

Post Office Mediation Scheme

DRAFT

Second Sight - Case Review Report

Case Reference: M021

Applicant: Sunil Khanna

Advisor: Dipti Hirani, Howe and Co.

15 August 2014

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;
 - b) Post Office's Investigation Report ('POIR') including attachments.
 - c) Second Sight's Part 1 Briefing Report; and
 - d) Second Sight's Part 2 Briefing Report.
- 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:
 - b) an assessment of points of common ground between Post Office and that Subpostmaster;
 - c) an assessment of points of disagreement between Post Office and that Subpostmaster;
 - d) 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;
 - e) a summary of any points on which it is not possible to offer a fully evidenced opinion due to a lack of evidence/information;
 - f) a view on whether a case is suitable for mediation; and
 - g) 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 Adviser; 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 losses amounting to £46,049.16;
- b) transaction anomalies associated with telecommunications or power failures;
- c) training and support issues including helpline and audit;
- d) the contract between Post Office and Subpostmaster; and
- e) the lack of an outreach investigation function.

1.6. Given that the main issue here is financial loss, this report focuses primarily on the direct losses of £49,049.16. The other issues listed above may not be directly linked to responsibility for the financial loss, but have relevance to an overall consideration of the case.

1.7. The Applicant took up his post as Subpostmaster at the Jesmond Branch, Newcastle Upon Tyne on the 25th April 1996, and remains so to date. He was also responsible for running a GRO to which the Branch was attached and employed a Manager to run the Branch. The Applicant did not serve behind the Branch counter and carried out no Horizon transactions. He did not have a Horizon password.

1.8. The Applicant and Manager were both suspended on the 18th September 2008, following an audit where a discrepancy of £49,049.16 was identified.

1.9. Following an interview on the 9th October 2008, the Applicant was reinstated on the 19th November 2008. He agreed to make good the loss by repaying monthly amounts over a period of three years.

1.10. Criminal proceedings were instigated against the Manager, who pleaded guilty to and was convicted of False Accounting.

1.11. The issues raised by the Applicant occurred in September 2008. He was unaware of problems prior to the audit taking place. Whilst the Applicant had no first-hand knowledge of some of the issues complained of, he relied upon reports of problems raised during conversations with his Manager.

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

2.1. It is common ground that, on the 18th September 2008, an Audit of the Branch took place.

2.2. The Audit established that a cash declaration of £39,632.16 was made by the Branch Manager on 17 August 2008, the day before the Audit was carried out. The Audit itself revealed a cash shortfall of £46,049.16, whereupon both the Applicant and the Manager were suspended.

3. Points of disagreement between Post Office and the Subpostmaster

3.1. The Applicant disputes responsibility for the loss, and maintains that faults with the Horizon system, in particular a slow connection between the Horizon branch terminals and the Post Office data centres, may have been responsible for or contributed to the loss.

3.2. Post Office does not accept that the issues raised by the Applicant either caused or contributed to the loss. Post Office maintains that under the terms of his contract, the Applicant was ultimately responsible for the day-to-day running of the Branch and that tighter controls and checks at an earlier stage would have prevented the losses occurring. Post Office's position is that due to the terms of his contract, the Applicant was responsible for the losses.

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. On the 22nd September 2008 the Applicant and his brother interviewed the Manager and questioned him regarding the shortfall. The Applicant stated that the Manager said he had falsified the accounts by recording a zero balance over a 9-10 month period. He had not alerted the Applicant or Post Office to any problems, believing that an Error Notice would eventually come through.

Transaction anomalies associated with telecoms and power failures.

4.2. The Applicant reports anecdotally via conversations with his Manager that the system crashed on a regular basis, was slow, and would crash midway through a transaction. He was told that when the system restored there was no confirmation as to whether the transaction had gone through.

4.3. During the Applicant's interview with his Manager, the manager reported that 'for two or three days off and on, the system would sometimes crash during a transaction', resulting in a balance shortfall in the region of £3,000 at the end of that week. No specific instances of failed transactions were given.

4.4. The Applicant reports that the Helpline advised that problems with system failures may have been due to internal problems with a phone and fax line. Both Horizon and BT engineers attended in December 2007 but could not identify a cause. The Applicant installed a dedicated line for the fax machine, but it did not solve the problems.

