

**Confidential**



# Initial Complaint Review and Mediation Scheme

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## 1. Executive Summary

1. The Post Office provides essential services to communities from tiny villages to large cities with 18 million customers a week relying on its vast network for postal, government, financial and telecoms services. It is of vital importance that all those who work in the business, and their customers, can have confidence in the systems which underpin its work.
2. In 2012, the Post Office commissioned Second Sight Support Services Limited to carry out an independent review of its Horizon computer system, which is supplied to the Post Office by Fujitsu Services Limited, in response to allegations by a small number of former Postmasters about the integrity of that system. Second Sight reported on their investigation in July 2013.
3. The investigation found no evidence of system-wide issues with Horizon and its associated processes. However, it did point to areas where the Post Office could have done more to support Postmasters – for instance on training and support. In response, the Post Office set up a Branch Support Programme which has led to the introduction of a number of important new measures, as set out in this report.
4. Following publication of Second Sight's conclusions, the Post Office also decided to set up the Complaint Review and Mediation Scheme (the Scheme) to examine individual cases and, where appropriate, provide a forum for resolution through mediation. The Scheme was set up in consultation with Members of Parliament (MPs), the Justice for Subpostmasters Alliance (JFSA), Second Sight and overseen by a Working Group chaired by Sir Anthony Hooper, a former Court of Appeal Judge.
5. 136 cases were admitted into the Scheme. The Post Office has now completed thorough investigations into each one. Nothing has been found in any of the cases to suggest Horizon has not worked as it should.
6. Whilst every case is different, the detailed investigations show that a range of issues including human errors, a lack of awareness of or misunderstandings about processes and procedures, and in some cases, dishonesty are at the heart of the complaints raised.
7. Where the facts indicate genuine grievances, for example that the support provided or behaviour fell short of the desired standards, those issues are being discussed with Applicants and the Post Office is reaching settlements where it is possible to do so.
8. However, allegations made in many cases are not supported by the evidence. Post Office cannot ignore this evidence or be expected to provide redress in these cases.
9. Through the work of the Scheme, a number of cases have been resolved, including through mediation.

10. To date £6 million has been spent on this overall process, from the initial inquiry to the on-going mediation scheme. Not least because the Post Office is subsidised by the taxpayer, it needs to be mindful of the value for money aspects of this work.

11. The Post Office has also gone to considerable lengths throughout to provide information and background to the Working Group, Second Sight and the Applicants themselves. Confidentiality for individual cases was agreed by all parties, and this has necessarily limited what the Post Office has been able to say publically about the operation of the Scheme. Nonetheless the business has sought to be as open as possible about the process for the investigations, and its actions have been transparent to the Working Group.

12. In addition to the initial allegations made about Post Office's computer system and processes, it has been clear from comment in Parliament and in the media that the Scheme has not satisfied all of those involved. The Post Office has listened and taken action to address this where possible. However, it cannot act where the allegations and assumptions have not been borne out by the facts.

13. It has also become clear that for some with an interest in the Scheme, the desired outcome must result in the Post Office admitting liability and making compensation payments – regardless of the evidence and facts. Similarly, despite nearly three years of investigations, no evidence has been presented by any party to support claims of a miscarriage of justice. Nor has any Applicant with a conviction related to their complaint appealed their conviction or sentence.

14. The Centre for Effective Dispute Resolution (CEDR), the independent supplier of mediation services to the Scheme, has now conducted its first review of the mediation process and confirmed that some Applicants have approached mediation as a compensation process rather than one "in which claims made by either party do require some material evidence". CEDR has also concluded that, whether settlement is reached or not, the process has, in general, "left both sides ...with a much better understanding of each other's position."

15. Against this background the Post Office has decided to change the process, whilst continuing to meet the commitments it made to all those who brought complaints forward.

16. To that end, the Post Office will now offer mediation to all cases remaining in the Scheme, with the exception of those where Court has ruled on the subject of the Applicant's complaint, which will continue to be considered on a case by case basis. This will ensure that those Applicants whose cases have not previously been dealt with in Court

can move to a swifter conclusion. This does not change the process in relation to what an applicant can expect through their participation in the Scheme.

