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POST OFFICE RESPONSE TO CRR ON M022

[TO GO ON POST OFFICE LETTERHEAD]

Second Sight
By email only

[DATE]

Ref: M022

Dear Sirs

Post Office's Response to Second Sight's Case Review Report on case M022

This letter sets out Post Office's response to Second Sight's Case Review Report dated XX May 2014 for application M022 (the CRR). References to paragraphs are to paragraphs within the CRR unless stated otherwise.

The structure of this response is:

- Section 1 - Summary of Post Office's position.
- Section 2 - Commentary on the key issues raised by the CRR.
- Section 3 - Line-by-line comments on the CRR.

1. Summary of Post Office's position

1.1 There are a number of reoccurring issues with the CRR. These are set out below for ease of reference.

1.1.1 **Poor analysis.** The depth of analysis in a number of places is insufficient with a number of conclusions being untested by logical analysis and, in some instances, being entirely unsupported by any explanation.

1.1.2 **Factual inaccuracy.** There is not a clear articulation of the factual basis upon which conclusions have been reached and, in particular, a number of opinions are based on assumed facts without these assumptions being expressly stated.

1.1.3 **No evidence.** The CRR frequently does not cross reference any document or source of information to support its factual findings.

1.1.4 **Confirmation bias.** The CRR often only presents facts that support Second Sight's conclusions: evidence that detracts from those conclusions is not presented.

1.1.5 **Lack of counterpoint.** In some critical areas, the CRR does not present possible alternative analyses and outcomes that could arise from a particular set of facts. All the likely analyses should be presented before weighing them to form a conclusion.

1.1.6 **Inexpert views.** The CRR offers views on subjects on which Second Sight has no expertise.

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- 1.1.7 **Confused structure.** The structure of the CRR should allow points of common ground, points of dispute and Second Sight's conclusions to be clearly and separately presented. However, in places these three sections become muddled which may cause confusion for the reader (and potentially a mediator).
- 1.2 The cumulative effect of these issues has unfortunately led Second Sight to reach a number of unsound conclusions which risk making it more difficult for the parties to resolve their dispute at mediation.
- 1.3 A good example of the above difficulties is the error in Second Sight's central conclusion. Second Sight conclude that as Post Office was aware that the Applicant was absent from his branch and engaging the previous subpostmistress ("DA") to run the branch, it should have notified the Applicant of the losses incurred by DA during her tenure. This conclusion is incorrect:
 - 1.3.1 **Factually** - Post Office was not aware of the arrangements put in place between the Applicant and DA. Indeed, Post Office was not aware (before the audit in December 2011 by which time the losses had already occurred) that the Applicant had decided to have no involvement at all in the running of his branch. Second Sight have assumed these facts to be true without stating this assumption or making reference to any evidence.
 - 1.3.2 **Logically** - In any event, Post Office is not responsible for the risks taken by the Applicant in not attending his branch. If a subpostmaster unilaterally wishes to take greater risks in the way he manages his branch (ie. by fully delegating the management of the branch to another person), it does not logically follow that Post Office is then responsible for the consequential risks of that decision or should put in place greater controls against those risks. It is the subpostmaster's decision and he bears the corresponding risks.
- 1.4 Post Office does accept some of Second Sight's observations. Post Office could have investigated the losses at this branch in more detail at the time of the events in question. However, the lack of investigation into losses does not make Post Office responsible for the losses themselves.
- 1.5 It is also accepted that there was a delay in providing ATM training to the branch staff. However, it is maintained that this is at best small contributing factor to the losses in this branch which were primarily caused by the Applicant's failure to put in place any controls over the actions of the staff running his branch.
- 1.6 Finally, Post Office could have communicated better with the Applicant about the need to repay the losses suffered by his branch.
- 1.7 Nevertheless, as a number of Second Sight's key findings are incorrect, its conclusion drawn from those findings (that Post Office should bear a significant proportion of responsibility for the losses in the branch) is unsustainable. It is asked that Second Sight reconsiders its ultimate conclusion and the content of its CRR in general in light of the matters raised in this response.
- 1.8 Despite Post Office's concerns about this CRR, Post Office would welcome the opportunity to discuss the issues raised in the CRR with the Applicant at mediation.