- 4.5. Post Office accepted that whilst there were telephone line issues impacting on customer service, a BT telephone line was a root cause of many of the equipment difficulties encountered, and that this was eventually rectified.
- 4.6. The Helpline call log for the Branch during 2008 recorded four calls relating to Online Services being unavailable.
- 4.7. Post Office responds that intermittent issue with the telephone line would not have impacted on balances as Online Services such as Debit Cards and Post Office Card Account would not have been available during periods of the line 'being down', and it would not have been possible to input transactions.
- 4.8. Post Office has stated that Horizon has a recovery system whereby should a transaction fail midway, on-screen instructions will guide the user through the transaction recovery. The Applicant did not use Horizon himself so is not able to say whether this system worked effectively, and he does not appear to have been alerted by his Manager to instances of failed transactions at the time of occurrence.
- 4.9. Our Part 2 Briefing Report deals with other examples of problems associated with telecommunications and power failures.

Training and support issues including Helpline and Audit.

- 4.10. The Applicant reports that he and his Manager attended a half-day training session, following which a trainer visited the Branch for one day to observe the clerks. Post Office training records from 1996 are not available, as this is beyond the normal retention period.
- 4.11. Whilst the Applicant did not himself contact the Helpline, he reported his Manager's concerns regarding poor support and an inability to 'guide through queries' to his Area Manager. He said he seemed unconcerned, and that the general response was that they would discuss the problems when next in the area.
- 4.12. During his interview with the Applicant, the Manager said he did not seek assistance from Post Office, and that whilst he suggested computer error may be at fault, he '*buried his head in the sand*' and waited for an Error Notice (or Transaction Correction - "TC"). When they were not forthcoming, he did not inform the Applicant or Post Office that the accounts did not balance.
- 4.13. Post Office responds that during the period October 2007 to December 2008, 31 Transaction Corrections (formerly known as Error Notices) were returned to the Branch, suggesting poor accounting practices, and that there are no records to suggest that there were delays in sending TCs back to the Branch.

The lack of an outreach investigations process

4.14. The Applicant reports that the Post Office Auditor, Robert Daley, investigated and found no indication of how or if money was taken. The Applicant was not supplied with a copy of Mr. Daley's report, despite requests. The Applicant suggests that in the absence of this report there is no proof that the loss actually occurred.

4.15. Post Office concluded that the cause of the £46,049.16 shortfall in this case was '*likely to be the cumulative product of operational errors by the Manager or other staff over an extended period of time (such as mishandling cash, mis-keying transactions into Horizon, etc).* Alternatively, the possibility of theft or fraud could not be ruled out'. Post Office identified nothing to indicate Horizon was responsible for the shortfall.

4.16. The Investigating Officer, Robert Daily, noted that Horizon had been checked and allegations about its accuracy were unfounded. The report continues; ultimately the OIC (Manager) admitted 'false accounting', and under the terms of contract, the Subpostmaster was liable for the shortage. Post Office notes that it is not possible to distinguish between genuine errors and intentionally false entries.

4.17. The contract between Post Office and Subpostmaster

4.18. The Applicant says he did not receive or sign a Contract. There is nothing to show whether the Applicant was, or was not supplied with a copy of the Contract.

4.19. Correspondence has been produced by Post Office concerning an Audit shortfall of £359.65 in April 1997. This correspondence records that the Manager said he couldn't afford to make good the shortfall and was waiting for an Error Notice, and that Applicant had said the shortfall was not his responsibility as he did not go in to the Post Office.

4.20. The Applicant was reminded he had ultimate responsibility for the accounts. A letter dated 30 April 1997 and responded to by the Applicant reiterated he was responsible for losses, as per his contract with Post Office.

4.21. Post Office also comments: '*It would appear that Post Office did not monitor the balancing fluctuations centrally at the time of the events in question; under current Post Office processes such patterns of transactions may have been noted quicker with intervention activity being instigated at an earlier stage.*'

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

5.1. The Applicant did not possess a Horizon password, or take any part in the day to day running of the Branch, delegating these functions to his Manager. The issues raised are therefore mainly

anecdotal and contain little by way of supporting evidence. It is not therefore possible to provide an fully evidenced opinion on some of these issues.

6. Is this case suitable for mediation?

6.1. In our opinion this case is suitable for mediation and the following issue should be considered:

- a) whether Post Office or the Applicant is responsible in part or in whole for the overall loss of to £46,049.16.