17. Applicants will still be able to receive an independent review of their case and the Post Office intends to continue to work with Second Sight to enable this. Post Office also intends to continue to work with Second Sight to produce a final background document to aid mediation - Briefing Report Part Two - on issues raised through the Scheme. The Post Office will also continue to discuss any case with an Applicant's MP if that is their wish. The Post Office decision means that the Working Group's main role, deciding which cases should be recommended for mediation, is overridden and the group will therefore cease.

18. Where cases have been the subject of a Court ruling, the Post Office has taken allegations of miscarriages of justice extremely seriously and, with external legal experts, has re-examined every such case, with the question of any potentially unsafe convictions in mind. Nothing has been found to date that has given reason to conclude that any convictions are unsafe. They will continue to be considered on a case by case basis, with all the evidence and findings from investigations and reviews shared with Applicants. Mediation cannot alter Court rulings but Applicants remain able to pursue normal legal avenues open to them, for instance through appeal.

19. It has been a long and difficult process to reach this position. However, while it has been challenging, it has also been productive. The Post Office is a better business for the steps that have been taken.

## 2. Horizon and Second Sight's Initial Investigation

20. Horizon is the electronic point of sale system used across all Post Office branches to process and record a wide range of transactions. The term 'Horizon' is used throughout this report to refer to the original Horizon system, which was introduced in 1995, as well as the current version of Horizon, introduced in 2010, known as Horizon On Line.

21. Horizon processes six million transactions every working day and nearly 500,000 users have worked with Horizon since it was introduced, serving millions of customers.

22. In early 2012, a group of Members of Parliament lead by Rt Hon James Arbuthnot MP raised a number of concerns over the reliability of Horizon with the Post Office, having been approached by a small number of mainly former Postmasters under the banner of the Justice for Subpostmasters Alliance (JFSA). These Postmasters considered that apparently unexplained accounting issues in their Post Office branches might be the product of a flaw in the Horizon operating system.

23. Given the serious nature of the issues raised, the Post Office agreed to appoint an independent firm of forensic accountants, Second Sight Support Services Ltd (Second Sight), to investigate these claims as a matter of urgency. The basis of Second's Sight's initial engagement, was reflected in a document for Postmasters entitled "Raising Concerns with Horizon", a copy of which is available at Annex A, and included to:

*"Consider and advise on whether there were any systemic issues and or concerns with the Horizon system including training and support processes, giving evidence and reasons for the conclusions reached."*

24. The document, produced by the Post Office at the request of the JFSA, was intended to facilitate Second Sight's work, not least by reassuring Postmasters that they should have absolutely no hesitation in raising any concerns they might have about the operation of the Horizon system and assisting Second Sight in their work. The content of the document was agreed jointly between the Post Office, Second Sight and the JFSA. A copy was posted on the JFSA's website to ensure maximum coverage among those with a potential interest.

25. The Post Office agreed with Second Sight that, in order to undertake their work, they would:

- review all company-held documentation focusing on why shortfalls occurred;
- interview company investigators to gain insights and to verify their findings;
- review defence submissions;
- consider and analyse relevant evidence with regard to Horizon.

26. A year-long investigation took place during which the Post Office provided Second Sight with an enormous amount of information concerning the operation of the Horizon system in postmasters' branches. To answer Second Sight's questions about the specific issues raised by Postmasters, the Post Office also conducted a significant number of 'spot reviews', designed to explain how a particular transaction or procedure should be processed (where possible) and apply that to a specific example raised by a postmaster.

27. After a year's work, Second Sight had neither completed their investigations into the cases brought to their attention, nor had they been able to reach any definitive conclusions in respect of any of the concerns raised with them, save that they had found no evidence of a system-wide flaw with Horizon. As a result, it was agreed with Second Sight that they would produce an 'Interim Report' of their findings to date which was published on 13 July 2013 and is available at: <http://www.postoffice.co.uk/post-office-statement-horizon>.

