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**Briefing note for Counsel**

**Alan Bates & Others v Post Office Limited**

1. Since 2009 Post Office Limited (“POL”) has faced complaints from sub-postmasters (“SPMRs”) about their treatment by POL.
2. A small group of SPMRs have complained that cash shortfalls in their branches, for which they were held responsible by POL were caused by POL’s computer software, known as Horizon, and POL’s wider operational model. These matters have been the subject of consideration and investigation by and on behalf of POL on a number of occasions, as explained in greater detail below.
3. On 11 April 2016, a group of 91 SPMRs (former and current) represented by Freeths LLP, issued a claim against Post Office Limited. This claim was issued to protect against limitation issues and the Claim Form has been sent to, but not served on, POL (attached hereto). On 28 April 2016, POL received a Letter of Claim from Freeths (attached hereto).
4. This purpose of this briefing note is to summarise the legal and factual context of this dispute by way of a high-level briefing ahead of a meeting between POL and prospective Counsel. This note has been prepared from a compilation of other documents and any views expressed below will need to be tested and verified once Counsel is properly instructed and full documentation made available.

## **I. Post Office Limited, Sub-postmasters and the Horizon System**

### **(A) The POL Business Model**

5. POL is a limited company under the Companies Act 2006. As of 1 April 2012, POL has been separately owned and managed from Royal Mail. The sole shareholder of POL is the Secretary of State for Business, Innovation and Skills but POL acts under the direction of its Chairman and Board of Directors, rather than Ministerial control. However, because the sole owner of POL is the Government, it is commonplace and appropriate to describe POL as expending public funds.
6. There are approximately 11,500 Post Office branches around the United Kingdom. They provide a range of mail, telephony, government and financial products and services to the public. A Post Office branch is often a vital part of a local community.
7. Some 350 of those branches are operated directly by POL, known as Crown branches, in which the staff are employees of POL. These branches have not been the focus of the complaints although it is alleged by Freeths that some future Claimants may be employees from Crown branches.
8. The remainder of the branches are run by SPMRs on an agency basis, under contracts with POL. SPMRs are, accordingly, independent business people. Many operate additional businesses, and it is common that the Post Office branch is found within a wider retail business, such as a newsagent or general store. Every branch has a quantity - varying according to local demand and branch size - of POL cash and stock (such as stamps) for which the SPMR must account to POL.

(B) The Legal Status of SPMRs

9. Although some SPMRs have argued the point that they are more akin to an employee, there is no real dispute that SPMRs are agents of POL, under a contract for services.<sup>1</sup> Clause 1 of the standard contract<sup>2</sup> between POL and SPMRs states in terms that the SPMR is an agent of POL.
10. At common law an agent is obliged to keep an accurate account of all transactions entered into within the scope of his agency and has to be ready to produce that account at any time to his principal. The applicable contract contains a clause to the same effect (clause 12.4).
11. Where an account is produced – such as automatically through an accounting system – the burden of proof is on the agent to show that the account is wrong and does not reflect the financial obligations he owes to his principal. In *Camillo Tank Steamship Company Limited v Alexandria Engineering Works* (1921) 38 TLR 134, 143 Viscount Cave noted that:

*“The expression “account stated” ... has more than one meaning. It sometimes means a claim to payment made by one party and admitted by the other to be correct. An account stated in this sense is no more than an admission of a debt out of court; and whilst it is no doubt cogent evidence against the admitting party, and throws upon him the burden of proving that the debt is not due, it may, like any other admission, be shown to have been made in error.”*

12. The general principle of the agent’s duty to account is contained in *Shaw v Picton* (1825) 4 B & C 715, 729 per Bayley J:

*“It is quite clear, that if an agent (employed to receive money, and bound by his duty to his principal from time to time to communicate to him whether the money is received or not,) renders an account from time to time which contains a statement that the money is*

<sup>1</sup> Indeed, there is a judgment of the Employment Appeal Tribunal holding that SPMRs are not employees (and not workers for the purposes of various pieces of legislation either): *Inland Revenue Commissioners v Post Office Ltd* [2003] ICR 546.

<sup>2</sup> Since 2011/2012 POL has been transitioning to a new suite of standard contracts and some Claimants will be contracted under these new contracts.

*received, he is bound by that account unless he can shew that that statement was made unintentionally and by mistake. If he cannot shew that, he is not at liberty afterwards to say that the money had not been received, and never will be received, and to claim reimbursement in respect of those sums for which he had previously given credit."*

The application of these standard agency principles to the SPMR context was confirmed in *Post Office Ltd v Castleton* [2007] EWHC 5 (QB); [2007] All ER (D) 125 (Jan) in which POL sued to recover losses shown in the SPMR's accounts.

(C) The Horizon System

13. Horizon is the name given to the computer system provided to POL under contract by Fujitsu Services Limited ("**Fujitsu**"), formerly ICL. It is the system used in all POL Crown branches, sub-Post Offices and outreach branches.
14. Fujitsu was awarded a contract with POL in 1996 to provide the Horizon system. Horizon was rolled out to all branches between 1999 and 2002. Branches migrated to an updated system known as Horizon Online (or HNG-X) over the course of 2010. There is no significant difference between the practical operation of the original Horizon system and Horizon Online. As the complaints raised have spanned both systems, this note refers to both by the term Horizon.
15. Under the original Horizon system the data relating to each transaction was processed and stored by a designated master terminal in each branch before being transmitted in batches to a central POL data centre. Under Horizon Online, each branch terminal now communicates directly with the data centre on a transaction by transaction basis. In order to function, Horizon must be online and each terminal connected to the POL data centre via a secure communication line with a back-up system, provided by POL, usually comprising a mobile telephone network.
16. Horizon is used by over 68,000 users in the 11,500 branches processing more than six million transactions every working day.



17. Transactions in Horizon can only be entered by someone with a user ID and an associated password. Formal approval of a new user can only be carried out by POL, but new users can be added to the system and allocated a user ID by an SPMR when POL has given them 'manager access'. The password is set by POL or the SPMR and is subsequently managed and changed by the user.
18. Every record that is written to the transaction log has a unique incrementing sequence number. This means it is possible to detect if any transaction records have been lost. While a customer session is in progress, details of the transactions for that session are normally held in the computer's memory until the customer session (often known as the 'stack') is settled (i.e. payment is taken). At that point, all details of the transactions, including methods of payment, are written to the hard disk and replicated. When the stack data is successfully written the screen is updated (printing the relevant receipt means the session is completed) to indicate a new customer session can be started.
19. Each stack, or basket, of a customer session consists of accounting lines. When a session is settled, the payment process is also added as accounting lines. When the value of the basket is zero it is sent to the data centre where the accounting lines are recorded and committed. The effect of this is that either all of the data, in the form of the accounting lines, is written to the local hard disk and the data centre or none of it is written. The same approach applies to back office transactions, such as inputting stock levels or reversing mistaken transactions.
20. All data that is written includes a 'checksum' value which is checked whenever the data is read to ensure that it has not been corrupted. Any such corruptions detected on reading will result in failures being recorded in the event logs which are held on the local hard disk for a short period, and at the data centre where they are held for seven years.

