

## Post Office Mediation Scheme

DRAFT

Second Sight - Case Review Report

Case Reference: M103

Applicant: Timothy John BURGESS

Advisor: Bill Cleghorn (Aver)

8 February 2015

This draft report and accompanying documents are confidential and are not to be disclosed to any person other than a person involved in the processing of the Applicant's claims through the Scheme.

## 1. Introduction

- 1.1. This report has been prepared by Second Sight, which is the trading name of Second Sight Support Services Limited, the company appointed to conduct an independent investigation of a number of matters raised by Subpostmasters, or former Subpostmasters.
- 1.2. This report should be read in conjunction with the following:
  - a) the documents submitted by the Applicant and his Professional Advisor;
  - b) Post Office's Investigation Report ('POIR') including attachments;
  - c) Second Sight's Briefing Report - Part One; and
  - d) Second Sight's Briefing Report - Part Two.
- 1.3. The Terms of Reference for Second Sight as set by the Mediation Working Group for this work are as follows:
  - a) To investigate the specific complaints raised by each Subpostmaster who has been accepted into the Scheme with the aim of providing:
    - i. an assessment of points of common ground between Post Office and that Subpostmaster;
    - ii. an assessment of points of disagreement between Post Office and that Subpostmaster;
    - iii. where there is disagreement, a logical and fully evidenced opinion on the merits of that Subpostmaster's complaint where it is possible to do so;
    - iv. a summary of any points on which it is not possible to offer a fully evidenced opinion due to a lack of evidence/information;
    - v. a view on whether a case is suitable for mediation; and
    - vi. assisting with any reasonable requests made by the Working Group and/or Post Office.
- 1.4. Second Sight has been provided with the following documents:
  - a) the Initial Application to the mediation scheme submitted by the Applicant;
  - b) the Case Questionnaire Response ('CQR') submitted by the Applicant's Professional Advisor; and
  - c) Post Office's Investigation Report ('POIR'), prepared in response to the above mentioned documents.

1.5. The following are the issues raised by the Applicant:

- a) responsibility for direct losses that total £7,525.65;
- b) anomalies associated with:
  - I. Transactions seemingly not entered by the Subpostmaster or his staff
  - II. Power failures
  - III. Motor Vehicle Licences (MVLs)
  - IV. Bank/GIROs/Cheques, including Automated Payment ('AP') transactions
- c) adequacy of training and support, including Helpline and Audit;
- d) limitations in the Audit Trail available to Subpostmasters;
- e) process issues at the end of each Trading Period;
- f) abuse of Criminal Prosecutions processes; and
- g) other consequential losses, not dealt with in this report, but which may be raised if the case progresses to mediation.

1.6. This report focuses on the net loss of £7,525.65. Other issues, not all of which are dealt with in detail in this report because we could not find a causative link to the financial loss, may however be relevant to the mediation process.

1.7. The Applicant was in post as Subpostmaster of the Catterick Village branch between July 2006 and his suspension in June 2010. A cash count, carried out as part of the branch's migration to Horizon Online, discovered a shortfall of £7,525.65 which was confirmed by an Audit on 2 July 2010. The Applicant's contract was terminated on 1 September 2010.

## **2. Points of common ground between the Applicant and Post Office**

2.1. It is common ground that the shortfall was made good in full. It is also common ground that the Applicant, having originally been summonsed for theft, pleaded guilty to False Accounting in September 2011. He was sentenced to a 12 months' Community Order, and required to carry out 150 hours of unpaid work.

## **3. Points of disagreement between Post Office and the Subpostmaster**

3.1. In his CQR, the Applicant says that, in his opinion, "*the Horizon system contains errors, which create anomalies causing differences in the cash reconciliations and Trading Period closures*". He says that his attempts to trace the cause of the differences were unsuccessful, and that he does not know what caused them. The Applicant says that he experienced difficulty in balancing from the end of his first Trading Period, but that he was not too concerned as it

*"fluctuated between losses and gains"*. He says that it was only after he experienced the first major difference, in November 2008, that matters *"seemed to become worse and the difference was increasing"*.