28. The report set out six preliminary conclusions, chief among which was that Second Sight had found "no evidence of system-wide (systemic) problems with the Horizon software". However, Second Sight considered that a limited number of other issues may have contributed to difficulties being experienced by those Postmasters who had raised concerns, most notably around the effectiveness of the training and support offered to them by the Post Office and suggesting that these merited further examination.

### 3. The Establishment of the Complaint and Mediation Scheme

29. As Second Sight had not found any evidence of systemic issues with Horizon that could affect all Subpostmasters, the Post Office decided to establish the Scheme in order to provide an avenue for any Postmasters to raise their specific concerns directly with the Post Office.

30. The Scheme, developed jointly by Post Office, Second Sight, and the JFSA as the way of focussing Second Sight's investigations on the issues raised in individual cases, also provided any other postmasters with a relevant complaint the opportunity to make an application to the Scheme. The Scheme was open to both serving and former Subpostmasters, as well as to counter clerks employed by Post Office. Applications were invited through the Post Office's internal communications channels as well as through the JFSA over a 12 week period between 27 August and 18 November 2013.

31. The Scheme was overseen by a Working Group comprising representatives from the Post Office, Second Sight, and the JFSA. The Working Group's role was to ensure the Scheme was run in a fair and efficient manner and to make decisions on how particular cases should be progressed. To ensure its impartiality, the Working Group appointed an independent chair, Sir Anthony Hooper, a former Court of Appeal judge. The press release announcing Sir Anthony Hooper's appointment and the Working Group's Terms of Reference are available at Annexes F and G respectively.

32. In an initial application process, Postmasters with a complaint were invited to submit details of their case to Second Sight. The Working Group's role at this juncture was to ensure that the application met the Scheme's entry criteria.

33. On acceptance into the Scheme proper, Applicants were given the opportunity to apply for a funding contribution of £1,500 +VAT, payable by the Post Office, so that they could appoint a professional advisor to assist with setting out the detail of their complaint. Full details of Scheme funding may be found at Annex I, but this element has amounted to a total cost to the Post Office of £300,000. When a complaint was made, this was passed to the Post Office for comprehensive investigation. It is important to bear in mind that, except in a small number of cases where the issue had not previously been raised with the Post Office, this new investigation constituted a further detailed examination of all the available facts, including a review of the investigation which took place at the time of the original incident.

34. It is important to note that the purpose of Second Sight's engagement by the Post Office changed fundamentally following the establishment of the Scheme. Whereas Second Sight had previously been concerned with making inquiries of the Post Office about the workings of the Horizon system, their remit was now to:

- serve as a member of the Working Group and attend Working Group meetings as required, acting in accordance with any directions from the Working Group chair;
- advise, as requested by the Post Office or the Working Group, on the format, style and content of documents submitted by the Post Office and/or Applicants during the Scheme;
- investigate the specific complaints raised by each Applicant accepted into the Scheme with the aim of providing (to the Working Group):
  - an assessment of points of common ground between the Post Office and the Postmaster;
  - an assessment of points of disagreement between the Post Office and the Postmaster;
  - in the event of disagreement, a logical and fully evidenced opinion on the merits of that Postmaster's complaint where it is possible to do so;
  - a summary of any points on which it is not possible to offer a fully evidenced opinion due to a lack of evidence/information;
  - A preliminary view on whether a case might be suitable for mediation.
- Give any assessment or opinion without bias and based on the evidence available ;  
and
- Act with the skill and care of qualified and experienced accountants.

35. Consideration of Second Sight's final reports by the Working Group resulted, more frequently than not, in a recommendation that mediation should take place. Where that occurred, the case details were then passed to the Centre for Effective Dispute Resolution (CEDR), the independent organisation appointed to administer the mediations.

36. Since Mediation is a voluntary process, it is a matter for each party to decide whether they actually wish to proceed to mediation. This is consistent with the process set out in the original documentation, which established the Scheme and was agreed by the Working Group.