21. Where the data is not written or replicated, further attempts are made at regular intervals. Once the data reaches the data centre, a further copy is taken and written to the audit file which is placed into the audit trail where it is available for retrieval for seven years. Data in the audit trail is digitally sealed with a secure checksum that is held separately (in the form of a digital index) to ensure it has not been tampered with or corrupted. Each audit record includes the branch identifier, the counter identifier, the sequence number (i.e. the sequential transaction identifier), and a counter timestamp.
22. Any failures to write to a hard disk, after the set number of retries, will result in the counter failing and needing to be restarted. Such a failure will accordingly be visible, even if it were not already evident because of, for example, a loss of power. There is a specific recovery process which must be followed by the user when the counter is restarted which involves various screen prompts.
23. Horizon adopts the principle of double-entry bookkeeping. As set out above, this means that separate accounting lines are also generated for the tender items (i.e. the methods of payment), resulting in a total value of all of the accounting lines in a basket adding up to zero. If, when being written, the net value is not zero then an alert is raised and the basket is discarded.
24. The way in which the Horizon system is operated was described in accessible terms in the *Castleton* judgment at [5]-[7]:

*“Each computer terminal included a processor, a touch-sensitive screen, a keyboard, a barcode scanner and a printer. The laid down practice, in outline, was and is as follows. The clerk records on the computer all transactions that he makes. Transactions other than on-line banking are recorded not only on the computer but also by a document, such as a television licence counterfoil, savings bank deposit or withdrawal slip or a cheque. Some transactions are known as APS (automated payment system) transactions. Those are transactions where a customer either uses a card containing a magnetic strip to pay a bill or pays a bill that is barcoded. There are corresponding APS slips recording APS transactions. The subpostmaster is responsible for checking daily the computer records of the transactions of the day against the documentation. He prints out the computer records of the transactions, and when satisfied that they tally with the*

*documentation he sends the documentation in sealed bags or envelopes by the last collection of the day to the relevant centres. He receives cash, stamps and other cash-type items from time to time in sealed bags and has to record daily the amount of cash held by reference to the denominations of notes and coins. The subpostmaster is also responsible for producing a weekly balance...*

*Every week, after close of business at 5.30 p.m. on Wednesday and before opening at 9 a.m. on Thursday [the stock is checked] as required by Post Office procedures.*

*It is obvious that the week's accounts of a post office balance if the difference represented by the receipts minus the payments equals the difference represented by the value of the stock at the end of the week minus the value of the stock at the end of the previous week. If those two differences are not equal, there is a discrepancy. If the former difference is greater than the latter, there is a loss, which is treated as a positive discrepancy. If the former is less than the latter, there is a gain. That is treated as a negative discrepancy..."*

25. As the judgment explains, the operation of Horizon as an accounting system is effectively dependent upon the SPMR inputting the correct information into the system.
26. One issue which has occurred with some frequency is that an SPMR has falsely declared onto the Horizon system the cash and/or stock position in order to conceal a discrepancy. This is likely to constitute the criminal offence of false accounting. When this has occurred it has rendered it more difficult, if not impossible, for POL (and possibly the SPMR) after the event, to establish the last point at which the accounts were correctly declared and locate the circumstances in which the discrepancy occurred.
27. The Horizon system is the subject of three different industry standard evaluations: ISAE3402 audits (carried out by Fujitsu and Ernst & Young); Payment Card Industry Data Security Standards (carried out by Information Risk Management plc, focussing on cardholder data); and Bureau Veritas ISO27001 reports (over the Fujitsu networks).

(D) Training

28. There is good deal of dispute about the level and quality of training SPMRs received in particular cases. The nature of the training provided has changed over time. This section of the briefing note seeks to summarise the history of the training provided to SPMRs since the introduction of the Horizon system in 2000.
29. In brief, when Horizon was first introduced in 2000-2002, SPMRs were given classroom training and then 10-11 days of on-site training and support, followed by one day of support on balancing at the end of a trading period. In 2003-2006 new SPMRs received between five and ten days of classroom training if they chose it, or five to ten days of on-site training and support, followed by one day of support on balancing at the end of a trading period. In 2007-2011 new SPMRs received between five to ten days of classroom training on sales and products and then six days of on-site training and support, followed by one day of support on balancing at the end of a trading period. Telephone calls were made at the interval of one and six months, with a one day site visit after three months.
30. Training was voluntary and SPMRs who had experience of working in Post Offices may have chosen not to receive additional training. Further training could be requested from POL. SPMRs are responsible for the training of their own staff.

(E) Support

31. POL provides various methods of support to SPMRs, in relation to Horizon and the more general operation of the branch. There are two different telephone helplines which can be called.

32. The Network Business Support Centre (“**NBSC**”) is operated by POL (although prior to 2012 it was effectively operated by Royal Mail) to provide support for all operational issues arising in branch, including queries on the operation of Horizon and on balancing issues. It has been in place since 1999. Queries which cannot be resolved by the call-handler, or are not resolved to the satisfaction of the caller, can be transferred to a second tier of more experienced call-handlers or to managers. Branch visits may result where a problem does not appear to be fixed over the telephone.
33. NBSC call-handlers receive a four week classroom training course which includes a Horizon test terminal, and then two weeks of supervised call-handling. Call-handlers will principally answer a query by reference to a detailed computerised encyclopaedia of explanations known as the Knowledge Base. The Knowledge Base is periodically updated to reflect changes in products and processes.
34. The NBSC produces a log of all calls. This records the date, the branch, the caller, a brief description of the problem, the call-handler and the resolution. Those logs are available back to 2000, but they are reliant on the notes made by the call-handlers at the time. In many cases, the resolution notes only that the caller was given an answer from the Knowledge Base. Calls to the NBSC were not routinely recorded.
35. The Horizon Service Desk (“**HSD**”) was, until 2014, operated by Fujitsu (now by ATOS) and deals with technical issues arising out of Horizon which an SPMR has not resolved through the online information available to them. An engineer will be sent out where a problem is not resolved. The HSD and NBSC transfer calls between each other when the SPMR has called the incorrect helpline. HSD call logs are retained for seven years.

36. Support is also provided through in-branch field visits by advisors. They visit branches to provide training, additional training or support when requested and to carry out audits or other checks. Branches also have managerial relationships, which may involve on-site visits from time to time.

(F) Third Party Business Involvement

37. POL is a point of sale and contact for a variety of products and services provided by third parties. For example, Government documents such as DVLA forms can be purchased from Post Offices, and utility bills can be paid through the Horizon system. Similarly, many customers will pay for products, or make cash withdrawals, from their bank account at the Post Office counter.

38. Important examples of third party involvement are: ATMs, which are (now) provided through Bank of Ireland and require the SPMR to account for the cash held in and transacted through the ATM; lottery products, which involve accounting for the stock of scratchcards and the cash purchases of all lottery products (and which can require reconciliation where the sales are made through the SPMR's separate retail business); and Paystation, which is a payment device used for certain utility payments and top-ups. All of these separate products and equipment require manual inputting into the Horizon system to ensure that the SPMR accounts for the cash and stock passing through his branch. The third party (such as Bank of Ireland) will receive their own records directly from the equipment, and discrepancies between those electronic records and the Horizon records manually inputted by the SPMR may require adjustment.

(G) Accounting Discrepancies



39. SPMRs are required to balance their accounts (including all cash and stock) at the end of every monthly trading period. In order to roll over into the next trading period, the account must balance, i.e. it must not show a positive or a negative discrepancy. Good SPMR practice will involve the SPMR carrying out a weekly balance (of cash and stock) to ensure any discrepancy is promptly identified. SPMRs are also required to undertake a daily cash (but not stock) declaration on Horizon to show how much cash is being held in the branch.
40. Where there is a discrepancy which cannot be corrected by reversing figures to reflect the true picture (such as to correct an overstatement of stock), the SPMR may make good that discrepancy by physically putting in cash from their personal funds. Where the discrepancy is small, and is likely to be because of minor errors at the counter, this is often the approach adopted.
41. Where the sum is larger and the SPMR cannot or does not wish to simply pay it off, or the SPMR does not understand how it arose, there are two choices. During the monthly trading periods, the discrepancy can be moved to a local suspense account while it is investigated by the SPMR with the assistance of POL. Where there is, or remains, a discrepancy at the end of a trading period the discrepancy must be settled centrally, i.e. placed into a central POL suspense account, for resolution. In order to settle centrally, an SPMR will be reminded that he is liable for any negative discrepancy which is not resolved. This reflects the position under the contract and at common law, as set out above.
42. A discrepancy may be resolved through the issue of a Transaction Correction by POL. These may occur in a variety of situations, but will reflect POL having information that shows that figures inputted onto Horizon by a branch were incorrect. This may be to the benefit or disbenefit of the branch. For example, Horizon may have been told that more cash was sent back (or 'remmed out') to POL in a pouch than the pouch actually contained. Alternatively, a cheque thought to have been lost may have been discovered. Sometimes a Transaction

Correction will be issued because of information from a third party, such as a bank, that a transaction was cancelled. A Transaction Correction issued to a branch must be acknowledged and accepted by the SPMR before it affects the branch accounting position (however see below for an error that has occurred with this proces).