2. Commentary on key issues in the CRR

- 2.1 The key issue in this case is whether Post Office should have informed the Applicant about the losses suffered by the previous subpostmistress ("DA") who was then later engaged by the

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Applicant to run the branch or whether the responsibility for vetting and managing DA (or other branch staff) rested with the Applicant.

2.2 **Factual position.** At paragraph 3.2, Second Sight state that Post Office knew that the Applicant was going to be running the branch "without providing a 'personal service'". This is incorrect.

2.3 It is unclear what Second Sight means by "personal service" but it is assumed that this means where a subpostmaster is on-site full time running a branch. Second Sight is asked to define unclear terms rather than put those terms in quotation marks.

2.4 Whilst it is accepted that Post Office knew that the Applicant was not providing "personal service", Post Office was not aware (prior to the audit in December 2011 by which time the losses had already occurred) that the Applicant was wholly absent from his branch and neither Second Sight nor the Applicant have adduced any evidence to the contrary. Post Office also did not know (until May 2013) about the informal arrangement put in place between the Applicant and DA for DA to indemnify the Applicant against any losses.

2.5 Second Sight, at paragraph 4.2, appear to rely on the fact that the Applicant was running two other branches as evidence that Post Office knew the Applicant would not be involved in managing the branch under review in the CRR.

2.6 It is rare for a subpostmaster to personally conduct all business transacted at a branch. To some extent, nearly all subpostmasters delegate some degree of a branch's work to other persons (even if this is only to engage assistants to conduct customer transactions at the counter).

2.7 It is accepted that as the Applicant was running three branches this meant that Post Office was aware that he would not be giving "personal service" (which is not unusual) but this does not mean that Post Office was aware that the Applicant had decided to be entirely absent from the branch under review in the CRR.

2.8 **Post Office's role.** Second Sight goes on to state (at paragraph 4.3) that given Post Office's knowledge of the Applicant's absence from his branch (which is incorrect) Post Office should have informed him of the previous losses that occurred in the branch during the tenure of DA.

2.9 The extent to which a subpostmaster delegates work to others is the choice of the subpostmaster. There is a correlation between delegating work and the extra risks this creates / the need for additional operational controls. This balance is for each subpostmaster to determine depending on how they wish to operate their branch – Post Office does not direct how this should be done and indeed has no control or even visibility of this.

2.10 It is illogical to suggest that if a subpostmaster wishes to take the higher risk of not managing his branch at all (like the Applicant), that somehow Post Office should (a) be aware of that decision and/or (b) take action to mitigate those risks. Taken to a logical conclusion, this would mean that Post Office would need to monitor and step in every time a subpostmaster was absent from their branch which would extend to periods when subpostmasters were on holiday or ill, or even just on lunch break. Clearly, this would become unworkable very quickly.

2.11 Second Sight has also not undertaken any analysis of (a) Post Office's duties of confidentiality to DA or (b) the Data Protection Act implications of disclosing information about DA to the Applicant. This is a good example of where Second Sight's opinions have been formed without first analysing all issues.

2.12 The concept that Post Office should bear the risks created by subpostmasters who choose not to attend their branches is also contrary to the terms of the Temporary Subpostmaster Contract. As set out below, this contract clearly provides that responsibility rests with the temporary subpostmaster for the engagement of branch assistants, even where those assistants were employed by the previous subpostmaster:

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Clause 2.7

"The Temporary Subpostmaster is not obliged to attend the Branch personally but he is required, whether he is there or not, to accept full responsibility for the proper running of the Branch."