#### 4. Post Office Investigations, Principal Findings and Improvements to Date

37. The Post Office comprehensively investigated all complaints and applications made to the Scheme except those which were not eligible and those that were resolved prior to the completion of a full investigation. In all other instances, a full investigation report was completed, passed to Second Sight and sent to the Applicant. Although cases varied in their complexity, investigation reports totalled more than 2,000 pages in length and were supported by up to 80 pieces of evidence in each case.

38. Whilst these investigations took longer than it would have wanted, the Post Office is satisfied, and generally Second Sight and the JFSA agree, that they were comprehensive and thorough. Although some cases were very old and outside the standard retention periods for keeping information, the Post Office went to considerable lengths to search its records and provide as much evidence as possible. In total, thousands of pages of information were identified, recovered and made available both to Applicants and Second Sight.

39. The investigation team comprised 20 members of staff drawn from across the business with the requisite skills and expertise to undertake this type of work. They were managed by one of the Post Office's most experienced and long-serving senior managers, who personally signed off each investigation report before it was passed to Second Sight.

40. The cost to the Post Office of conducting the investigations and supporting the business of the Working Group stands at approximately £3 million. Full details of Scheme funding are available at Annex I.

41. Second Sight identified a number of 'thematic issues' arising from their assessment of the Applicants' complaints generally. Although a number of cases do have some features in common, Post Office's assessment is that each case is demonstrably different and influenced by its own particular facts and, as a result, the notion of 'thematic issues' was, and continues to be of limited practical utility.

42. Nonetheless, now that the Post Office has completed all its investigations into each complaint made under the Scheme, the findings of those investigations, together with opportunities for the Post Office to make improvements to various processes, procedures and ways of working have been cross referenced with the 'thematic issues' identified in Second Sight's report. These were:

- A. Transactions or transaction corrections not entered by the Postmaster or staff;
- B. Transaction anomalies associated with cash or stock remittances;
- C. Transaction anomalies associated with Pensions and Allowances;
- D. Transaction anomalies following telecommunication or power failures;

- E. Transaction anomalies associated with Automatic Teller Machines;
- F. Transaction anomalies associated with Lottery Terminal or Scratch Cards;
- G. Transaction anomalies associated with Motor Vehicle Licences;
- H. Transaction anomalies associated with Foreign Currency;
- I. Transaction anomalies associated with Bank / GIRO / Cheques;
- J. Transaction anomalies associated with the handling of Stamps, Postage Labels, Phone Cards or Premium Bonds;
- K. Hardware issues including printer problems, PIN pads, touch screens and PayStation;
- L. Failures to follow correct procedures or imperfect advice provided by POL's Helpline;
- M. Training and Support issues including Helpline and Audit;
- N. Limitations in the Transaction Audit Trail available to Postmasters;
- O. Process issues at the end of each Trading Period;
- P. The contract between the Post Office and Postmasters;
- Q. The lack of an outreach investigations function;

43. The Post Office's headline findings in respect of these thematic issues as a whole, following the detailed investigations it conducted, were that:

- Nine issues were, in fact, attributable to user error (A, B, D, E, F, G, H, I, and J);
- Two issues were, in fact, the product of fraud (C and O);
- Four issues were, in fact, the product of a lack of awareness on the part of the Postmaster and/or his staff of existing processes, leading to user error (K, L, N and Q);
- One issue could not be substantiated (P).

44. Chiefly through the Branch Support Programme (details of which are available at Annex K of this report), the Post Office has, with input from the NFSP, already introduced improvements to address, where it has been appropriate and possible to do so, some of the issues identified by Second Sight. The Post Office has also made other improvements it identified itself as a result of its detailed investigations, over and above those identified by Second Sight. These are set out below:

- Thematic issues relating to user error – to mitigate the risk of user error within branch the Post Office has, for six of the thematic issues, already introduced improvements. Further improvement opportunities have been identified in respect of a further seven.
- Thematic Issues relating to fraud – the two relevant issues are false accounting and Pension and Allowance reintroduction fraud. Improvements have already been introduced to raise further awareness of false accounting and to offer increased support to Postmasters at the earliest opportunity. The Post Office Card Account (POCA) has replaced Pension and Allowances processes in circa 2005.
- Thematic issues relating to a lack of awareness on the part of staff – in three of the four issues in this group, improvements have already been made to raise awareness with and improve the understanding of Postmasters. Further improvement opportunities have been identified for all issues raised.
- Thematic Issue which has not been substantiated – this relates to situations in which Postmasters have claimed they were not aware of the terms of the Postmaster contract they entered into and/or had never received a copy of that contract. Although there is no evidence to support this claim, steps to raise awareness of the terms of the contract still further have been implemented.

45. In addition, training and support was claimed by a number of Applicants to have been insufficient. The Post Office's investigations have found that its training practices (principally when a postmaster is first appointed) were adequate and did give postmasters the skills needed to operate their branches. However, in some cases, where certain postmasters were struggling, the Post Office has accepted that it might have delivered additional training sooner.

46. Annex J of this report provides further comprehensive detail about the issues identified and the results of investigations into the identified thematic issues.

## 5. Mediations

47. The Centre for Effective Dispute Resolution (CEDR) was engaged to provide mediation services for the Scheme. The arrangements put in place by CEDR, and agreed by the Working Group, are in line with CEDR's own Code of Conduct and the European Code of Conduct for Mediators which the Civil Mediation Council requires all UK providers to observe in order to maintain accreditation.

48. The reason independent, well established and reputable mediation experts were appointed to conduct the mediations was specifically to ensure that the mediations are undertaken in line with best practice. The process and procedure agreed by the Working Group for these mediations is included at Annex Q.

49. Consistent with its approach of supporting Applicants to the Scheme throughout the process, the Post Office further agreed to provide each with £1,250 + VAT (full day) or £750 + VAT (half day) towards costs of a professional advisor in preparing for and attending mediations. In addition, it provides Applicants and up to two representatives with reasonable expenses in respect of travelling to and from the mediation. Full details of Scheme Funding may be found at Annex I.

50. Every mediation is conducted by an experienced and entirely independent mediator appointed by CEDR, and Applicants typically attend mediation with their own professional advisor. When a case is passed to mediation, the Applicant and their advisor are contacted by CEDR to arrange a date for mediation and provided with information about the process.

51. In deciding who attends individual mediations on its behalf, the Post Office considers the particulars of the case and selects a team which it considers best able to contribute to a successful outcome. The team is drawn from a pool of senior Post Office staff with long experience working within the Post Office network and a pool of experienced lawyers who are familiar with mediation, the Scheme and case investigations.

52. As is standard mediation practice, parties sign a confidentiality agreement prior to a mediation session. Under those confidentiality arrangements, which are a key component of every mediation, no one other than the parties involved is entitled to know the outcome of individual mediations. This includes the Working Group. However, to enable the Working Group to monitor how mediations were proceeding, CEDR agreed to provide regular updates in a manner which preserved confidentiality.

53. It was accepted by the Working Group that the final decision on whether or not to mediate a case rested with the parties involved. Mediation is, by its nature, a voluntary process designed to help reach a resolution through compromise and, accordingly, the Working Group agreed that it could not compel either party to participate in mediation. At

the time of writing this report the Post Office has only declined to mediate 6 of the 46 cases where the Working Group recommended mediation. .

54. The Post Office has entered into mediations in some cases following a Working Group recommendation to do so even where on the face of it there appeared to be little prospect of either resolution or even just further progress in bringing clarity to a case (including where Second Sight concluded that the case was 'weak'). However, the Post Office took the view that it should adopt a general default position in favour of mediation, at least for the initial cases, and await feedback from CEDR. However, in all cases where Post Office has attended mediation it has done so in good faith, giving each Applicant the opportunity to voice their concerns and attempting to address those concerns.