(H) Investigation of Discrepancies

43. Where a significant shortfall is discovered at an audit, or is reported to POL, POL will conduct an investigation into that shortfall and the responsibility of the SPMR for it. That investigation could lead to a decision as to whether the contract with the SPMR should be terminated and/or whether criminal charges should be laid in respect of the SPMR's conduct. Investigations are carried out by POL's own investigations and security department. POL's records indicate that between around 3,000-4,000 audits took place a year in 2011-2014. Only a small proportion of these were random; most were either risk-based or on the occasion of a change of SPMR.
44. In England and Wales, POL conducts private prosecutions of criminal offences arising out of the misconduct of SPMRs. This is not in exercise of any special statutory power; it is simply the choice of POL to adopt this course of action. Thus decisions as to whether charges should be brought and what charges should be brought are made by POL employees (taking account of appropriate legal advice). Cases in Scotland are prosecuted by the Procurator Fiscal and in Northern Ireland by the Public Prosecution Service (with the assistance of POL investigators). The difference between the approach across the UK reflects the different legal traditions.

## II. The Horizon Complaints

### (A) Initial Complaints

45. The complaints and allegations made publicly and to POL about the Horizon system and associated issues commenced in earnest in 2009 with the establishment of the Justice for Subpostmasters Alliance (“JFSA”). The core of those complaints has always been that various SPMRs have been the subject of criminal prosecution, civil recovery and/or contract termination in respect of accounting discrepancies for which the SPMRs say they were not responsible. Instead, it is said that Horizon is responsible. A wider element of the allegations is that SPMRs received insufficient training and support in operating the Horizon system.
46. During the course of 2010 the JFSA entered into correspondence with Ministers and Members of Parliament about their concerns. The story obtained press coverage from the BBC’s ‘Inside Out’ programme and articles in *Private Eye*.
47. In 2011, Shoosmiths threatened to bring a group action against Post Office in relation to Horizon. They allegedly represented 150+ subpostmasters but, in the end, claims were only advanced on behalf of five subpostmasters. Four of those claims only resulted in pre-litigation correspondence between Shoosmiths and Bond Dickinson. Shoosmiths issued one Claim Form (on behalf of an SPMR called Lynn Prosser) in order to protect against a limitation deadline. Shoosmiths did not serve the Claim Form on time and, after an interim hearing, the Court struck out the Claim Form and found that the Claim was time barred. Following this, no further action was taken by Shoosmiths.

48. From late 2011 to May 2012 James Arbuthnot MP pursued the allegations made by the JFSA and individual SPMRs with the Minister and POL. In May 2012, at a meeting with James Arbuthnot MP and Oliver Letwin MP, POL agreed to engage a firm of forensic accountants to review Horizon. During the course of June and July 2012, following meetings with James Arbuthnot MP, other MPs and the JFSA, Second Sight Support Services Limited ("**Second Sight**") were instructed by POL to conduct the inquiry. The remit of their inquiry was to *"consider and to advise on whether there are any systemic issues and/or concerns with the 'Horizon' system, including training and support processes, giving evidence and reasons for the conclusions reached"*.<sup>3</sup>
49. The deadline for the submission of cases and issues for the consideration of Second Sight was 28 February 2013. Some 29 cases were submitted through James Arbuthnot MP and 18 cases through the JFSA. Second Sight issued an Interim Report on 8 July 2013. Post Office assisted Second Sight with its investigations of these cases, including providing general access to information (including some privileged material) that it held.

(B) The Second Sight Interim Report

50. For the purposes of this briefing note, it is sufficient to note some of the core statements made in the Second Sight Interim Report. Second Sight defined the "Horizon system" to include not simply the software, but also all aspects of using the system, the training and support provided to use the system and the audit and investigation process into discrepancies shown by the system (paragraphs 1.4-1.8). Second Sight noted that the limited number of complaints it received *"suggests that the vast majority of SPMRs and branches are at least reasonably happy with the Horizon system"* (paragraph 1.11).

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<sup>3</sup> 'The Second Sight Inquiry – the Detail', Appendix to the Second Sight Interim Report.

51. The Interim Report stated that Second Sight had carried out so-called “Spot Reviews”. These were considerations of particular issues in certain of the cases which referred to them. Four of these Spot Reviews were appended to the Interim Report. Second Sight stated that differences between POL and the JFSA had not been resolved, and POL had accepted only minor errors (paragraphs 5.6-5.7).
52. Second Sight noted that POL had disclosed to it two defects in the Horizon software which had impacted branches in 2010 and in 2011-2012, as well as a further (unspecified) incident (paragraphs 6.4-6.10).
53. Second Sight criticised POL for a lack of thoroughness in their investigations of shortfalls, and a focus on asset recovery rather than establishing the underlying root cause (paragraphs 7.3, 7.6). A list of issues of concern was set out (paragraph 7.2).
54. The Interim Report reached various preliminary conclusions (paragraph 8.2). Importantly, those included that *“We have so far found no evidence of system wide (systemic) problems with the Horizon software”*. They also included conclusions that unusual combinations of events could give rise to a situation where timely information is not available to an SPMR; that POL’s attitude to problems could appear unsympathetic or unhelpful; and that investigations did not identify root causes.

(C) The Criminal Cases Review Commission

55. The CCRC is a statutory body with the power to refer criminal cases to the Court of Appeal where it considers that there is a real possibility a conviction may be overturned. POL was first contacted by the Criminal Cases Review Commission (“**the CCRC**”) in July 2013 on a general basis noting the media attention around Horizon and past prosecutions by POL.

56. In March 2015, SPMRs began referring their own convictions to the CCRC. This has included some cases in which conviction followed a guilty plea. None of the convictions was itself the subject of an appeal.
57. At the present time the CCRC is considering 25 cases. 19 of those involve individuals who have made a complaint under the scheme discussed below. POL is co-operating with any and every request for assistance from the CCRC. At present it is unknown when the CCRC is likely to reach decisions on whether any case should be referred back to the Court of Appeal. It is POL's current understanding that this is unlikely to be before the autumn of 2016.