Clause 5.2

"The Temporary Subpostmaster must comply with the provisions of Appendix 1 to this Contract in relation to assistants and prospective assistants. However, a Temporary Subpostmaster continuing the employment of assistants engaged by the previous subpostmaster at the Branch will not be required to comply with those provisions of Appendix 1 that relate to the selection and recruitment of those assistants. Nevertheless, the Temporary Subpostmaster will be responsible for the management and control of all assistants in the Branch and, if required by Post Office Ltd, must furnish details of these assistants to it."

2.13 **Information not considered.** In addition to above, there are a number of issues that Second Sight has not considered when analysing this question. Failure to do this risks the report be considered biased as only information that supports the Applicant is often presented. For example, it is concerning that Second Sight has only quoted part of clause 5.2 in the CRR (see paragraph 3.11); omitting the part that supports Post Office's position.

2.14 In reaching its conclusion, Second Sight takes no account of the fact that the Applicant chose to run the branch without putting any operational controls in place. The Applicant accepted the position of Temporary Subpostmaster on the terms set out in the Temporary Subpostmaster Contract and should have put in place proper controls and processes to ensure that he could manage the branch adequately.

2.15 Whilst the Applicant was also running two other branches that does not prevent him putting in place adequate controls or personally monitoring the activity of the branch, particularly since he accepted the appointment on the understanding that he would be liable for losses that arose. The Applicant's duties and failings in this regard are not commented on at all by Second Sight.

2.16 Second Sight has also not questioned the Applicant's role in allowing the branch to operate without vetting the branch staff. At paragraph 4.3, Second Sight criticises Post Office for not disclosing information about the dealings of the previous subpostmistress. However, neither Second Sight nor the Applicant have provided any evidence to suggest that the Applicant requested this information from Post Office nor identified any obligation upon Post Office to provide such information. The Applicant was free to make his own enquiries of DA or her staff regarding the previous running of the branch. The fact that he never sought this information is not questioned by Second Sight.

2.17 Second Sight's comment (in paragraph 4.3) regarding the Applicant being denied the chance to re-train or pay close attention to his staff due to Post Office not disclosing information about the previous running of the branch is incorrect. That opportunity was always open to the Applicant.

2.18 the Applicant entered into an "informal" agreement with the previous subpostmistress and, therefore, had clearly been in contact with her about the allocation of risks in operating the branch.

2.19 Post Office maintains that the fact that the Applicant entered into an arrangement with DA about losses in the branch shows that he accepted that these risks were for him to manage. Further still, this type of arrangement is, in Post Office's experience, unusual. This indicates that the Applicant was perhaps aware of some form of heightened risk in this branch and was looking to mitigate that risk. Unfortunately, Second Sight has not explored this avenue of enquiry at all.

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2.20 **Summary.** Post Office was not aware of the arrangements for running and managing this branch before the audit in December 2011. Second Sight's factual basis for finding Post Office culpable for the losses in this branch is therefore unsound. In any event, it was the Applicant's (not Post Office's) duty to vet and manage the branch staff and his failure to do this is the root cause of the losses in this case.

