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POST OFFICE RESPONSE TO CRR ON M030

Second Sight

By email only

05 September 2014

Ref: M030

Dear Sirs

Post Office's Response to Second Sight's Case Review Report on case M030

This letter sets out Post Office's response to Second Sight's Draft Case Review Report for application M030 (**the Draft CRR**).

The Post Office's position is set out below. The appendix to this letter has Post Office's line by line comments on the Draft CRR. References to paragraphs are to paragraphs in the Draft CRR unless stated otherwise.

Second Sight is asked to reconsider its recommendation as to whether this matter is suitable for mediation:

1. Paragraph 6.1 of the Draft CRR initially states that this case is a weak candidate for mediation but then goes on to state that, overall, Second Sight considers that the

"case is suitable for mediation and that the following issue should be considered:

- a) *Whether Post Office or the Applicant is responsible in part or in whole for the direct loss that totalled £94,380.69."*

The Applicant has been convicted of false accounting and theft and therefore the cause of the loss is clear.

The Applicant has previously pleaded guilty to a charge of false accounting and theft. A plea of guilty to a charge entails a complete admission to the offence.

The plea was voluntarily entered after the Applicant had the opportunity to take legal advice. Post Office is not responsible for any advice that the Applicant may or may not have received. If the Applicant considers that they were wrongly advised, then that is a matter between them and their lawyer.

The Applicant has also admitted to making false entries on Horizon. Due to this false accounting, any small operational losses were not shown in the branch's accounts and only revealed themselves as a single large loss following an audit.

As daily cash declarations were made falsely (by declaring that there was more cash in the branch than there actually was) then it was impossible for Post Office, and will have been very difficult if not impossible for a Subpostmaster, to have:

- Known if cash was missing;

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- Identified the days on which cash went missing;
- Identified which member of staff may have been the source of errors; or
- Located the erroneous transactions that were the cause of the loss.

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

The false accounting in this case means that it was not possible at the time of these events, and it remains impossible now, to precisely identify all the errors in branch which have caused a shortfall. Post Office primarily relies on reviewing the branch accounts to help subpostmasters identify errors but because the accounts in this case have been falsified, it is not possible to distinguish between genuine errors and intentionally false entries.

Not only is false accounting a criminal offence, but operationally Post Office must insist on accurate daily cash declarations. The Applicant's negligence is also why they are liable (under the terms of their Contract) for any losses hidden or caused by their inaccurate record keeping. It is also an established principle of the Law of Agency, that agents like Subpostmasters are liable pay to Post Office (as principal) any cash sum declared in their accounts even if that declaration is false.

Post Office does not consider that there are any new circumstances in this case that would justify a change of plea and therefore maintains that the Applicant's guilty plea is good evidence that she submitted false accounts and stole Post Office cash / stock.

As stated in the original Scheme Documentation, Post Office has no power to overturn a conviction. The proper forum for this is an appeal through the Courts. Neither the Draft CRR nor the Post Office investigation identifies any information or evidence which Post Office considers would make the applicant's conviction unsafe. However it remains open to the applicant to appeal their conviction through the Courts.

2. Paragraph 4.2 of the Draft CRR concludes that training and support issues are not relevant to the case in light of the Applicant's guilty pleas to the charges of theft and false accounting, and yet goes on to recommend at paragraph 6.1 that the allegations of mis-advice and inadequate training and support may benefit from mediation.
3. Paragraph 5.6 of the Draft CRR concludes that it has not been possible to establish when and how the shortfall of £94,380.69 built up due to the admission of false accounting, yet goes on to conclude at paragraph 6.1 that the issue which should be considered at mediation is whether Post Office or the Applicant is responsible for the £94,380.69 in whole or in part.

In light of all of the points above, Second Sight is asked to reconsider its recommendation that this case is suitable for mediation.

Yours faithfully

GRO

Angela Van Den Bogerd

Head of Partnerships
Post Office Limited

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Appendix

Line-by-line comments

Paragraph in CRR	Post Office comment
1.5 (j)	<p>Paragraph 1.5(j) of the Draft CRR notes that the Applicant has raised consequential losses "<i>which may be raised if the case progresses to mediation</i>". As stated in the CRR, it is outside the scope of the Scheme and Second Sight's role for it to assess or comment on any consequential losses claimed by an Applicant.</p> <p>However, in the interests of transparency, Post Office notes that it does not consider the losses claimed by the Applicant to be recoverable. The relationship between Subpostmasters and Post Office is governed by a contract which makes it clear that the relationship between parties is one of agent and principal, permitting Post Office to recover branch losses from the Subpostmaster.</p> <p>Post Office has considered the circumstances of this case very carefully and, on the basis of the information provided by the applicant, in its own investigation and in the draft CRR, does not consider that it has in acted in breach of contract or caused the Applicant the harm now claimed as consequential loss.</p>
1.8	The calculation of the shortfall having built up at a rate of nearly £8,600.00 a month over a period of 11 months is mathematically correct, but Post Office wishes to clarify that there is no evidence that the shortfall only started to build up in the period after the branch closure. This is recognised by paragraph 5.6.
1.9	The Applicant pleaded guilty to six counts of false accounting on 12 April 2010, and to a charge of theft on 8 November 2010. She was sentenced for these offences on 21 January 2011.
2.1	It was noted on page 2 of the POIR that the calls "suggest that the Applicant did struggle with everyday transactions". It is not agreed that the calls demonstrate this to be the case.
2.4	The POIR does not suggest that one shared stock unit rather than two would be a "better arrangement".
4.2	There is no evidence that the Applicant requested additional training. The only record of additional training was for training delivered on 25 April 2007 at the request of Post Office.
5.1	Post Office has responded to the allegations of mis-advice on page 15 of the POIR. Post Office has concluded that there is no evidence of mis-advice, although the call logs are not verbatim, and that specifically in relation to the alleged failure to advise to declare shortages as being in dispute, this option was explained on the Horizon terminal and in the training provided to the Applicant.