(D) The Mediation Scheme

58. In an announcement of 26 August 2013, POL established an independent mediation scheme for SPMRs, overseen by a Working Group ("**the Scheme**"). The membership of the Working Group comprised POL, the JFSA and Second Sight. Sir Anthony Hooper was appointed the Chairman of the Working Group on 29 October 2013. The Working Group sought applications from SPMRs who had a complaint about the Horizon system or an associated issue. Applicants would have their cases investigated by Second Sight, with a view to mediation of the dispute between the SPMR and POL.
59. By the time the Scheme closed on 18 November 2013, it had received 150 applications, of which 136 entered the full Scheme (ten were resolved before entry and four were ineligible). 37 applications were from SPMRs who had been convicted of a criminal offence.
60. POL contributed £1,500 (ex-VAT) to each Scheme applicant for the purposes of obtaining professional advice to articulate the complaint. Each applicant submitted a case questionnaire review ("**CQR**") to POL and Second Sight. In some cases evidence was supplied. Each case was then the subject of a detailed



investigation by Post Office which produced a Post Office Investigation Report (“**POIR**”) for each case on the basis of the evidence which could be examined, given the passage of time. This evidence – depending on the application of the seven year data retention period – included Horizon transaction records, NBSC call logs, HSD call logs, training records, audit records and other related correspondence. The POIR and supporting evidence were provided to Second Sight, who would examine the material and issue a case review report (“**CRR**”) setting out the areas of agreement and disagreement, the conclusions Second Sight could draw and whether mediation was appropriate.

61. The Scheme applicant was provided with the POIR and the CRR (having been given the opportunity to comment on a draft of the CRR). The Working Group considered the suitability of each case for mediation. Cases which were accepted as suitable, and which POL agreed to mediate, were referred to the Centre for Effective Dispute Resolution (“**CEDR**”) for mediation to take place. POL met the costs of the mediation, and provided up to £1,250 (ex-VAT) and expenses to applicants for professional advice in relation to the mediation.
62. During the course of 2014, real concern grew on the part of POL and the JFSA about the slow progress which was being made concerning Scheme investigations. The JFSA objected to POL’s approach to mediation. Public criticism of POL, including of its approach to the Scheme, on the part of MPs (particularly James Arbuthnot MP) grew during the year. On 9 December 2014, James Arbuthnot MP appeared on the Today programme and contended that POL was sabotaging the Scheme and refusing to mediate 90% of cases. This figure was not accurate, but POL considered itself bound by confidentiality and so has not published any different figure.
63. By early June 2014 POL was having internal discussions about the possibility of closing down the Working Group and resolving the cases in another way. POL was also considering the replacement of Second Sight.

64. On 10 March 2015 POL announced it would mediate all Scheme cases, save for those which had been the subject of a court ruling (whether or not to mediate those cases was to be considered case-by-case). This decision effectively removed the core purpose of the Working Group. POL announced the closure of the Working Group the same day.
65. Second Sight were instructed to complete the outstanding CRRs, and did so in July 2015. This brought to an end their engagement by POL.
66. The JFSA encouraged applicants to withdraw from any mediation process and a number did so. However, by the time the Scheme was brought to an end, a total of 44 cases were mediated, resulting in 22 agreed settlements.

(E) The Substantive Second Sight Reports

67. During the course of the Scheme, Second Sight issued their substantive report in two parts. The Part One Report was issued on 25 July 2014. It was in essence a narrative describing how a Post Office branch worked, the systems used, and the types of products and issues dealt with by SPMRs on a regular basis. Part III of this note covers similar ground, but in considerably less detail.
68. A first version of the Part Two Report was issued by Second Sight on 21 August 2014. POL produced a reply document in September. Following the closure of the Working Group, POL also instructed Second Sight on 10 March 2015 to issue a completed version of their Part Two Report.
69. The final Part Two Report was issued on 9 April 2015. Where the Part Two Report is referred to in this note, the reference is to the final version of the report. POL also produced a reply to the Part Two Report.

70. Second Sight report that their work was limited by POL's refusal, with which they did not agree, to provide three categories of information. Those were: (a) the complete legal files; (b) the complete email records of POL employees working at Fujitsu's Bracknell office for 2008; and (c) detailed transactional records relating to POL's suspense account (paragraphs 2.1-2.19). As a result of this failure, Second Sight concluded that POL *"did have, and may still have, the ability to directly alter branch records without the knowledge of the relevant"* SPMR (paragraph 2.12).
71. Second Sight also alleged that:
- (1) The contract between POL and SPMRs was not always provided to SPMRs and the contractual terms, placing responsibility for losses on SPMRs, is "unfair" (paragraphs 3.6-3.8, 6.1-6.16).
  - (2) Horizon was insufficiently error repellent, in that "the majority of branch losses were caused by 'errors made at the counter'", which could have been avoided if the systems had been improved. Second Sight took the view that POL had little incentive to do so (paragraphs 3.11-3.14).
72. The Report addressed 19 thematic issues drawn from the Scheme cases (paragraph 1.10). (Only the more significant ones are addressed here.)
- (3) The ATMs introduced a vulnerability to error and fraud, had on two occasions printed corrupted data and were likely at some point to have been the subject of malware and/or criminal theft/fraud (paragraphs 7.1-7.38).
  - (4) Accounting for foreign currency transactions was fundamentally flawed because Horizon is a single currency system and individual transactions could not be seen by POL (paragraphs 9.1-9.12).

- (5) The sale of lottery scratch cards prior to 2012 had too easily allowed for errors in stock scanning, coupled with inconsistent NBSC advice and delays in the issue of Transaction Corrections (paragraphs 10.1-10.15).
- (6) Training was “*probably adequate for people who had reasonable levels of IT skills, numeracy and accuracy*”, but it was not sufficiently clearly monitored that the training was properly delivered and the ability to request training did not help those who did not realise what they were doing wrong (paragraphs 11.1-11.9).
- (7) Errors were less attributable to inadequate training than adequate support from the NBSC, which would have benefitted from sending written instructions. Second Sight recorded the complaint that SPMRs would be told that “*it will sort itself out*” but did not uphold or reject that complaint. They accepted that the NBSC could not be expected to determine how discrepancies arose and expectations of that facility were unreasonable (paragraphs 12.1-12.9).
- (8) The periods of delay in issuing Transaction Corrections, often of high value, posed real difficulties for SPMRs and might cause a temptation to falsify the accounts in the hope that a subsequent Correction would resolve the problem (paragraphs 13.9-13.14.)
- (9) Second Sight addresses the POL denial that it is possible to amend branch data remotely, referring to a number of documents disclosed to it from 2008 and 2010 which refer to correcting live data without the knowledge of the SPMR, altering balances at the branch, although there was no detail as to whether such amendments had been made (paragraphs 14.1-14.19). They also recommended that where Horizon has reversed a transaction (because a terminal is timed out before transaction is settled and completed), the records should clearly show that it was the system which

carried out the reversal rather than the user. There was no dispute that this would not have caused a loss (paragraphs 15.1-15.7).

- (10) Cash errors at the counter would be hard to detect, particularly following the removal by POL of paying-in paper slips in 2008 (paragraphs 20.1-20.20).
- (11) It was possible for losses to occur in a branch as a result of power and telecommunications failures, where it has not been possible for the SPMR to follow the correct recovery procedures, particularly where the power to a screen does not return and so messages are not displayed to the user (paragraphs 21.5-21.15). It was possible, but unclear, that hardware equipment failures could have caused losses (paragraphs 23.1-23.4).
- (12) Some of the people appointed to an SPMR role *"may have been unsuited"* to that role (paragraph 21.25). POL's selection processes failed to reject candidates who showed signs of inadequacy at interview and *"proved themselves to be wholly unsuitable"* (paragraph 21.26).
- (13) In the *"specific and limited circumstances"* of a person who was *"unsuitable, inexperienced or inadequately trained"* who encountered problems (particularly relating to the recovery process) Horizon was not *"fit for purpose"* (paragraph 21.27).
- (14) POL is responsible for detecting and acknowledging system or procedural flaws that have allowed errors to repeatedly occur and not providing the improvements to reduce or remove those errors (paragraphs 21.30-21.31).
- (15) POL investigators were focussed on seeking evidence of false accounting to aid asset recovery rather than identifying the root cause of losses. In some cases, a charge of theft did not seem to have been supported by the evidence and was dropped as part of a plea bargain. Some of those

decisions may have been contrary to the prosecutor's code (paragraphs 25.1-25.24).