- 3.2. The Applicant says that there were a number of upgrades to the Horizon system, both in terms of hardware and software, and questions *"whether these upgrades may have been responsible for the differences which arose"*. He considers that those upgrades, which were carried out remotely, required the system to be shut down and rebooted, and says he is *"unaware if some of the differences may have arisen when these upgrades were taking place, and the counter terminals shut down"*.
- 3.3. The Applicant says that he had *"four or five power cuts"* during his tenure, and that he was concerned that after such an occurrence, data may have been compromised. He says that after a power failure, it was *"necessary to log on to Horizon in the way which was required at the commencement of each trading day"*.
- 3.4. In his CQR the Applicant refers to an incident when a customer settled her monthly rent of £300 by Debit card. He says that he *"put the transaction through in the normal way, but when he carried out the balance at the end of the day, he had a shortage of £300"*. He says that the customer returned when she found that the charge had not been taken from her account, and that *"it was thought that the customer had not entered her pin code either at all or correctly"*. The customer gave the Applicant £300 cash, and he was then able to eliminate the difference.
- 3.5. The Applicant also says that he suffered a loss through four fraudulent cheques of £250 each that had been cashed over a period of four weeks. In his CQR the Applicant says that he was *"certain that he had been presented with genuine bank cards, but this was not the case"*. He says that he subsequently received four Transaction Corrections (TCs) and had to repay £1,000 from his salary. He says that he received *"no follow up or assistance with training in how to recognise a fraudulent bank card"*.
- 3.6. The Applicant says that his training was inadequate, and that it *"concentrated more on selling the Post Office's products rather than being relevant to the branch in which he was to be operating"*. He also says that when he had problems balancing, which necessitated calling the Helpline, there were *"numerous times when they could not assist in resolving his problem"*. He says that, if more frequent audits had been carried out at the branch, it would, in his view, *"have been possible that assistance might have been provided, and the events following the July 2010 Audit would not have taken place"*. In terms of support afforded to him by Post Office, the Applicant says that on *"rare occasions"* he would receive a visit from his Area Manager, but that the Manager was *"more interested in sales of the Post Office products and not in the running of the branch or any issue which [the Applicant] was encountering"*.
- 3.7. The Applicant says that he experienced his *"first large difference"* in around November 2008, which he thought may have been related to motor vehicle licences. However, he says that there was an insufficient audit trail to allow him to carry out an effective investigation.

- 3.8. The Applicant says that none of the reported issues were ever resolved, and that, after a short period of time, he was dismissed and prosecuted *"even though he had paid back almost all of the losses"*. He says that *"in fact the Judge at Crown Court said the case shouldn't have been brought before him and could have been resolved in the Magistrates Court"*.
- 3.9. Post Office says that there is no evidence to support the Applicant's allegations that Horizon was the cause of the branch's shortfall. It concludes that the most likely cause of the loss was human error within the branch.

**4. Where there is disagreement, a logical and fully evidenced opinion on the merits of that Subpostmaster's complaint where it is possible to do so**

- 4.1. Post Office says that the Applicant's initial training included sessions on cheque and debit card acceptance as well as Financial Services Act (FSA) compliance, and adds that it does not hold Subpostmasters liable for fraud *"where the correct procedure has been followed"*. In its POIR, Post Office says that, in accepting the four cheques for £250, the Applicant did not follow the correct procedure and therefore was liable to make good the loss caused by the fraud. It adds that the Applicant admitted, during the post-Audit investigative interview under caution, that he had not completed a full check of what he had taken to be a cheque guarantee card in support of each of those cheques, and that he accepted that it was his own fault. It says that, as a result, the Applicant was liable for the loss.
- 4.2. Post Office has responded to the Applicant's reference to having suffered a £300 shortfall, after a customer had paid her monthly rent by debit card, by saying that the most likely explanation is that the Applicant settled the transaction to cash instead of recording the Method of Payment (MOP) as having been a debit card payment. It also says that this version of events is supported by the Applicant's later interview with the Investigating Officer, when he stated that the customer went to pay on her debit card but he had settled the transaction to cash.
- 4.3. We consider that both of the matters raised by the Applicant in relation to the cheques and debit card payments are answered by the POIR, and in fact had already been adequately explained by the Applicant himself in his interview under caution. In relation to the debit card payment, the customer returned to the branch to query the transaction, which had been caused by the Applicant's error, and consequently no loss was ultimately suffered by the branch. Post Office says that the error would have meant that no prompt was given by Horizon for the customer to insert her debit card into the PINpad, and (if the Applicant really had settled the transaction to cash) then the double accounting system, that Horizon employs, would have been satisfied. It says that the initial payment would have been processed (i.e. the customer's rent would have been paid over to her landlord), and Horizon would have accepted that it had been settled to cash even though it had not been.
- 4.4. We consider this to be an example of a situation where a customer may gain from a Subpostmaster's error, if it is not identified by the Subpostmaster himself, or queried subsequently by an honest customer. Indeed, in his interview the Applicant said *"...so I don't know how many times that happened and how many times that happened with people not*

