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*Bond Dickinson*INITIAL COMPLAINT REVIEW AND MEDIATION SCHEME
SETTLEMENT ANALYSIS

Background Information

Applicant details	Claim no.	M046
	Name	Siobhan Sayer
	Branch	Erpingham Post Office
Loss position	Branch loss	£18,997.60
	Date of loss	January 2008 (but likely to have been accruing before that date)
	Debt position	£14,117.60 – Applicant was ordered to pay a confiscation penalty of £4,880
	Consequential losses claimed	<p>£4,880 – repayment of money paid to POL</p> <p>£1,500 – reimbursement of legal fees for criminal case</p> <p>Unquantified – legal advisors fees</p> <p>Unquantified but £3,600 taken as likely sum in light of salary claimed (limited to three months) – loss of salary</p> <p>£15,000 – forced sale of cars therefore at an undervalue</p> <p>£120,000 – additional mortgage costs</p> <p>£60,000 – inability to re-mortgage due to conviction</p>
Contract / termination position	SPMR / employee / other	SPMR
	Former or current SPMR?	Former
	Termination route	Terminated
	Termination date	18 January 2008
Applicant position	Bankrupt / IVA?	No
	Prosecuted?	Yes
	Outcome of criminal prosecution	<p>Convicted of fraud contrary to Section 1 of the Fraud Act 2006</p> <p>Sentence: 40 weeks' imprisonment, suspended for 18 months; and 200 hours community service.</p>
	Civil proceedings?	Yes – claim issued to protect against 6 year

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		limitation deadline but currently stayed.
	High profile media / MP case?	N/A
	Professional advisor	Howe & Co. (John Walker)

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Bond Dickinson Legal Analysis

Legal risk adjusted claim value

£0

Legal analysis of branch losses

Legal factor	Legal risk (0% = no risk to POL)	Legal risk adjusted claim value
Claim value		£14,117.60
Has the claim already been barred / determined so that legal proceedings cannot be brought against POL? No – proceedings issued but not resolved yet.	100%	£14,117.60
Responsibility for loss. No evidence of failure in Horizon or POL procedures. POL conclusion is that loss caused in branch. The most likely cause of the loss is operator error / theft by the Applicant and/or his staff and based on the evidence currently available to the parties there is no risk of Post Office being found responsible for the direct losses in this case. However, false accounting means that the Applicant is liable for the loss of cash as she was Post Office's agent.	0%	£0
Other legal issues None	n/a	£0

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*Bond Dickinson***Legal analysis of consequential losses resulting from termination**

£0

Legal factor	Legal risk (0% = no risk to POL)	Legal risk adjusted claim value
Value of claim based on Applicant's figures		£204,980
Are the claimed consequential losses recoverable at law? Financial losses arising from termination could be recoverable if proven – see below.	100%	£204,980
Has the claim already been barred / determined so that legal proceedings cannot be brought against POL? Possibly – see additional notes.	100%	£204,980
Is there the possibility of an unlawful termination claim because the Applicant's contract was not terminated on 3 months' notice? Yes – summary termination.	100%	£204,980
Was contract termination unlawful? No evidence to suggest that the contract termination was unlawful. The Applicant's contract was terminated on the basis that they no longer had control on the premises they proposed to operate from. In addition, the Applicant has been convicted of fraud. In light of these the contractual basis for termination appears to be justified and therefore there would be no loss.	0%	£0
Is there evidence that the Applicant could have "sold" his / her branch as a going concern if given 3 months' notice? No	0%	£0

Suitability for mediation

This case is not suitable for mediation as there is no evidence to substantiate the Applicant's claims. Second Sight agrees with this view, but makes the recommendation to mediate on the basis of the mis-advice and difficulty resolving the issues. We have asked Second Sight to review their recommendation.

Additional Notes

The Applicant's claim for unlawful termination is now over 6 years old as his termination took effect in February 2008. Usually a person is barred under the Limitation Act from commencing proceedings on this type of claim where it is more than 6 years old.

However, Post Office has already commenced Court proceedings against the Applicant to recover the outstanding debt. It would therefore be open to the Applicant to bring a counterclaim in those proceedings for unlawful termination. For limitation purposes, the date on which that unlawful termination claim was deemed to commence would be the date of when POL issued the original Court

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Proceedings. These Court proceedings were commenced within the 6 year time bar period and so the unlawful termination claim would not be time barred on this basis.

However, to issue a counterclaim, the Applicant needs to show that the counterclaim is related to, or arises out of the same set of facts that are pleaded in, Post Office's original claim. If not, then the Applicant will need to issue new separate Court proceedings which would be time barred.

Our view is that the Court is likely, but not certain, to allow the Applicant to issue a counterclaim in the current proceedings initiated by POL and that the unlawful termination claim is therefore not time barred.

Bond Dickinson contact

Name:	Andy Pheasant
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Advice qualifications

1. This advice has been produced by applying the principles set out in the Advice from Linklaters dated 20 March 2014.
2. No further legal analysis of the underlying legal principles has been carried out, in particular we have not considered any other possible legal bases for the Applicant's claims including without limitation malicious prosecution, defamation, malicious falsehood, breach of confidence, tortious causes of action or privacy law.
3. We have not analysed the possibility that failures by Post Office in training or supporting the Applicant, or subsequently investigating losses, may have contributed to the Applicant's ability to prevent losses in branch.
4. Our advice is based on only the information in the Applicant's Case Questionnaire Response, the Post Office Investigation Report and Second Sight's Case Review Reports. Our advice does not factor in the possibility of further information being available at a later date that may change our analysis.
5. We have not considered the Applicant's appetite or capacity to bring proceedings against POL or any of the "other" factors set out in the settlement mandate.
6. We have applied a de minimis threshold to legal risk. Where the legal risk is very small (less than 20%) we have recorded this as 0% in our analysis.

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Post Office Settlement Mandate**Legal risk adjusted claim value**

£0

Other settlement factors

Factor	Adjustment	Adjusted settlement threshold
Legal risk adjusted claim value		£0
Actual cost of settlement to POL Costs of mediation, plus any cash payment to the Applicant.		
Other admissions of fault by POL None.		
PR / media implications We are not aware of any special PR / media issues related to this case.		
Applicant expectations / experience from any previous negotiations Unknown		
Criminal case – need to protect safety of convictions Pleaded guilty and convicted of fraud. No new evidence to call the safety of the conviction into question.		
Risk of future litigation / court costs Applicant's only option at this stage is to seek to overturn the criminal conviction on the basis of new evidence that was not available at the time of the criminal trial. There is a risk she may attempt to do this.		
Cost savings through early settlement None as mediation is not recommended.		
Other factors		

Mandated financial settlement range**Alternative / additional non-financial settlement proposals that can be offered****Other matters**

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Approved for mediation

Post Office Approval

Name: _____ Date: _____