- (16) In some circumstances Horizon "*can be systemically flawed from a user's perspective and Post Office has not necessarily provided an appropriate level of support*" (paragraph 26.8).

(F) Parliamentary Debates

73. There have been a number of Parliamentary discussions of the impact of the Horizon system on SPMRs. These discussions include:

- (1) House of Commons debate of 9 July 2013;
- (2) Westminster Hall debate of 17 December 2014;
- (3) The hearing before and evidence given to the Business, Innovation and Skills Select Committee on 'The Post Office Mediation Scheme and the Horizon IT System' on 3 February 2015;
- (4) House of Commons debate of 29 June 2015; and
- (5) Prime Minister's Questions on 1 July 2015.

74. This note does not further summarise or discuss these publicly available records but suffice to say there has been an on-going and high level of Parliamentary interest in the issue.

(G) BBC Panorama Programme

75. On 17 August 2015 the BBC broadcast a Panorama programme '*Trouble at the Post Office*'. It featured a number of SPMRs (who have been the subject of criminal convictions, including some who had pleaded guilty to criminal



charges), James Arbuthnot MP, Professor Charles McLachlan (who had appeared as an expert witness in defence of Seema Misra when she was convicted by a jury of theft, having pleaded guilty to false accounting) and a former Fujitsu employee named Richard Roll.

76. Mr Roll said that he and his fellow Fujitsu employees saw a *“lot of errors, a lot of glitches”* on the Horizon system and that they *“went in the backdoor and made changes. Sometimes you would be putting in several lines of code in at a time. If we hadn’t done that then the counters would have stopped working”*.
77. Following the broadcast, there was correspondence between POL and the BBC in which POL complained about the reporting of the BBC.

### III. Criminal Prosecutions

78. A total of 43 of the Scheme applicants' cases involved criminal convictions, 37 of them of the SPMR directly. The vast majority of these were for the offence of false accounting (contrary to section 17 of the Theft Act 1968). In at least some cases, SPMRs were also the subject of a charge of theft (contrary to section 7 of the Theft Act 1968). Both offences require the prosecution to prove dishonesty, but the offences are directed at different conduct and an SPMR may be guilty of false accounting without being guilty of theft, in large part because the false accounting offence is committed where the SPMR falsely declares he has more cash than he actually does, even where this suggested gain is only intended to be a temporary accounting gain in the hope that the money will turn up (*R v Eden* (1971) 55 Cr App R 193).
79. Those subject to criminal convictions, or those on their behalf, have raised broad areas of concern:
- (a) whether their convictions were consequent on flaws in the Horizon system and/or because of a failure properly to disclose such flaws during the criminal proceedings, and for such reasons are not safe;
  - (b) whether POL acted appropriately in cases where it pursued charges both of false accounting and of theft (or whether POL pursued theft charges in cases where there was no proper basis in evidence to do so simply to encourage a guilty plea to the false accounting charge); and
  - (c) whether it is appropriate for POL to conduct private investigations and prosecutions (rather than leaving matters to the police and the CPS).

(A) Safety of Convictions and Disclosure of Information

80. None of the Second Sight reports identify systemic flaws in the Horizon system likely to have caused the losses incurred at the Scheme branches. Rather, operator errors at the counter is the usual cause identified by Second Sight (with the likelihood of those errors being exacerbated by a problems in training and support). At this point in time that there is no evidence that the Horizon system – i.e. the computer system – is responsible for the losses which have resulted in convictions.

81. So far as it concerns disclosure, POL has undertaken a considerable exercise reviewing its compliance with its disclosure obligations (past and present). In 2013 it instructed Cartwright King Solicitors to review all criminal prosecutions POL commenced since 1 January 2010 with a particular focus on identifying those cases in which disclosure should now be made of the Second Sight Interim Report and/or the Helen Rose Report (which is addressed in the next part of this note). Cartwright King is the firm which conducts criminal law work on behalf of POL. The scope and scale of that review was the subject of oversight and advice from Brian Altman QC, who delivered interim advice on 2 August 2013 and a general review on 15 October 2013. Mr Altman QC considered both the process adopted by Cartwright King, and their actual decisions in a sample of cases, to be reasonable and appropriate.

(B) Sufficiency of Evidence

82. The allegation is that POL has too readily brought a charge of theft, which is said to be more serious than false accounting, with the aim or effect that the SPMR is pressurised into pleading guilty to false accounting in the hope that the theft charge is dropped, and because a theft charge would more readily enable

POL to recover its losses. There are approximately 19 Scheme cases in which this, or something similar, occurred.

83. Whether POL had sufficient evidence to bring a charge of theft alongside charges of false accounting is an accusation raised by a number of Scheme applicants, as well as by Lord Arbuthnot and Panorama. It has also been a matter raised by Second Sight in their Part Two Report.
84. This suggestion gained particular traction in Scheme case M035, Josephine Hamilton (a case in which there was guilty plea to false accounting, in return for which the theft charge was not pursued). In this case certain documents in the prosecution file indicated that initial POL investigators could not find evidence of theft (although there was clear evidence of false accounting), but theft was nonetheless charged. In these documents there is an absence of clear documented rationale for charging theft. That is not to say that no rationale existed or could have existed, or can now be divined, but the lack of clear reasons inevitably gives rise to cause for doubt.
85. POL's position is that its prosecutorial decisions are always taken in accordance with the Code for Crown Prosecutors, which requires that there be sufficient evidence to provide a realistic prospect of conviction, and the prosecution must be in the public interest. The decision to plead guilty is a matter for the defendant alone. Any concerns they have about the legal advice they received at the time is a matter only the defendant can pursue and is not the responsibility of POL. Similarly, it is always open to the defendant to challenge the sufficiency of the evidence disclosed to him or her and seek to have that charge dismissed.
86. POL has instructed Brian Altman QC to review the prosecution files of the relevant Scheme cases to establish, on the basis of the facts and law at the relevant time, whether there was sufficient evidence in accordance with the Code to bring the charges which were brought. This review is ongoing.

(C) POL as Prosecutor

87. Criticism has been levelled at POL for conducting private prosecutions, in reliance on its own investigations. It is said (a) that POL does not have the benefit of the specialist criminal expertise of the police; and (b) that prosecution decisions lack the independent view that is applied by the CPS.
88. However, POL is as entitled to bring private prosecutions as any other legal person (although few major commercial entities do so for internal matters) and their investigations and prosecution decisions are designed to be carried out to the equivalent police and CPS standards. Ensuring the police investigate complicated financial records and transaction logs may also not always be easy to ensure.
89. POL has also taken advice from Brian Altman QC who has advised that, if prosecutions are to be conducted, then POL is better placed than the CPS to conduct those prosecutions.

#### IV. The Horizon System

90. As elsewhere in this note, references to the Horizon system, are references to the computer programme and software developed and supplied to POL by Fujitsu, and which POL requires to be used across all of its branches. This is this how an ordinary person would interpret a reference to the Horizon system. It also reflects the roots of the concerns of the SPMRs, although the reach of those concerns has expanded over time. In essence, the allegation since 2009 has been that Horizon is a flawed system which causes, through software errors and possible third party action, branch balances to be altered to the disadvantage of the SPMR. SPMRs are, it is said, being held responsible for losses which are incorrectly generated by Horizon such that they do not reflect real losses to POL. POL has always denied that there is any evidence that Horizon, as opposed to user error on the part of SPMRs and their staff, has caused the shortfalls for which the SPMRs are accountable.

91. There are three broad areas of concern which are addressed in turn below:

- (a) Horizon system bugs;
- (b) The thematic issues identified by Second Sight; and
- (c) Whether branch balances can be affected by third party alterations without SPMR knowledge.