*coming back in and saying that you know there's been an error...".* Had the customer not returned, the Applicant would have had to make good the loss caused by his error.

- 4.5. On balance, we consider that neither the Applicant's acceptance of the four fraudulent cheques, nor his error in settling the Debit card payment to cash were caused by what could be fairly described as "*Horizon system faults*". However, in its POIR, Post Office accepts that settling a transaction to cash, instead of selecting 'Debit Card' as the MOP, is "*a common error*". Having been so identified, we consider that this error should have been addressed by a process change to reduce its frequency of occurrence, and, until the system's error repellency was improved, Post Office could have shown more sympathy towards the Applicant.
- 4.6. In relation to the Applicant's complaint within his CQR that, following his acceptance of the fraudulent cheques he had received, there had been "*no follow up or assistance with training in how to recognise a fraudulent bank card*", we consider that statement to be at odds with the explanation he gave during his interview under caution. In his interview he explained: "*It started not long after I moved in. I got 4 cheques cashed by some Lithuanian lads, £250 each, my own fault I should have checked it, didn't, I think they must have caught me at a busy period whatever, each one was for £250 they obviously bounced it wasn't a cheque guarantee card that they were using, I didn't do a full check and it just went on from there really*". In light of the Applicant's acceptance that he had not carried out sufficient fraud prevention controls at the time, we consider that he must bear the full responsibility for the loss that ensued, as indeed he did.
- 4.7. In answer to the Applicant's complaints regarding his training, Post Office says it does not accept that his initial training was overly sales-focussed, or that it was inadequate. It says that its training records show that, following 10 days' classroom training, and six days' on-site support, it was not suggested that any further training was required on balancing, processing of cheques, or in respect of debit card payments. Post Office adds that "*there is only one instance where further training was requested. This would suggest that the Applicant felt he was competent with the Horizon processes*".
- 4.8. Post Office's records show that, on 1 August 2006, the Applicant telephoned the National Business Support Centre (NBSC) Helpline, to request "*further trainer attendance to assist with balancing*". Post Office says that this request was forwarded to the relevant section, but it does not say whether the request was actioned, and whether further training was in fact provided. Further, Post Office's records show that on 19 July 2006, a trainer had attended the branch to assist with a follow-up balance. However, there is no report confirming that this visit took place nor whether any necessary actions steps were identified by it, nor was there any evidence to suggest whether the Applicant carried out the balancing competently, although we note that the date of 19 July 2006 would not be at the end of a Trading Period, so presumably no practical End of Trading Period balancing could have taken place on that day. If it did not, that may explain why the Applicant felt it necessary to telephone the Helpline, twelve days later on 1 August, to request further training in balancing. We have seen no specific references, in any of the documents supplied to us, confirming that the Applicant received any training in End of Trading Period balancing.