55. CEDR provided its first report to the Working Group after 11 cases had been mediated. A copy of that report may be found at Annex S. The report notes that, while the number of cases which have been through mediation is currently small, a number of steps can already be identified which may increase the likelihood of cases being satisfactorily resolved. The Post Office considering how best to achieve this with CEDR.

## **6. Allegations of Improper Information Control**

56. Accusations have recently been made that the Post Office has been unwilling to provide information to assist in Second Sight's work or has otherwise been attempting to frustrate that work through the inappropriate control of information. Those accusations are incorrect.

57. The specific allegations concerned information in three broad areas, covered in the following paragraphs.

### **Legal files**

58. As Post Office made plain in its evidence to the Business, Innovation and Skills Committee on 3 February 2015, it has made the appropriate documentation from its prosecution files available to Second Sight. Post Office has not however provided the legally privileged material. This is standard practice for prosecutors, including the Crown Prosecution Service, and it is well understood that this information is not even shared with the Court. The Working Group endorsed this approach in October 2014 .

### **Emails**

59. In 2013, Second Sight asked for email accounts for a number of Post Office employees dating from 2008. This was in response to an issue raised by Second Sight as part of its initial investigation, prior to the publication of its report in July 2013. The allegation related to whether the Horizon test environment in the basement of Fujitsu's office in Bracknell could have been used to edit live branch data. The Post Office explained at the time that it may be difficult to provide such information in view of its age but did, in May 2013, provide the email data it was able to retrieve.

60. In order to address the allegation more comprehensively, the Post Office also provided Second Sight with a witness statement from a key member of staff who worked at Bracknell. This confirmed that the basement was a secure test environment, there was no connection to any live transaction data, live transaction data could not be accessed from the basement and the basement was never used to access, change or manipulate live transaction data in branches. In addition, the Post Office provided Second Sight with a considerable amount of policy documentation relating to the Bracknell office covering systems access, building access and security.

61. In light of this, the Post Office has asked Second Sight to clarify its request for further data with reference to the specific questions it is seeking to address beyond those that the Post Office has already answered. The Post Office does not consider it reasonable at this stage of the process to undertake a further transfer of bulk data without any clarity as to what it could add to the comprehensive answer the Post Office has already provided on this point.

### **Suspense Account Data**

62. In June 2014, Second Sight asked the Post Office to explain the operation of its suspense account. The Post Office replied to that request in a written paper in July 2014. Second Sight then made a request for further data on the accounting entries being posted to the suspense account. Given that the purpose of this request was unclear, Second Sight agreed to provide further clarity on the nature of the enquiry, which they did in October 2014. Following some residual uncertainty over the focus and purpose of the request, the Post Office sent a further written paper to Second Sight..

63. Second Sight was invited to meet with the Post Office's Chief Financial Officer to discuss the issue, so that the nature of the exercise could be understood and, at the meeting which took place in January 2015, it became apparent that the information being requested was to allow Second Sight to assess a theoretical risk to Postmasters in general, rather than address a specific complaint raised in the Scheme. It was therefore agreed that the Post Office would provide 'contextual data' giving a sense of the scale and complexity of the account and the information available. An initial set of data has now been provided and a further meeting has been arranged with Second Sight to agree the next steps.

64. Whilst the Post Office acknowledges it has taken longer to respond to Second Sight's requests than it would have wished, it has not withheld access to information about its suspense account.

## 7. Prosecutions Policy and Practice

65. All cases of potentially criminal conduct are thoroughly investigated and decisions about appropriate courses of action are taken on the basis of the available facts and evidence.

66. Post Office records show that in the financial years 2011-12 and 2012-13, for example, approximately 12% of all audits conducted led to the suspension of a Postmaster and approximately half of those Postmasters suspended saw their contracts terminated. Approximately 2.5% of the audits during this period led to criminal prosecutions.

67. The decision to prosecute a Postmaster or employee, in the small number of instances where this occurs, is always taken following numerous checks and balances. The Post Office is confident that its approach complies with all legal requirements.