(A) Bugs in the Horizon System

92. It seems entirely unremarkable that the Horizon system, which is enormous in terms of the range of matters it deals with and the number of users it has, will occasionally discover bugs, errors or glitches in the way that it works. (For ease such issues are referred to in this note as bugs.) Some of those bugs may impact



on the financial position of a branch, either positively or negatively. Neither POL nor Fujitsu suggest anything otherwise. The important point is the ease with which such bugs are noticed and corrected, with remedial action to any financial position taken where necessary.

93. There are a number of bugs which have been detected by Fujitsu through their own work or the reporting of problems to them by SPMRs via POL. These instances appear to be as follows.
- (1) The Calendar Square, Falkirk problem discovered in 2005 (fixed in 2006). This issue was described in some detail in the evidence and cross-examination of Mr Jenkins of Fujitsu in the criminal trial of *R v Seema Misra*. It involved a failure by Horizon to recognise transfers between different stock units and was visible as a receipts and payments mismatch. Due to the antiquity of the issue, Fujitsu cannot confirm whether any other branches had been affected by this problem.
  - (2) The receipts and payments mismatch problem, discovered in 2010 (see the Interim Report, paragraph 6.5). This impacted 62 branches.
  - (3) The local suspense account problem, which occurred in 2011 and 2012 (and fixed in 2013) (see the Interim Report, paragraphs 6.6-6.9). This impacted 14 branches. Fujitsu have explained that it reoccurred because a particular balance reappeared each year in the annual accounts between 2011-2013 until it was drawn to their attention and fixed.
  - (4) The Second Sight Interim Report refers at paragraph 6.10 to another bug which was disclosed in witness evidence in court proceedings. It is not clear whether that was the Calendar Square incident, or the unusual non-polling event for 12 days at Winford Post Office referred to by Mr Jenkins in his statement in *R v Grant Allen*.

- (5) There were also references in articles in Computer Weekly in November 2015 to a further bug which led to a branch being recorded as having remmed out cash to an outreach branch four times instead of once. Fujitsu's analysis of this bug to POL dated 10 December 2015 explains that the problem arises where a certain succession of actions concerning cash pouches are entered, and then the system is left to time out, rather than being logged out on completion. Fujitsu describe the issue as having occurred 112 times since 2010 but that 108 of those were corrected at the time either by a transaction reversal by the SPMR spotting the duplication, or by a Transaction Correction issued by POL. Four occasions appear not have been corrected at the time. None of the uncorrected instances relate to Scheme cases.
- (6) Between 29 June 2015 and 13 September 2015, there was a bug which caused all Transaction Corrections to be accepted (even if the SPMR pressed 'cancel'). Again, this could have affected any branch, although Fujitsu have confirmed that the problem was only raised by seven branches.
94. Fujitsu have also confirmed that all of these bugs were generic ones; i.e. they could have affected any branch. The reasons they affected only certain branches were accidents of processing, as the particular chain of actions and steps required for the bug to apply happened to occur only on those occasions in those branches. (Or, in the November 2015 bug, because the situation could only arise where there were outreach branches.) It is on this basis that POL holds the view that the Horizon system works effectively and accurately for the overwhelming majority of the time for the overwhelming majority of its users. There are also back office checks and balances to make sure that SPMRs are not held wrongly accountable for losses.

95. There is nothing to suggest that these specific bugs identified have been the cause of wider loss to SPMRs in the Scheme cases or otherwise.

(B) Thematic Issues

96. Second Sight's Part Two Report addresses a number of areas of complaint raised in Scheme cases which they describe as 'thematic issues'. It is POL's position that few, if any, of those issues can sensibly be said to relate to any error in the operation of the Horizon system. Second Sight recognise, largely implicitly, that the themes they see are regular forms of errors at the counter on the part of SPMRs and their staff. It is notable that nowhere in their Part Two Report do Second Sight revise or disavow their conclusion in the Interim Report that they have found no evidence of systemic problems with the Horizon software.
97. There is a considerable amount of documentation concerning those thematic issues, including: the Second Sight Reports; POL's responses to those reports, including in draft; Spot Review paperwork; witness evidence provided by Fujitsu in the course of criminal and civil trials which explain some apparent concerns; and the detailed investigation work done in POIRs and CRRs for a sample of the Scheme cases. While not every issue raised by SPMRs has been the subject of a categorical answer or explanation (still less an accepted one), that is inevitable in circumstances where the events in question happened some time ago and an understanding of how the problem arose is dependent upon an accurate explanation on the part of the SPMR.
98. As discussed in (A) above, the Horizon system does occasionally suffer from bugs which have caused losses in some branches. Those bugs have been generic in the sense that they have the potential to affect any branch, depending on how it is structured. It is often the case that those bugs are identified when an SPMR draws the attention of POL and Fujitsu to an odd situation which he or she

cannot explain and which appears to have caused a discrepancy. When carrying out their investigations into Scheme cases, investigators were looking out for unusual or unexplained patterns of transactions which might have required further technical examination by Fujitsu to confirm whether there was a wider bug. No instance arose and Fujitsu were not asked to look at the records in any case.

(C) Third Party Action

99. SPMRs have alleged that certain transactions appear in their transaction records which they did not perform. There is, as a result, an allegation – usually generic rather than specific – that branch records can be remotely altered by POL and/or Fujitsu to the detriment of the SPMR.
100. The Scheme investigations show that in the vast majority of cases specific transactions of concern have been readily explicable by common-sense explanations; such as sharing of user identifications, or SPMRs being on leave, or mistakes as to the timings. Other types of amendment of branch records – Transaction Acknowledgements relating to third party information, and Transaction Corrections issued by POL – require the acceptance of the SPMR before they are adopted into the accounts on Horizon. (In some of the Scheme cases, the shortfalls included unaccepted Transaction Corrections.)
101. A slightly different category is that discussed in the report drafted by Helen Rose on 12 June 2013 in respect of the Lepton branch, which formed part of Second Sight's Spot Review 1 consideration. That discusses a Horizon record that a transaction was reversed, and the assertion of the SPMR that he had not carried out the reversal. Ms Rose discusses the fact that it only became clear through detailed discussions with Fujitsu (in the person of Gareth Jenkins) that the transaction was automatically reversed because of a system failure before completion (as the system was designed to do), but that this was only clear at a

level of raw data not apparent in the transaction logs available to the SPMR and POL. Ms Rose raised the fact that the data available may appear misleading depending on which report is retrieved from Horizon (although the origin of the reversal is clearly stated in the raw transaction data). This is not, however, a true example of the system altering branch records, as it is really Horizon not completing a transaction due to a system failure of some kind. Ms Rose's report was available to Second Sight who agreed with her that the clarity of the transaction logs should be improved.