- 4.9. The records provided by Post Office show that, during his first six months in post, the Applicant made 172 calls to the Helpline. Post Office says that 51 of those calls related to balancing and other operational issues, and that the *“vast majority of these calls required assistance to rectify errors made in branch, particularly with regard to cheque acceptance and processing”*. It adds that advice was generally provided by the NBSC with reference to the Knowledge Base (KB), and that there is *“nothing within these call logs to suggest that the query raised by [the] branch was not resolved, nor that they were not satisfied with the advice and service they received”*.
- 4.10. We have reviewed the record of calls made by the Applicant to the NBSC, and note that the resolution to the majority of calls is recorded as ‘KB’. Accordingly, there is insufficient detail given to allow us to assess whether the advice given was appropriate, or whether the Applicant or his staff were satisfied with the advice and the service that they had received. Post Office says that there is nothing within the call logs to suggest that the queries raised by the branch were not resolved, nor that they were not satisfied with the advice and service they received. Equally, we would suggest that there is nothing to suggest that they were. We also note that Post Office has referred to holding *“transcripts”* of all Helpline calls whereas no transcripts of the complete dialogue are actually prepared, merely such notes as the Helpline operator sees fit to key in during the course of the call.
- 4.11. In relation to the Applicant’s complaints of a lack of on-going support, Post Office says there are no records of any visits having been made to the branch by Post Office personnel by either a Retail Line Manager (RLM) or Business Development Manager (BDM). However, Post Office says that such visits would not necessarily be documented, and that it is not therefore possible to verify the Applicant's claim that he received no business contact during long periods of his tenure.
- 4.12. In that the Applicant’s branch was a relatively small and uncomplicated one, we consider that his training should have been adequate. However, it is a commonly made complaint that Post Office’s initial training was overly sales-focussed, and did not prepare Subpostmasters for the reality of balancing a branch. Against this must be tempered the Applicant’s comments, made in his interview under caution, where he acknowledges that he was trying to run two businesses, a **GRO** and the Post Office branch, and that *“a lot of errors and mismanagement”* occurred as a result. He said that he was also at fault *“probably for not training my assistants up better in the first place or spending more time with them”*. He also accepted that he had *“kept shuffling money about just to try and not raise any suspicion”*. Whilst we have not been provided with a full transcript of the interview, the summary also suggests that the Applicant said he had not contacted the Helpline for assistance, due to *“embarrassment at what he had done”*.
- 4.13. In our view, this is not a case where the Subpostmaster’s *initial* training was inadequate although it does not seem to have been very effective in regard to handling incoming cheques, card payments and End of Trading Period balancing processes. We have, however, concluded that Post Office’s practice of relying on its Subpostmasters to themselves recognise that they, or their staff, have been making mistakes, and that they therefore need to call for additional

training, is seriously flawed. It seems to us that, where errors are being systematically repeated, then the individuals who are making those errors will not be aware of that (or they would stop making those mistakes) so they are unlikely to realise that they need further training.

- 4.14. We have also concluded that thorough investigation, sufficient to identify the underlying root causes of branch shortfalls, would also identify the need for additional training and guidance. We have not seen, in this case, any evidence that adequate investigative work was carried out to identify either the true cause of the branch's shortfall or the need for additional training.
- 4.15. The Applicant also suggested in his CQR that, had he been audited at an earlier stage, the events leading to his prosecution may not have subsequently occurred. Whilst this may be true, the Applicant had a contract to supply services to Post Office, which he accepts he had read, and as such we consider that the onus was not on Post Office to 'discover' the Applicant's mismanagement of the branch, nor to discover that earlier than it did.
- 4.16. In relation to the Applicant's ability to access the Audit trail in order to identify the cause of discrepancies, Post Office disputes assertions that Horizon does not provide sufficient information to identify and correct "*in branch errors*" that may have occurred. It says that prior to the implementation of Horizon Online, branches could review transactional and event data in branch for a period of 42 days. It adds however, that the historical Horizon data would only reflect the values and volumes keyed into it, and that if the error was a manual mis-key, it would not be apparent unless the user remembered the correct transaction value when they were reviewing the data or unless a customer drew attention to the mistake (as in paragraphs 4.3. and 4.4. above).
- 4.17. We have reviewed the record of TCs issued to the branch and note that, whilst the Applicant was able to review data in-branch for up to 42 days, some TCs were being issued anywhere up to 10 months after the date of the original error. This meant that the branch staff would then need to find underlying documents, that should generally be held in the branch for two years, in the hope that these would provide enough detail to help them challenge any TC that they did not understand. Also, in some instances, a Subpostmaster could challenge a TC, but would be reliant on Post Office to provide the data that he or she needed to do so. On balance therefore, the Applicant would appear to be correct in his assertion that, in relation to at least some of the errors - in particular those for which TCs were issued many months after the transaction that was being corrected - the normally-available transactional data provided an inadequate audit trail. We have been told that, if data was requested from Post Office outside of that 42 day period, such requests were often rejected on the grounds of cost.
- 4.18. Late-delivered, high-value, TCs pose serious difficulties for branches. If the incoming TC is a Debit (i.e. a TC Invoice), that means that the branch ought to have been maintaining a surplus from the time that the error occurred until the time that the TC is accepted. In that Subpostmasters are contractually entitled to withdraw and retain surpluses, this can mean that they might do that, only later to find that they should not have done so. More seriously, if the