68. When the Post Office decides to prosecute a case, its conduct of the prosecution is scrutinised by defence lawyers and ultimately by the Courts themselves. Possible miscarriages of justice in the criminal courts of England, Wales and Northern Ireland can also be reviewed by the Criminal Cases Review Commission, which refers appropriate cases to the appeal courts.

69. In deciding whether a case is suitable for prosecution, the Post Office considers (among other factors) whether it meets the tests set out in the Code for Crown Prosecutors. The Code requires prosecutors to be satisfied that there is sufficient evidence for a realistic prospect of conviction and that the prosecution is in the public interest. The Code is issued by the Director of Public Prosecutions and followed by Crown Prosecutors. The Post Office is not required to inform the Crown Prosecution Service (CPS) that a private prosecution has commenced but the CPS can take over a private prosecution if circumstances warrant. Like the CPS, the Post Office keeps cases under continuous review all the way up to and during any trial.

70. Once a decision has been made to prosecute and a defendant is charged, he/she is entitled to receive private and confidential legal advice. As with all criminal prosecutions, the Post Office has a duty to disclose the evidence in the case to the defendant and his/her lawyers, including all evidence that would assist the defence or undermine the prosecution.

71. The Post Office is duty bound to communicate with a defendant's lawyers, and any decision by a defendant to plead guilty is made after he or she has had the opportunity to take private and confidential legal advice and consider, with lawyers, all the available evidence. The evidential requirements for proving the offences of theft or false accounting are a matter of law.

- The suggestion that the offence of false accounting is a less serious offence to that of theft has appeared in a number of contexts, most commonly where it is alleged that an Applicant has pleaded guilty to the former offence so as to avoid “the more serious” charge of theft, or has pleaded guilty to “the lesser offence” of false accounting. In fact, both offences are equal in law, both are offences of dishonesty and both carry the same maximum sentence (7 years imprisonment). Post Office does not advise a defendant on their response to a criminal charge. Every person charged with a criminal offence is entitled to representation by independent solicitors (and in the Crown Court, a barrister). Further, Legal Aid is available to any defendant where the offence carries a risk of imprisonment (as do the charges levelled by the Post Office);
- The decision to plead guilty is always one for the defendant only, having taken advice from their own lawyers;
- When deciding to plead guilty, the defendant will have been advised by his or her own lawyer that a guilty plea represents a complete admission to having committed the offence and, where the offence is one of dishonesty (theft, false accounting, fraud), to that dishonest act. This is advice a defence lawyer must give;
- Where an audit discloses a loss in circumstances where there is evidence of false accounting, the fact of the loss together with the false entries is sufficient evidence upon which to base a charge of theft. Simply put, the fact that money is missing and the defendant has adjusted the figures is sufficient evidence (in accordance with the Code for Crown Prosecutors) to form the basis of a theft charge;
- The Post Office has always been prepared to accept a guilty plea to false accounting where theft is charged, not least because it has a duty to protect public (and its own) funds. Given that both charges are equal in the eyes of the law, the added expense of going to trial where a guilty plea to an offence of dishonesty is offered would often (but not always) jeopardise that duty;
- In any event, the initial suggestion that a defendant pleads guilty will come from the defendant’s lawyers, usually motivated by the defendant’s instructions that they are guilty of that offence;
- Finally, it is the duty of the defence lawyers to identify to the court where there is insufficient evidence to sustain a charge. If the court agrees, then the Judge must dismiss that charge. Thus a charge upon which there is no evidence will inevitably fail.

72. Any suggestion that the CPS would have acted differently from the Post Office as a prosecutor, perhaps by not prosecuting at all, or by accepting a different outcome, is misplaced:

- Both the Post Office and the CPS are bound by the Code for Crown Prosecutors; the courts oversee both and both must act in accordance with the principles of fairness;
- The Post Office is not unique in prosecuting its own cases. Many organisations conduct prosecutions within their own sphere of interest, including for example the Driver and Vehicle Standards Agency, Transport for London, the Environmental Agency, and many local authorities;
- The Post Office prosecutors are all experienced criminal lawyers, many of whom have wide experience of prosecuting both for the Post Office and the CPS. These lawyers advise the Post Office in full, including by reference to the Code for Crown Prosecutors and its application in the courts, before a prosecution is commenced and continued. The CPS does not have any role in this process;
- Neither does the CPS ‘review’, ‘oversee’ or otherwise regulate non-CPS prosecutions — that function is reserved for the Courts.