3. Line-by-line comments

Paragraph in CRR	Post Office comment
2.3	See our comments on paragraph 3.6 below.
2.5	See section 2 above. In addition, Post Office would not have been in a position to comment on whether the staff operating the branch under the former subpostmistress (DA) needed re-instruction or retraining as they were employed by DA and POL had no performance related information on them.
2.6	It has not been established by reference to any evidence whether the Applicant did have a User ID set up on the Horizon. The only evidence seen by Post Office is that during the key period under investigation (ie November 2011) there was no activity that related to a User ID assigned to the Applicant. Can we determine whether AC ever had a user id? In any event, it would have been open to the Applicant to setup a User ID on Horizon at any time so that he could access the system.
2.8	The CRR states that ATM training was requested on " <i>multiple occasions</i> " by " <i>the Applicant or his branch staff</i> " and that Post Office failed to deliver that training. There was only one request for ATM training from the Applicant's staff and this was actioned promptly by Post Office. Before the Applicant's tenure as subpostmaster, a request for ATM training was placed by "Susan" on 18 June 2010. This request was in error not passed to the Post Office training team and as result the training was not arranged in advance of the Applicant taking up post at Cleaton Park. After the Applicant was appointed as subpostmaster, a further request for ATM training was made on 5 Oct 2010. Training was subsequently delivered at the branch on 12 Oct 2010. If the Applicant was not aware of this ATM training in his branch, it is Post Office's position that this demonstrates further that the Applicant had inadequate controls in place to monitor branch activity. Post Office responds to training requests from branches – it is not Post Office's role to ensure that branch staff are properly communicating with their subpostmaster. Indeed, SS have not been able to identify any obligation on Post Office to do so.
2.9	Post Office cannot "agree" (nor deny) whether there was an arrangement put in place between the Applicant and DA. It has no direct knowledge of these events. It is accepted that the Applicant informed Post Office of this "arrangement" in May 2013 – long after the events under review had taken place. IS THIS CORRECT - I CANNOT SEE REFERENCE TO THIS IN THE POL REPORT?

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2.10	AVDB comment - There is one important fact omitted here - that another Temp Spmr, Zubes Patel was in post between DA and AC for a month and he left at the request of DA for a 'local' relief/temp. ANGELA - what's the relevance of this?
2.11	<p>It is accepted that this case is linked to DA's case.</p> <p>However it is not "<i>common ground</i>" that DA continues to (i) own the premises and run the retail shop (ii) pay the branch staff (iii) have access to the secure area, safe and ATM (iv) and possibly unsupervised access to Horizon.</p> <p>This statement in the CRR has been made by Second Sight without reference to any explanation or evidence that shows Post Office has this knowledge. For the sake of clarity, Post Office has no knowledge of DA's current position or level of access</p>
2.12	THIS IS A NEW PARA IN THE LATEST DRAFT – ANGELA/RODRIC – DO YOU HAVE ANY COMMENTS ON IT?
3.1	<p>See section 2 above.</p> <p>The Applicant claims that he would not have accepted the position of temporary subpostmaster had he been made aware of the losses suffered by DA. As far as Post Office is aware, the veracity of this statement has not been tested by Second Sight and the CRR should make that clear.</p>
3.2	See section 2 above.
3.3	<p>See section 2 above – in particular 2.16 above.</p> <p>In addition, the CRR makes reference to "incorrect" or "incomplete" information being provided to the Applicant by Post Office. It is unclear what information is in question here or why it was incorrect or incomplete.</p> <p>It is noted that "incorrect" or "incomplete" information is an entirely different proposition to information simply not being provided at all – the latter being, as far as Post Office understands, the focus of the Applicant's complaint.</p>
3.5	<p>Paragraph 3.5 only repeats the Applicant's case with regard to training and support. It does not set out Post Office's position and does not identify any issue in dispute. Again, this one-sided presentation of information raises the risk that Second Sight could be accused of bias which will not assist the mediation process.</p>
3.6 – 3.9	<p>The Applicant accepts that he was notified of the £86k shortfall identified by the 15 December 2011 audit and that he is aware of his contractual obligations in respect of losses (see paragraph 2.3). It is therefore not clear why the Applicant thought that he needed to be told separately that Post Office expected him to pay the £86k shortfall.</p> <p>In processing the transaction correction that made up the majority of the shortfall via the settle centrally function on the 20 December 2011 (when the Applicant had taken over control of the branch), he would know that that amount was allocated to his account with Post Office and would need to be repaid.</p> <p>Second Sight has not explained why this usual pattern of business did not apply in this instance. Furthermore, Second Sight has not considered whether the Applicant's belief (that he did not need to repay the £86k shortfall) was reasonably held.</p> <p>Instead, Second Sight has taken the view that Post Office should have gone above and beyond its usual operating practices and notified the Applicant separately of the need for him to repay a debt that (based on the above) he already knew was due. No explanation has been given by Second Sight for this opinion.</p> <p>For the sake of clarity, Post Office does not consider that it was either obliged or needed to</p>