branch has not shown an overall surplus, that is likely to be because there exists an offsetting shortfall that has been masked by an, at that time undetected, error. If the incoming TC is a Credit, that means that the branch ought to have been carrying a shortfall from the time that the error (that the TC is intended to correct) occurred until the time that the TC is accepted. This means that the Subpostmaster will have had to 'fund' that shortfall during the intervening period. In instances where Subpostmasters have been unable to make good such transient (though sometimes very lengthy and large) shortfalls, it is possible that there could be a temptation to falsify the branch's accounts.

- 4.19. In relation to his prosecution and subsequent conviction, the POIR says that the Applicant *"was initially charged with theft but this was subsequently withdrawn"*. The Applicant was summonsed to appear at Northallerton Magistrates Court on 11 April 2011, to answer an allegation that, between the first day of January 2008 and the first day of July 2010, he stole a sum of money belonging to Post Office Limited. The Disclosure as to how Post Office made out its case in relation to this theft had been provided to the Applicant by his solicitors in a letter dated 22 March 2011. At a subsequent hearing, (whilst theft was still the only 'live' matter), the Magistrates declined jurisdiction (meaning that the case was to be heard in the Crown Court). The letter to the Applicant from his solicitors notes that they (the Magistrates) did so as they had come to the conclusion that, if he were to be convicted, *"their maximum sentencing powers available of 6 months imprisonment would not be sufficient punishment for the offence"*. The letter continues: *"From speaking to the representative for the Post Office who was prosecuting, the Prosecution's case is quite simply that you have taken the said money from the Post office and then altered the accounts to cover your tracks"*.
- 4.20. When the Applicant appeared at Teesside Crown Court, on 12 August 2011, Post Office confirmed, in answer to a request from the Applicant's solicitors, that a plea to false accounting was acceptable to the Crown, which it was representing, and that the Crown would not proceed on the charge of theft. Accordingly, the Applicant pleaded not guilty to theft and guilty to false accounting, and no evidence was offered by the prosecution in relation to the theft charge. We consider therefore that it is not correct to say that the theft matter was *"withdrawn"*.
- 4.21. In his interview under caution, the Applicant denied having stolen any monies from Post Office, but made a full admission to having committed the offence of false accounting. In his CQR, the Applicant attaches Post Office's 'Summary of facts' provided as Disclosure to his solicitors (see Applicant's submitted evidence at M103\_CQR\_Final\_tab\_5). The Disclosure asserts that *"This case concerns the theft of monies facilitated by falsifying Post Office accounts"*. There is however, in our opinion, nothing within this Disclosure which points to the existence of any evidence, in the possession of Post Office at that time, which would suggest that the Applicant was guilty of theft, and we have seen no evidence, provided by Post Office subsequently, which would suggest otherwise. We are drawn to the conclusion that this was possibly an abuse of Post Office's authority to represent the Crown in carrying out this prosecution. Had the matter been reviewed at an earlier stage, for example by the Crown Prosecution Service (which, in the cases that we have examined in connection with the mediation scheme, we have never seen to have been involved in any of the prosecutions initiated by Post Office) and the Evidential Test consequently applied, we consider it probable

that the charge of theft would have then been discontinued before the case came to the Magistrates Court and, as a result, that Court may well have accepted jurisdiction and the case would never have reached the Crown Court. This was a point that the sentencing Judge noted.