102. The consistent position of POL and Fujitsu has been to the effect that transaction records, and therefore branch balances, cannot be remotely altered without SPMR knowledge. For example, in Fujitsu's response to a draft of the Part Two Report, dated 15 September 2014, paragraph 11.2 states *"To be clear, any system generated transaction requires a branch user to acknowledge and accept this transaction and it is this operative's id that is recorded as the primary id"*. As an example of POL's expression of the position, its Response to the Westminster Hall Debate of 17 December 2014, dated January 2015, responded to the concerns raised by MPs during that debate. At paragraph 47, POL states that *"There is no functionality in Horizon for either a branch, Post Office or Fujitsu (suppliers of the Horizon system) to edit, manipulate or remove transaction data once it has been recorded in a branch's accounts."* At paragraph 48, POL discusses Transaction Acknowledgements and Transaction Corrections, reiterating that both be must be accepted by the SPMR.
103. The issue of the ability to remotely alter branch balances derives from the case considered in Spot Review 5, where an SPMR (whose wife was later convicted of false accounting in a Post Office branch) alleged that he had visited the Fujitsu Bracknell site in 2008, had been shown around by a member of POL staff, and had been shown the ability of the team to alter the recorded holdings of a branch. In their Part Two Report, Second Sight refer to their having requested email records for all of the POL staff working at Bracknell in 2008 but

only having been provided with those for August 2008 (when the visit took place). Second Sight state these emails would be *“the most compelling evidence on this point”* (paragraph 2.10). Second Sight confirmed to us that it is only those wider tranche of emails to which they refer in paragraph 2.13 when they state that it is *“regrettable that we have not been provided with the further evidence we have requested in order to reach a properly researched conclusion”*. They nonetheless concluded at paragraph 2.12 that their *“current, evidence based opinion, is that Fujitsu / Post Office did have, and may still have, the ability to directly alter branch records without the knowledge of the relevant Subpostmaster”*.

104. Martin Rolfe, who is the POL employee who carried out the tour in question, explains, as POL has always stressed and Fujitsu have confirmed, that POL employees at that time only had access to a test environment which was not connected to the Horizon network. He believes that the SPMR must have misunderstood what he was seeing, because the test screens would have looked like the Horizon system but were not live or connected to actual branches. Fujitsu have confirmed that the live network is accessible only to Fujitsu employees in a secure area on a different floor of the Bracknell building.
105. It is possible that this secure area is what was being referred to by Mr Roll when he spoke to the BBC Panorama programme, in which it is said by the reporter that Mr Roll told him that *“financial records were sometimes changed remotely without the postmaster knowing”* and which Mr Roll describes as going *“in through the back door”*. It is understood that Mr Roll was a Fujitsu employee in the level of line support which would have had access to the secure area. The specific comments in the Panorama programme are, however, ambiguous and unclear as to precisely what is being suggested was done.
106. Second Sight’s Part Two Report also obtained and quoted from documents between Fujitsu and POL in 2008 and 2010, which suggested that Fujitsu had the capability to amend or correct live branch data. The documents quoted in the



Part Two Report at paragraphs 14.8-14.15 do suggest that Fujitsu does have the ability to *“manually write an entry value to the local branch account”*. POL are noted by Second Sight to say that the references in those documents to amendments and corrections are inaccurate, because the system only allows additions to the records which can be seen by the SPMR.

107. In May and June 2014, Deloitte produced two documents for POL entitled ‘Horizon: Desktop Review of Assurance Sources and Key Control Features’ and an accompanying ‘Board Briefing’. POL instructed Deloitte to carry out some review work as to how Horizon functions, the controls in place and the extent to which it was achieving the objectives of the system. Deloitte’s work was a desktop review of the operating documentation, including discussions with Fujitsu and POL. It did not involve access to the system itself or testing processes.
108. Deloitte note, following a review of the technical documentation, the ISAE3402 and verbal discussions with POL and Fujitsu, that database access privileges which *“would enable a person to delete a digitally signed basket”* do exist, but are *“restricted to authorised administrators at Fujitsu”*. Those privileges *“would enable a person to create or amend a basket and re-sign it with a ‘fake’ key, detectable if appropriately checked”*. Deloitte had not identified specific controls to prevent a person with the appropriate authorisation carrying out this exercise in an unauthorised manner. The Briefing goes on to state that administrators had the ability to *“delete data from the Audit Store during the seven year period, which was a matter...contrary to POL’s understanding...This could allow suitably authorised staff in Fujitsu to delete a sealed set of baskets and replace them with properly sealed baskets, although they would have to fake the digital signatures”*. Deloitte describe this functionality as resulting, in essence, from the level of security contained in the Horizon servers being a level down from the maximum.



109. Fujitsu responded to this aspect of Deloitte's investigation, based upon a summary of the investigation provided by POL rather than the original Board Briefing itself. Fujitsu appear to accept that Deloitte's interpretation is technically correct, but emphasise the wide range of security measures in the software, hardware and environment which reduce the risk of interference. Fujitsu also, properly, stress that there is no evidence that any such action has occurred and that likelihood of all the security measures being overcome is so small that it does not represent a credible line of further enquiry.
110. The fact that such activity is possible does not, of course, indicate that it has actually occurred. Indeed, it is difficult to see why it would have done so. Second Sight have suggested that Fujitsu employees could, in theory, run a fraud in collusion with an SPMR whereby transactions were added to the branch records generating cash payments out. Even if it may be theoretically possible, there is no evidence for this and it is inherently improbable. An alternative may be closer to Mr Roll's account, which would be that Fujitsu would use the functionality to correct system bugs without drawing them to the attention of POL or SPMRs in order to avoid any form of contractual penalty.
111. Another issue expressly noted by Deloitte is the existence of a third mechanism by which errors can be corrected: a Balancing Transaction. This is *"an emergency process, accessible only to restricted individuals in Fujitsu, which can create transactions directly in Branch ledgers. This process creates an identifiable transaction in the ledger, verbally asserted by POL staff to be visible to Sub-postmasters in their branch reporting tool, but does not require positive acceptance or approval by the Sub-postmaster."* Deloitte explain that they were told that this tool had only been used once since 2008 – in 2010 – and generated a full audit trail.
112. Although it is not entirely clear, it is likely that the admitted 2010 instance is the same, or linked to, the 2010 documents referred to by Second Sight in their Part

Two Report. Deloitte have scoped further work that could provide assurance as the use of this function.

## **V. The Support Provided to SPMRs**

113. A consistent theme of the complaints made by SPMRs is that the training they were provided was insufficient, particularly in relation to the accounting side of their role, and that the support provided to SPMRs in office through the NBSC was unhelpful or misleading. There have been allegations that NBSC call-handlers advised SPMRs that discrepancies would 'sort themselves out' and SPMRs have alleged that NBSC advised them to submit false accounts.
114. These issues have been addressed as comprehensively as possible by both POL and Second Sight through their investigations of all the Scheme cases. Although training records were not always available, NBSC call logs were available back to around the year 2000.
115. It is inevitable that the ability of any investigation to definitively deal with each individual allegation would be hampered by a number of factors:
- (1) Even where training records exist, if an applicant alleges that they received less training than they should have done it will be very difficult now to establish the correct position. Individual trainers, even if still employed, are highly unlikely to remember training sessions many years ago.
  - (2) The NBSC call logs do not tend to provide the details of the call-handler's answer to any issue. They are often helpful in identifying the issue for which assistance is sought, but the answer recorded is very often simply that the SPMR was given an answer from the Knowledge Base, but not which part of the Base or precisely what was said. Calls were not routinely recorded.

- (3) The call logs are filled in by the call-handlers. It is highly unlikely that even if a call-handler had suggested that an SPMR falsely account, the advice would have been logged.
- (4) As with the training, even if individual call-handlers were still employed it is highly unlikely that they would be able to remember the details of any individual call.
- (5) SPMRs have generally been unable to recall with any specificity the dates or precise content of advice they received from the NBSC or HSD. This is similarly unsurprising.
- (6) A number of instances were alleged by SPMRs whereby their discrepancy doubled (or worse) when they followed the advice of the NBSC. The advice given by NBSC – who had no access to the branch systems – was dependent upon the caller correctly identifying the problem to the call-handler. If the problem was misunderstood, then the corrective action proposed might in fact exacerbate the problem. Working out now whether the SPMR identified the correct problem, or the NBSC gave the incorrect advice is not likely to be possible.