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	<p>contact the Claimant to re-iterate the need for him to pay a loss that he had accepted without complaint at the time.</p> <p>The clause setting out Post Office's right to off-set any losses against any NT compensation payment was set out in the agreement the Applicant received on 2 Nov 2012 and signed by him on 10 November 2012. The Applicant was therefore fairly notified of this right of set-off.</p> <p>Despite the Applicant being aware of the above debt and set off right, it is accepted that Post Office could have been clearer in communicating that the combined effect of these two elements would effectively reduce his compensation to nil.</p>
3.10	<p>"Hardship" is the term used when a loss is settled centrally so Post Office accepts that the transaction correction was attributed to the "hardship fund" in that sense. However this was not done without the Applicant's knowledge or authority for it was the Applicant who chose to centrally settle the outstanding transaction correction.</p>
3.11	<p>See section 2 above.</p> <p>It is noted that in this paragraph Second Sight acknowledges that it does not know whether Post Office was aware that DA had continued to employ the staff who were operating the branch. For the sake clarity, Post Office was not aware of this. – ANGELA – not aware at all or not aware before the audit in Dec 2011?</p>
3.12	<p>See section 2 above.</p> <p>The CRR refers to a "proposal" that Post Office may or may not have been aware of. It is not clear what is meant by this. It is assumed that the "proposal" is a reference to the arrangement between the Applicant and DA for DA to manage the branch in the Applicant's absence. Second Sight is asked to clarify this word in its final report.</p> <p>It is noted that in this paragraph Second Sight acknowledges that it does not know whether Post Office was aware of the "proposal".</p> <p>When taken together, paragraphs 3.11 and 3.12 make clear that Second Sight does not know whether Post Office was aware of the arrangements in the branch. This is of course an acceptable position for Second Sight to adopt as it cannot be in possession of all the facts related to this case.</p> <p>However, these paragraphs also provide the most telling example of the analytical failures highlighted at section 1.1 above that have led Second Sight to reach an unsound final conclusion.</p> <p>After accepting that it is unclear on the factual position, Second Sight then advances an opinion (that Post Office accepted the "fundamentally flawed" arrangements in this branch) on the assumption that Post Office was aware of these arrangements. This approach:</p> <ul style="list-style-type: none"> • Fails to point out that this is based on assumed facts. • Fails to set out an alternative analysis assuming that Post Office was <u>not</u> aware of the arrangements in branch. • Fails to explain why the arrangements were "fundamentally flawed". • Fails to address the Applicant's culpability for these arrangements and therefore only considers one viewpoint. • Includes the above analysis/opinion in this section of the CRR (which should be used to neutrally describe points of dispute) rather than section 4 of the CRR (which is the proper home for Second Sight's opinions).
3.13	<p>See section 2 above, in particular 2.2 about Post Office's state of knowledge.</p> <p>In addition, Second Sight say that the Applicant would have had "<i>great difficulty in exercising any authority over staff sharing the building with the premises owner who ran</i></p>