4.22. We have seen a number of cases where Applicants have, like this one, been charged with theft and false accounting, when no evidence was subsequently offered in relation to theft when a plea of guilty was made to false accounting. This practice seems to have been frequently employed by Post Office to encourage defendants, in the absence of evidence of theft, to plead guilty to the 'lesser' charge of false accounting, in the hope of avoiding a custodial sentence.

**5. A summary of any points on which it is not possible to offer a fully evidenced opinion due to a lack of evidence/information**

5.1. In relation to Horizon upgrades, and the Applicant's suggestion that differences may have arisen whilst the upgrades were taking place, Post Office says that software upgrades are undertaken remotely, with the required information sent electronically to the branch, and that, after such upgrades, each terminal would automatically shut down and re-boot. Post Office does not accept that the process of deploying system upgrades could have caused any of the discrepancies that occurred in this branch. In the absence of any evidential material that supports the Applicant's assertion, we are unable to offer an evidenced opinion on this point.

5.2. Post Office adds that Fujitsu can, at the request of Post Office, access (but not amend) the transaction records sent by branches when they are stored on the 'audit server'. We refer to this matter, which is still under investigation in our Briefing Report Part Two.

5.3. In answer to the Applicant's complaint that branch data might have been lost, or compromised, as the result of power failures, Post Office says that there are comprehensive instructions in the Horizon Operations Manual detailing the action that needs to be taken in the event of Horizon failing as a result of a power failures or other issues, and that, provided the Applicant followed the correct recovery procedures, the branch would not have suffered a loss. It adds that, if the procedures were not followed and a loss occurred as a result, this would be due to an in-branch error and the Applicant would be liable for the loss.

5.4. Contrary to Post Office's assertion that there is "*no evidence in the NBSC call log that the branch either suffered Horizon failure due to power outages or that the Applicant sought advice on the recovery procedure*", we note that on 8 April 2008 the branch made two calls to the Helpline regarding a power cut. The first informed the Helpline that the power had been cut by the Electricity Board. The second call was noted as "*Horizon system problems*", and referred to an "*AP recovery message*" regarding a cash withdrawal where the money was "*given to customer*". The 'AP' referred to here is Post Office's 'Automated Payment' process. The resolution was recorded simply as 'KB'. Due to the lack of detail as to how the matter really was resolved, we are unable to ascertain whether or not the branch suffered a loss. The Applicant does not provide any further evidence in support of his assertion that a loss of power may have been the cause of discrepancies, so we are unable to usefully comment further.

- 5.5. In relation to MVLs, the Applicant suggests, in his CQR, that the difference he experienced in November 2008, *“may be something to do with Car Tax, as there had been a considerable number of transactions of this nature in the period prior to balancing”*. We note, from the POIR, that the Applicant had previously made errors in relation to MVLs which had subsequently been corrected by TCs, so it is possible that he had been making similar errors in November 2008. However, had he done so, it is reasonable to assume that TCs would later have been issued to correct those errors, but it does not appear that they were. In the absence of any supporting evidence provided by the Applicant on this issue, we are once again unable to reach a fully evidenced conclusion on this aspect of the Applicant’s complaint.
- 5.6. In the absence of evidence of any other specific transactions that may have generated this branch's losses, and that would allow us to reach a firm opinion as to the real underlying root cause(s) of the losses in this branch, we can only refer here to the possibility that errors in balancing, and operational errors made at the counter, such as those outlined in our Briefing Report - Part Two, could have generated some of this branch's shortfalls. To the extent that such operational errors were to blame for the branch's shortfalls, it is likely that customers benefitted from them, just as, in the example described in paragraphs 4.3. and 4.4. above, the customer would have had she not been honest enough to return to the branch.

## **6. Is this case suitable for mediation?**

- 6.1. In our opinion this case is a weak candidate for mediation, primarily due to the Applicant’s admission of having falsified the branch's books. There are however, other matters that may benefit from mediation, such as whether inadequate training, or inadequate system error repellency, played any part in the errors made by the Applicant and his staff. Also, the conduct of the prosecution leading to his conviction, and the consequences that ensued from that, should be tabled for discussion. Overall, we consider that this case is suitable for mediation and that the following issue should also be considered:
- a) whether Post Office should bear any responsibility for the errors that appear to have generated this branch's shortfall, made good by the Applicant, of £7,525.65.