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By post and e-mail to: rjw GRO, irh GRO

Date 24 February 2015

Dear Ian and Ron

**Initial Complaint Review and Mediation Scheme (Scheme)  
Case Ref: M103**

As you know, I have now taken over from Chris Aujard as Post Office General Counsel and I felt it necessary to write to you having read your draft report on this case.

Having reviewed the recent Second Sight reports, I am concerned that these include statements regarding criminal law that could be construed by applicants as being the expert opinion of Second Sight, and where we believe that Second Sight's statements are in fact, incorrect.

I understand that you have expressly acknowledged that matters relating to criminal law and procedure are outside Second Sight's scope of expertise. I also understand that Post Office has discussed with you in the past the fact that criminal law is a specialist area, outside of Second Sight's remit in relation to the Scheme, in which neither Second Sight Directors, nor, to the best of my knowledge, any of the people engaged by Second Sight to undertake work in relation to the Scheme, have either qualifications or expertise. I am however concerned that your comments or opinions on criminal law could be interpreted by applicants as factual statements on which they are entitled to rely, which if they did so, could be to their detriment.

Examples from this report include:

- The suggestion that the offence of false accounting is a less serious offence to that of theft is incorrect. Both offences are equal in law: both are offences of dishonesty and both carry the same maximum sentence (7 years imprisonment).
- The suggestion that Post Office has encouraged a defendant into pleading guilty in order to avoid prison or to achieve a lesser sentence. This suggestion is based on a misunderstanding of the criminal law process:

- Post Office has no role in advising a defendant: every person charged with a criminal offence is entitled to representation by independent solicitors (and in the Crown Court, a barrister).
- Legal Aid is available to any defendant where the offence carries a risk of imprisonment (as do all of the charges levelled by 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 their 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.
- The suggestion that a guilty plea to false accounting rather than theft was accepted by Post Office because "...there was no evidence of theft" is based on a lack of understanding of criminal law and the criminal law processes:
  - 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 found a theft charge.
  - 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 and, 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.
- The suggestion that the Crown Prosecution Service (CPS) would have acted differently to Post Office as a prosecutor, perhaps by not prosecuting at all, or by accepting a different outcome, is misplaced:
  - Both Post Office and the CPS are bound by the Code for Crown Prosecutors; both are overseen by the courts and both must act in accordance with the principles of fairness.
  - 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.

- Post Office prosecutors are all experienced criminal lawyers, many of whom have wide experience of prosecuting both for Post Office and the CPS. These lawyers advise 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 to the courts.
- As such, any comment by Second Sight as to how the CPS may or may not have acted is inexperienced opinion based on speculation.

I reject the allegation that Post Office may somehow have breached or abused its position as a Crown prosecutor. Post Office has always taken its duty to act fairly, proportionately and with the public interest in mind extremely seriously; indeed not to have done so would have invited the scrutiny of the very courts in which Post Office conducts such cases. Such a statement is ill-informed and could be construed as an allegation of deliberate misconduct on the part of Post Office. Post Office rejects any such suggestion and considers such statements as potentially damaging to its reputation both as a business and also a prosecutor.

I am aware that Second Sight is preparing other reports and also a further mediation briefing pack and request you to take account of these comments when doing so.

Post Office will respond to the Second Sight report in the usual way. However, I believe the above points are sufficiently material that unless I receive your confirmation within 3 working days that these comments will be removed from the final version of your report, I will send a copy of this letter to the Working Group and to the Applicant.

I would, of course, be happy to discuss in more detail if that would be helpful.

Yours sincerely

**GRO**

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General Counsel

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