she

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caused or are liable for. The focus of the Report and this Reply is to help identify those issues that can cause such a loss and those that cannot, with the aim of establishing responsibility in each case.

In order identify a loss of physical cash, an investigator needs two pieces of key information:

- 1 They need to know how much cash should be in the branch as a result of the transactions processed in the branch. This information is provided by the branch accounts stored on Horizon.
- 2 They need to know how much cash is actually in the branch. This is known by conducting a physical count of the cash on hand.

Any difference between the above two figures generates a "discrepancy" which may either be a shortage or a surplus.

Controlling the branch accounts

If cash is missing, the first stage of the investigation is to identify the day on which the cash went missing. The transactions for that day can then be reviewed for anomalies (see section XX of the Part One Briefing) eg.

- Transactions incorrectly recorded (such as withdrawals recorded as deposits)
- Values incorrectly entered (entering £2000 instead of £200)

This is done to determine if the branch has made errors that would make the branch accounts inaccurate (item 1 above). This review must be done by the branch staff as only they will know the transactions made on that day and may recall the correct transaction details. Many branch errors (including the two examples above) can only be identified in branch.

Post Office helps correct branch errors where possible by reconciling Horizon records against data collected on some transactions by third

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parties such as banks and government departments. Where Post Office detects an error through this reconciliation process, it issues a Transaction Correction to a branch notifying them of the error and correcting the branch accounts.

It has been alleged by some Applicants that they have been issued Transaction Corrections even when they were not at fault. Post Office does not use Transaction Corrections to pass risk to Subpostmasters. Transaction Corrections are only issued where there is clear evidence of an error in branch. Where the cause of loss rests with Post Office or third party client, or the cause is just unknown, Post Office absorbs that cost and it is not passed back to branch. This principle underlies the design of Horizon and all Post Office's back office and reconciliation processes.

Controlling cash movements

Save when it conducts an audit, Post Office does not have any direct knowledge of what physical cash is in a branch (item 2 above) - only Subpostmasters have this information. For this reason, branches are required to

- Count the amount of cash in the branch daily and record this figure in Horizon as a cash declaration.
- Count all cash and stock at the end of each trading period and record these figures on Horizon before making good any discrepancies¹.

If daily cash declarations are not made by a branch or declarations are made falsely (by declaring that there is more cash in the branch than there actually is) then it is impossible for Post Office, and will be very difficult if not impossible for a Subpostmaster, to:

- Know if cash is missing;
- Identify the days on which cash has gone missing;

¹See paragraph XX of the Part One Briefing regarding "making good" errors.

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- Identify which member of staff may be the source of errors; or
- Locate the erroneous transactions that were the cause of a loss.

Daily accurate cash declarations are the most critical aspect of branch accounting, without which losses of cash, being taxpayer money, go unchecked.

For this reason, Post Office requires Subpostmasters to make accurate daily cash declarations. Subpostmasters habitually failing to make cash declarations may find their contracts terminated. Post Office also prosecutes those Subpostmasters who make false cash declarations. It is not an excuse to say that a Subpostmaster was poorly trained or received inadequate support in this regard. The need for daily cash declarations is known by all Subpostmasters and is easily performed - there is no specialist training or support required (albeit that both do exist). Post Office does not accept that there is any excuse that could justify committing the criminal offence of rendering a false account.

In the context of the Scheme, there are a number of cases where accurate cash declarations have not been made. Many Applicants have challenged Post Office to say where the losses in their branches have occurred. As explained above, identifying the specific source of the losses is not possible where an Applicant has failed to follow the simple but critical task of making accurate daily cash declarations. This failure on the part of Subpostmasters is why Post Office holds them liable for any losses hidden or caused by their inaccurate record keeping. It is also a well-established common law principle that an agent (like a Subpostmaster) is liable to pay to his principal (being Post Office) any sum declared in his accounts.

Responsibility for losses

An even greater number of Applicants have accused Horizon of inaccurately recording the transactions processed at their branch (item 1 above) which they say shows that they were not liable for the losses in their branches. To date, no evidence has been put forward

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by either an Applicant or Second Sight that presents even a slight doubt that Horizon has failed to record transactions accurately.

The Report looks to identify thematic points where Second Sight considers that Horizon may be flawed. As explained in this Reply, these points are either un-evidenced speculation or are proven not to be the cause of losses in branches.

Absent any doubt over the integrity of the branch accounts produced by Horizon, Post Office considers it a fair starting position to assume that if a loss has occurred then it has been caused in the branch and is something for which, in most circumstances, a Subpostmaster is liable to make good. This reflects the core tenant of the Subpostmaster Contract that Subpostmasters are liable for any loss caused by their carelessness, negligence or error.²

Post Office remains committed to fully and open-mindedly investigating every allegation levied at Horizon through the Scheme. It is in our interest as well as the interest of the 6,000 serving Subpostmasters who have not applied to the Scheme to identify an issue if one exists. However, Post Office is confident that there are no systemic problems with branch accounting on Horizon.

² Clause 12, Section 12