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Second Sight continues to comment on matters of criminal law notwithstanding that the topic is both outside of their remit and outside of their area of expertise and in this respect we have identified numerous occasions where SS has offered an opinion which is wrong in law and in some instances bordering on the negligent. Examples include:

- The suggestion that the offence of false accounting is a less serious offence to that of theft. This suggestion has appeared in a number of contexts, most commonly where 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).
- The suggestion that Post Office has “forced” a defendant into pleading guilty in order to avoid prison or to achieve a lesser sentence. Such a suggestion discloses a fundamental 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, for not to do so would amount to negligence.
- The suggestion that, in any case where a guilty plea to false accounting rather than theft was accepted by Post Office, this was accepted because “...there was no evidence of theft.” Again this comment indicates a complete absence of knowledge.
  - 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 certainly sufficient evidence upon which to base a charge of theft. Simply put, if money is missing and the defendant has fiddled the figures, that 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 POL has a duty to protect public (and POL) funds and, given that both charges are equal in the eyes of the law, the added expenditure involved in 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 on this point, 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 inevitable fail.

- The suggestion that the Crown Prosecution Service would have acted differently to POL as a prosecutor, perhaps by not prosecuting at all, or by accepting a different outcome. Again this suggestion is indicative of a complete absence of knowledge of the process.
  - Both POL 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.
  - POL prosecutors are all experienced criminal lawyers, many of whom have a wide experience of prosecuting both for Post Office and the CPS. These lawyers advise Post Office in full before a prosecution is commenced and continued.
  - Further, the CPS does not have a monopoly on prosecutions: many organisations conduct prosecutions within their own sphere of interest.
  - Neither does the CPS 'oversee' or otherwise regulate non-CPS prosecutions: that function is reserved to the courts. Thus the CPS has no role to play in any Post Office (or other independent) prosecution and it is wrong to suggest, as SS has done, that Post Office has somehow avoided CPS input.
- The suggestion that Post Office has somehow breached or abused their position as a Crown prosecutor.
  - This is perhaps the most distasteful and ill-informed suggestion thus far. 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. Further, the suggestion amounts to an outright allegation of deliberate misconduct on the part of Post Office bordering on the libellous.

These are but a few examples of Second Sight's ill-advised entry into areas that do not concern them. Other instances include numerous examples where they have demonstrated a complete lack of knowledge of the elements of offences of fraud, theft and false accounting. Such fundamental error does the Applicant no service at all.

What is most concerning of all is the fact that none of the Applicants and few of their advisors are lawyers – none are criminal lawyers. They are therefore most unlikely to recognise the errors committed by SS and, should they act on the misinformation advanced by SS, they may well become unrealistic in their expectations, acquiring a distorted understanding of the reality of their position and therefore become deeply disappointed when reality intervenes. No good service is done to any Applicant and much harm may flow.

On a final note, we are also concerned at the repeated, and perhaps inadvertent, waiving of an Applicant's Legal Professional Privilege by Second Sight. We say inadvertent because no lawyer would commit so fundamental an error; for such a mistake may well be actionable against SS in the event that an Applicant suffers as a consequence. Perhaps SS should look to their own Professional Indemnity insurance, if they have it, although given that they are not lawyer it is unlikely that their insurance would cover such negligence.