116. Calls to the NBSC were recorded against the identity of the call-handler, and call-handlers were and are the subject of performance monitoring. Through its external lawyers, POL has now undertaken an exercise to cross-reference specific complaints that the NBSC provided misleading advice against the personnel files of possible call-handlers to establish whether anything in the performance monitoring or complaints might indicate that it was more likely that a particular call-handler had provided misleading advice. The result of this review was that nothing was found in the performance review documents to indicate that there were any concerns about the quality of the advice given by the call handlers in question.

117. Second Sight concluded in their Part Two Report that the training provided by POL was “*probably adequate*”, at least for SPMRs with reasonable levels of IT skills, numeracy and accuracy (paragraph 11.1). When read with the criticisms of the unqualified nature of some of the SPMRs appointed at paragraph 21.25, this has to be taken as effectively meaning that the training was adequate for SPMRs who were properly qualified and appointed to be appointed to run a branch. Second Sight reiterate this finding at paragraph 12.5 when they say that the errors at the counter made by SPMRs are more likely to be the result of inadequate support than inadequate training. However, Second Sight are unable to reach any evidenced view as to the allegations about the NBSC and HSD in the light of the limited evidence now available (paragraph 12.8).
118. However, Second Sight do suggest that POL’s training programme required more product-specific training (paragraph 11.1), greater accounting and balancing training (paragraph 11.2) and that there was an insufficient degree of quality control to deliver effective training (paragraph 11.7).
119. POL accepts that improvements to both its training and support can and should be made. The Business Support Programme established in 2013 has made various refinements to the training programme for SPMRs, to providing express balancing support advice from the Branch Support Team and increasing the tools available to the NBSC in assisting callers, including access to branch transaction data and the recording of all calls (with a retention period yet to be determined).
120. Angela Van Den Bogerd (POL Director of Support Services) produced a ‘Lessons Learnt Log’ dated 11 November 2015, which sets some 30 pages of proposed changes to POL processes to address issues arising from the Scheme investigations and the views of Second Sight.

## VI. Scheme Investigations

121. Those SPMRs who complained to POL via the Scheme about losses for which they had been held accountable have had their cases and complaints investigated by both POL and Second Sight.
122. An applicant to the Scheme would submit a case questionnaire review setting out their grievance and what they wished to achieve from any mediation, along with any supporting evidence that they had available. In some cases, this was considerable. In many, it was minimal or limited. Many applicants took advantage of the contribution POL made towards the cost of a professional advisor.
123. POL would then investigate the details of that complaint and gather as much documentary evidence as they were able to find, reaching what conclusions they were able to on each aspect of the complaint. Depending on the age of the events in question, POL was normally able to retrieve from Fujitsu the transaction logs for the branch, any NBSC call logs and logs of calls to the HSD or to Fujitsu. In some cases, POL was able to find training records and other correspondence. POL also sought the audit records for the branch which uncovered the shortfall, and the correspondence between POL and the SPMR during the investigation and termination processes. POL produced a POIR which addressed the specifics of the grievance by reference to the evidence collected.
124. The POIRs were produced by two teams of POL investigators, made up of field support advisors, who carry out the branch training and audit work, and some security personnel (who would usually carry out internal criminal investigations). All investigators were experienced on Horizon and many were former SPMRs. They were not computer system experts, and Fujitsu did not conduct their own analytical review of the relevant transaction logs.

125. This material was then passed to Second Sight, who reviewed it, might speak to the SPMR, and produced their own CRR expressing a view as to whether mediation was suitable, along with findings in relation to the complaints made by the SPMR. This work took some 18 months to complete, following the closure of the application window for the Scheme in November 2013.
126. In the CQRs, very many of the SPMRs were unable to give much by way of specific instances of concern, or anything other than vague and generic complaints. Most of the cases involved a shortfall at audit of between £10,000-20,000, but some cases gave rise to losses in the hundreds or thousands of pounds. The cases involved a mix of time periods. Some spanned both the original Horizon system (from 2000) and Horizon Online (from 2010), some involved only one or the other. Most involved losses over approximately a two-three year period, but some involved much lengthier periods. Some cases were of considerable antiquity, which posed real and understandable problems of evidential clarity, along with data retention.
127. In many cases, Second Sight broadly accepted the analysis of the evidence set out in the POIR. Where it did not, it was usually because Second Sight felt unable to express a concluded view. In none of the cases was Second Sight willing to conclude that the shortfall was due to some form of systemic technical failure of the Horizon computer system, although they did speculate that the disproportionate appearance of power failures in the CQRs was likely to contribute to some extent. Where Second Sight was able to reach a view, they often accepted that the most likely cause of many shortfalls was operator error on the part of SPMRs or their staff (albeit that this often came with a related criticism around the training and support provided by POL to SPMRs which may have contributed to these operator errors).



128. Both the POIRs and CRRs were often unable to identify a specific cause of losses which is not surprising. Most cases involved very little assistance from the SPMR to highlight potential causes or even time periods. Where there was assistance, the dates given often proved to be incorrect when the evidence was examined. Moreover, the integrity of the transaction records is essentially dependent upon the information inputted at the branch. It is extremely difficult for any third party – or the SPMR after the passage of time – to review those records to identify precisely what went wrong, although likely causes were identifiable in many instances. Further, a proportion of the cases involved blatant instances of false accounting, rendering POL's task of assisting the SPMR in working out where problems had arisen very much harder without an accurate reference point from which to work – a point which Second Sight accepted.

## VII. Group Action

129. On 11 April 2016, a claim was issued on behalf of 91 postmasters by Freeths LLP. The Claim Form stated that the Claimants intend to make an application for a Group Litigation Order so the number of Claimants could potentially rise.
130. The claim as described on the Claim Form is wide ranging and the Particulars of Claim have not yet been received but, in broad terms, the Claimants allege that they have been subjected to unlawful treatment by Post Office causing financial losses, bankruptcy and criminal prosecutions among other heads of loss.
131. The claim is concerned with the reliability of the Horizon system but also a number of connected issues discussed above including, by way of some examples, the allocation of legal responsibility between SPMRs and POL, level of training and support offered by Post Office to postmasters and Post Office's approach to investigating shortfalls at the Claimants' branches.
132. There are also a large number of legal heads of claim, namely the following: breach of express and/or implied contractual terms; breach of duties of care in tort; breach of fiduciary duty; unjust enrichment; harassment under the Protection from Harassment Act 1997; negligent misstatement; deceit; unlawful means conspiracy; malicious prosecution; misfeasance in public office; breach of the Claimants' rights under Articles 6 and 8 ECHR and/or Article 1 of the First Protocol contrary to section 6(1) of the Human Rights Act 1998; and/or procuring a breach of their common law fair trial rights and/or rights under Article 6 and 8 ECHR. and/or Article 1 of the First Protocol.
133. Freeths have not put any financial value on the claims. However, experience from the Scheme suggests that the Claimants may have highly inflated expectations around what they might recover. During the Scheme, many SPMRs went into mediation seeking hundreds of thousands of pounds in

compensation (despite having had the benefit of professional, and often legal, advice). In practice, those cases that did settle, did so for low single digit thousands (though a handful of cases with special circumstances settled for low tens of thousands).

134. Of the 91 claimants, 70 were Scheme applicants and are therefore cases known to POL. The other 21 claimants are unknown to POL and their cases will need further investigation. Of 70 known cases, 6 have entered into settlement agreements with POL, 24 have been convicted of criminal offences relating to their tenure as an SPMR and up to 37 (some of which overlap with the 24 criminal cases) could be subject to limitation issues.
135. Freeths requested a response to their Letter of Claim within 30 days, namely by 28 May 2016. Bond Dickinson has written to Freeths indicating that it may take up to 3 months to provide a full substantive response due to the complexity and breadth of the issues involved. Work is currently underway to investigate a number of the points raised in the Letter of Claim.

18 May 2016