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	<p><i>the Retail Business and who retained access to the branch's secure area, safe and ATM and who perhaps also had access to the branch's Horizon system."</i></p> <p>██████████, it is clear that the Applicant did not even attempt to exercise any control over the branch staff.</p> <p>██████████, it was the Applicant choice to allow DA to continue to have access to the branch, its cash, stock and equipment.</p> <p>██████████, it is not uncommon for branch staff employed by former subpostmasters to continue to work for temporary subpostmasters and do so successfully. It is therefore not understood why the Applicant would have faced "<i>great difficulty</i>" in this regard.</p> <p>None of the above points are addressed in the CRR.</p>
3.14	<p>Second Sight state that Zubes Patel's engagement as temporary subpostmaster at the branch had "not worked out".</p> <p>It is unclear what is meant by this phrase or why this is relevant to the case.</p> <p>Indeed, it is not understood how ZP's tenure as temporary subpostmaster supports the view expressed in paragraph 3.13 that there would be "<i>great difficulty</i>" in managing the branch. In fact, ZP suffered no losses during his time in charge despite using the same staff as later engagement by the Applicant. If anything, this goes to demonstrate that the branch could be properly run with the right controls in place.</p>
3.16	<p>██████████ The Applicant's responses to SS' further questions make clear that he was fully aware of DA's role in running the branch. The statement in this paragraph that the Applicant may have not been aware of this fact is therefore wrong.</p> <p>██████████ In any event, it is not understood how Second Sight has formed the view that a telephone call by DA to NBSC would mean that the Applicant was not aware of DA's role in the branch. There is no logical connection between these two facts.</p> <p>██████████ Second Sight say that DA's role in the branch was "inappropriate". Again this view should not be included in this section of the CRR but reserved until section 4. It would also help if this view was properly explained as at present it is not understood why this would be "inappropriate".</p>
3.17	<p>The CRR states that that the transactions corrections in November 2010 and May 2011 "should have triggered investigations". It is unclear who Second Sight believe should have conducted these investigations.</p> <p>██████████ This opinion should not be in this section but in section 4 of the CRR.</p>
3.20	<p>The understanding of Second Sight at paragraph 3.20 is incorrect. Second Sight claim that Post Office does not have in place a process for subpostmasters that are not 'providing a personal service' to be routinely informed of all high-value Transaction Corrections issued at their branches.</p> <p>This information was available to the Applicant through the Horizon terminal in his branch and he was aware of this.</p> <p>Alternatively, the Applicant could have put in place a process whereby his staff would notify him of high-value Transaction Corrections (or whatever information the Applicant believed he needed to be able to ensure that the branch was being run properly).</p> <p>The Applicant could have further asked Post Office to send correspondence about TC's to his own address.</p> <p>Second Sight makes no reference to the Applicant putting in place controls to ensure that TCs were adequately managed even though it was his responsibility to do so.</p>
3.21	<p>Second Sight conclude at paragraph 3.21 that "<i>in the absence of a significant or material TC notification procedure to the absent and Temporary Subpostmaster in these</i></p>