73. As a prosecutor, Post Office is under a positive duty immediately to disclose any information that might undermine its prosecution case or support the case of the defendant. That duty continues after the prosecution has concluded, and Post Office has taken the steps it has in the Scheme with it firmly in mind.

74. This has included ensuring that specialist external criminal law solicitors have seen each Application, Case Questionnaire Report, Post Office Investigation Report, Second Sight Case Review Report, and Post Office response to the Case Review Reports, as well as Second Sight’s “Part Two” report and Post Office’s responses to that report, so that they can consider whether any disclosure issues arise in prosecutions both inside and outside the Scheme.

## 8. The Contract between Postmasters and the Post Office

75. The Scheme was established to consider complaints about Horizon and associated issues, not wider matters about the Post Office's business model, including contracts. Matters of contract are legal issues are, in any event, outside of the expertise and qualifications of Second Sight as forensic accountants.

76. However, Post Office has responded to various points made by Second Sight so that Applicants are not misled by an opinion or conclusion which is beyond Second Sight's expertise. This Section provides a summary of the information Post Office has provided to Second Sight and others in response to questions about the postmaster's Contract ('the Contract').

77. Postmasters are not employees of the Post Office. They are independent business people who make a conscious choice to enter into a contract with the Post Office. The Contract is a contract for services, which sets out the basis on which the parties agree to do business. Its core principles and risk sharing are consistent with arrangements used throughout the UK and the well established law of agency. It reflects a standard for all franchise agreements in use in the United Kingdom.

78. The current version of the Contract dates back to 1994 and has been subject to a number of amendments since then. Post Office discusses variations to the Contract with the National Federation of Subpostmasters (NFSP) on behalf of Postmasters. In a network of several thousand Postmasters, it is sensible for the Contract to be negotiated collectively on behalf of Postmasters.

79. The basis on which a postmaster is bound to the Contract, e.g. by signing it or an "Acknowledgment of Appointment" letter, is determined by the particular circumstances of each individual case. Either method is legally binding. It is worth noting that in the "Acknowledgment of Appointment" letter which is frequently used to record a postmaster's appointment, the postmaster states that he or she has been given and accepted the terms of the Contract.

80. Under the terms of the Contract, Postmasters are only responsible for losses caused through their "own negligence, carelessness or error" or for losses caused by their assistants. Thus, Postmasters are only liable for losses arising from those operations that are under their control and responsibility. Postmasters employ their assistants directly and are responsible for organising their staff and implementing controls to prevent opportunities for losses to occur. They are therefore responsible for the actions of their employees, even if those employees act dishonestly.

81. Postmasters' assistants are employees of the Postmaster and not the Post Office. The Postmaster is accordingly responsible for the management and performance of their staff including any disciplinary action which the postmaster may consider appropriate.

Postmasters must also assure themselves that any assistants they employ are suitable for the role e.g. by conducting interviews and seeking references, and that they are appropriately trained

82. Postmasters should undertake a number of basic checks when they recruit a new member of staff (e.g. right to work in the UK, proof of identity, and proof of address along with five-year work history). In addition, the assistant must be registered with the Post Office so that security checks can be undertaken (e.g. criminal record check). There is an annual check of all assistants to ensure they have been cleared through the pre-employment checking system.

83. Under their Contract for services with the Post Office, every Postmaster must establish, maintain and adhere to a formal disciplinary policy in respect of any assistants who fail to comply with the Postmaster obligations as detailed in the contract. The disciplinary policy must include the content as defined in the Contract and records must be retained.

## **9. Conclusions**

84.Placeholder

## **10. Appendices and Further Reading**

85.Placeholder