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	<p><i>circumstances is a significant control weakness".</i> [Again Second Sight is expressing an opinion when this section of the report is intended to provide points in dispute not opinion]</p> <p>Post Office's position is that this is a control weakness brought about by the (lack of) management of the branch by the Applicant. The contract between the Applicant and Post Office makes clear that contractually the Applicant is responsible for running the branch. The fact that the Applicant chose to run the branch remotely with "no personal service" is a matter for the Applicant and it was for the Applicant to ensure that the remote management was carried out in such a way as to ensure that the branch was being run correctly.</p> <p>It is noticeable that the Applicant's culpability for this state of affairs is not addressed at all in the CRR which again reflects a number of the general issues raised in section 1.1 above.</p>
3.22	<p>At paragraph 3.22 Second Sight criticise Post Office for not undertaking any on-site investigative work before the audit despite the obvious errors (or theft) that was occurring at this branch.</p> <p>Second Sight's criticism is not evidenced or explained in any way. For example, Second Sight do not set out what were the "obvious errors" or how these errors created a pattern that should have triggered activity by Post Office. Equally no reference is made to when Post Office should have undertaken activity or what it should have done.</p> <p>Again, the Applicant's responsibility for investigating losses in his branch is overlooked in the CRR.</p>
3.23 / 3.24	<p>At paragraph 3.23 Second Sight do not explain how the series of entries in the period 10 to 17 November which it describes as "unusual" are in fact "unusual".</p> <p>Post Office is criticised for failing to secure, photocopy or retain any documents relating to those entries and this is a far point to make. However, the Applicant also failed to secure, photocopy or retain any documents relating to those entries but is not criticised for this in the CRR.</p> <p>Further, it should be noted that at the time of these events, the Applicant accepted responsibility for the losses created at that time and did not ask Post Office to investigate further. It is only now through the Scheme that these transactions, and responsibility for the resulting losses, are being challenged. IS THIS CORRECT?</p>
3.26	<p>At 3.26, CRR confirms that no-one from Post Office formally interviewed the branch staff (albeit that informal discussions were conducted).</p> <p>It is noted that, like Post Office, the Applicant also addressed this matter on an informal basis in that he did briefly discuss this issue with DA (see answer 8 to Second Sight's additional questions). It appears that he also did not conduct formal interviews of the branch staff [and yet is not subject to any criticism in the CRR for not doing this].</p> <p>This is another example of Second Sight selecting only facts that support its conclusions.</p>
3.27	<p>Second Sight allege that Post Office took "over 3 years" to provide evidence of who keyed the "unusual entries" on the ATM despite "numerous requests" from the Applicant's solicitors. This statement is incorrect.</p> <p>First, these entries occurred in November 2011 and only two and half years have passed since then. It is therefore impossible that Post Office took over 3 years to provide information on these entries.</p> <p>Secondly, Post Office does not believe that the Applicant requested this information at the time of events in question (ie. in December 2011) or any time before this request was raised by his lawyers (see further below). Second Sight has not presented any evidence to prove an allegation that this was a long outstanding request.</p> <p>Thirdly, in any event, at time of the events (ie. December 2011), the Applicant could have accessed this information directly from the Horizon terminal in his branch. Presumably, he</p>

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	<p>did not do this. IS THIS CORRECT?</p> <p>Fourthly, Post Office is only aware of one request from the Applicant's lawyers for details of the users who keyed the transactions in question. Second Sight is asked to submit evidence of the other "numerous requests" for this information.</p> <p>Fifthly, by the time the above request was received (the date of the Applicant's solicitors letter being 26 September 2013, the Applicant's application to the Scheme had been accepted (his acceptance letter being also dated 26 September 2013) and so Post Office have provided this information with its Investigation Report rather than direct to the Applicant CORRECT?.</p> <p>In summary, Second Sight's criticism of Post Office in this paragraph is unfounded and its conclusion (which would again be better made in section 4 of the CRR) that Post Office denied the Applicant the opportunity to "<i>mitigate the loss</i>" is incorrect.</p>
3.28	<p>This paragraph sets out Second Sight's overall view on the lack of investigation into the issues at the Applicant's branch.</p> <p>In general, Post Office accepts that it could have more deeply investigated the issues causing the losses. However, for the reasons stated above, it does not accept that it is solely culpable – the Applicant's failures in this regard also need to be taken into account. At present, the CRR does not address the Applicant's responsibilities at all and therefore presents only a one-sided opinion.</p> <p>Again, the opinions reached in this paragraph would be better located in section 4 of the CRR.</p>
4.2	<p>In relation to the Applicant's absence from his branch – see section 2 above.</p> <p>In relation to ATM training – see our comments on paragraph 2.8 above.</p>
4.3	<p>See section 2 above.</p>
4.5	<p>Post Office accepts that it did not, but perhaps should have carried out, an investigation into the losses at the Applicant's branch. However, it is denied that Post Office failed to do this because of its reliance on its rights under the Temporary Subpostmaster Contract. This is mere speculation by Second Sight, unsupported by any justification or evidence.</p> <p>Later, at paragraph 4.11, Second Sight finds that Post Office was responsible for the losses in the Applicant's branch and relies on the lack of an investigation by Post Office as a reason for that conclusion. However, it is not understood why a lack of an investigation after the losses had occurred makes Post Office responsible for those losses. There is no causal link between these two facts (or at least there is no connection explained in the CRR).</p>
4.8 – 4.9	<p>See comments on paragraph 3.26 above.</p> <p>The fact that an assistant had finished her employment but her user ID had been left live on Horizon is an error by the Applicant. It is the Applicant's responsibility to de-activate user IDs of ex-assistants as subpostmasters have exclusive control over the employment of assistants and the power to create and delete user accounts.</p>
4.10	<p>See comments on paragraph 5.7 below.</p>
4.11	<p>For the reasons stated above, Second Sight's overall conclusion is incorrect.</p> <p>Further, in order to determine whether the sum of £32,023.31 should or should not be paid to the Applicant would require an assessment of the legal position (including the various contracts) between the parties. Second Sight has no legal expertise and therefore cannot advance a valid opinion on this question. For the record, Post Office's considers that Second Sight's view is wrong.</p>

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	Making this type of inexpert judgment on such an emotive issue will only make it more difficult for the parties to reach a solution at mediation. Second Sight is asked to refrain from including opinions which are outside the scope of their expertise.
5.2	As set out above, the allegations in this paragraph (around investigations and the preservation of documents) could also be directed at the Applicant.
5.4	This paragraph is the first time that the CRR acknowledges that the Applicant also failed to investigate the losses in his branch. It would be more balanced approach to repeat this counter-point throughout the CRR where appropriate.
5.5	<p>Post Office takes significant issue with the suggestion that the losses in this case were not real. Post Office's position is that there was a real loss suffered in this branch and that that loss was accepted as correct by the Applicant at the time.</p> <p>First, it is not clear what is meant by the loss not being "real".</p> <p>Second, the supporting explanation makes little sense. This section has been reviewed by persons at Post Office with detailed knowledge of ATM accounting procedures and they simply do not understand this paragraph.</p> <p>We suspect that some of this confusion is because Second Sight's view is unsupported by any evidence.</p> <p>It is also, in part, based on pure speculation. The CRR states that there "<i>would have been a gain in the internal suspense accounts that Post Office and Bank of Ireland must maintain</i>". Second Sight is guessing that such a suspense account exists without evidence. DOES POST OFFICE HAVE THIS TYPE OF INTERNAL SUSPENSE ACCOUNT?</p> <p>In its Interim Report, Second Sight confirmed that it is had no found no evidence of system-wide errors in Horizon. Against that background, it is unhelpful to speculate that a loss may not be real without a thorough explanation as to why that may be the case.</p>
5.7 – 5.9	<p>As part of its investigation under the Scheme Post Office has considered the possibility of theft from ATMs (as suggested at paragraph 5.7). However, no evidence of theft or any other criminal wrong doing has been found.</p> <p>Mechanical failures in the ATM at the Applicant's branch were a result in the ATM going out of service and the equipment problems were typical of general wear and tear. The equipment affected by mechanical issues can only be accessed via the back of the machine (ie the staff side) not the customer/external facing element which would be the subject of an attack.</p> <p>As a result, Second Sight's conclusion, that the branch may have been subjected to criminal attacks that contributed to the loss, is pure speculation which is not supported by evidence or reasoned analysis.</p> <p>It is noted that Second Sight has, outside of this CRR, asked Post Office to consider whether "retract fraud" could affect branches in general. Post Office's answer (with full supporting reasons) has been provided to Second Sight and shows that losses caused by third party retract fraud are absorbed by Post Office / Bank of Ireland so long as branches properly record any retract transactions on Horizon in accordance with the standard Post Office accounting procedure for ATMs.</p> <p>Second Sight has not raised any other ATM theft/fraud issues with Post Office. This highlights the very speculative nature of this issue within this CRR.</p>
6	Post Office agrees that the issues set out in this section are the appropriate ones for mediation.

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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

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