

LOSSES AT SPSO's

GUIDELINES ON RESPONSIBILITIES AND RECOVERY ARRANGEMENTS

INTRODUCTION

1. The purpose of these guidelines is to up-date and bring together previous advice and instructions that has been issued over a very long period and in the main have stood the test of time in dealing with the recovery of losses in whole or part involving Subpostmasters and their Assistants. Such information has been given in:

Personnel Manual INS 3 PII
PHQ Circular 90/76 Appendix A
SPSO Discipline Paper No 1A (Jan 1984)
MDCs Guidance to District Managers 9Aug 86)
Postal Instructions N5 A
Postal Instructions L5 Boo23

CONTRACTUAL POSITION

2. In strict legal terms a SubPostmaster is responsible for all losses caused through his own:

Negligence, Carelessness or Error

and for losses of all kinds caused by their Assistants.

In practice the full contractual right to recover the total loss is not always exercised where losses occur, and relief, in full or part, is often given even where negligence has facilitated a loss. However, there is a need to try and ensure, as far as possible, that SPSO loss cases are dealt with uniformly and fairly throughout by POC Ltd.

BASIC APPROACH

3. Before any consideration can be given to the recovery of a loss, the degree of responsibility has to be considered. Whether the loss was caused by:

Theft, Burglary, Fraud or Accounting Errors.

The circumstances surrounding the loss must be taken into account and weighted carefully, such as:

Violence used or Threatened

Lapse of Security
Disregard to Rules or Previous Advice
Failure to spot obvious Fraud
Non-observance of Transaction Procedures
Incompetence
Negligence etc.

and then a decision made as to the amount the SubPostmaster will be asked to make good, taken with the full knowledge of the Subpostmaster's

Age
Record
Experience
and
Any other Extenuating Circumstances.

CONTRIBUTION ASPECT

4. If the cause of the loss warrants it, the contribution by the SubPostmaster should be sufficient for it to be meaningful (i.e., the SubPostmaster feels the effect financially) but not such that this would cause severe hardship.
5. Contributions based on a percentage of the loss incurred are not generally considered a satisfactory method of assessment. For example, if such a calculation was applied in two separate cases where the losses were appreciably different then the contributions sought in each would vary considerably even though the degree of negligence may be very similar.
6. Where Post Office 25L and W77 time controlled burglar alarms are fitted together with a time over lock it is left to the SubPostmaster to decide where to keep the re-set key (B). The fact that the key is kept outside the safe should not be considered contributory negligence in the event of a criminal gaining possession of it provided reasonable precautions for its safety are applied.
7. Where value stock/or paid vouchers are involved in a loss FC4.3 RG/ID Chesterfield (in Scotland Scottish Accounting office AD1) should if necessary be asked to determine the amount of the possible loss to Post office Funds before the amount of contribution is decided upon.

RECOVERY OF LOSSES FOLLOWING ATTACKS ON SPSO's

8. If a SubPostmaster is negligent in running his Office and facilitates a successful raid, it seems right for him to contribute for the loss, but if he is attacked during a raid, is injured, or shows a commendable resourcefulness and bravery, then the finest of judgements is required in deciding the level of contribution. If one is to be sought the following guidance should be followed:
 - 8.1 Where the SubPostmaster has received a bravery award in connection with the same incident, or has been or is likely to be nominated for one, full relief should normally be allowed. If it is proposed to call for a contribution in such a case, HS/PIRC1 should be consulted first.
 - 8.2 Where the circumstances of the case are insufficient to merit an award, but commendable action has been shown or injury suffered, this should be sympathetically weighed against any negligence when assessing the contribution towards the loss.
 - 8.3 The degree of negligence and therefore the level of contribution will depend on the specific circumstances of the incident and each case will need to be judged on its merits. The blatant disregard of security procedures which led directly to a robbery taking place and to avoidable losses being incurred will be a critical factor in assessing negligence. **(NB If a history of security lapses is to be invoked as a factor, it is essential that any previous warnings should be clearly and carefully documented both within our files and with the SubPostmaster).** On the other hand, acts of bravery or resourcefulness, and evidence of duress whether the threat of violence directly or against hostages or severe risk of injury should be taken into account as countervailing factors.

DNS FRAUD

9. This is a particularly sensitive area as DNS and the Counters Business lose large amounts of money each year due to fraudulent payments from National Savings Bank Accounts. Any loss recovered from a SubPostmaster will lead to a reduction in the amount of money paid by the Counters Business to DNS.

The occasions where DNS will seek recovery are where.

- 9.1 The loss took place less than 2 years previously.
- 9.2 The SubPostmaster had been assessed to be to blame for the loss, i.e. he could reasonably have been expected to spot a fraud that was taken place.

9.3 The blame has been assessed to be gross or serious. This covers the following categories of fraud:

- Book on stop list
- Sex code differences
- Bogus entries
- Alterations/ erasures of genuine balance/ entries
- Missing pages
- Withdrawal over £50 - book not impounded.

There is a need to tighten up the recovery of losses, but the degree of responsibility and the contribution, if any, rests with the Area Manager within the guidelines laid down and full weight must be given to them when making a decision.

TREATMENT OF LOSSES

10. COUNTER LOSSES NOT INVOLVING THEFT OR FRAUD

a. Incurred by Postal Officer substituting for SPSO Assistant.

Full relief providing conditions stated in para 5 of Form R9 are fulfilled. (Conditions covering the loan of Crown Office Staff).

b. Incurred in first 6 weeks of Appointment.

Normally full relief.

c. Other cases.

SPM to be liable for full amount of the loss, but District Manager has discretion to give relief on application by the SPM, factors to be taken into account are the experience of the SPM, his remuneration and record, and any other extenuating circumstances such as exceptional pressure or the introduction of new services or a change of rates.

10.1 SPM sick or otherwise absent with permission and substitute, not appointed by POC Ltd., left in charge.

As 10c

10.2 SPM sick or otherwise absent with permission and Postal Officer in charge.

Full relief.

LOSSES CAUSED BY FRAUD

11. SPM “in attendance”, i.e., not sick or not otherwise absent with permission:

- a. Fraud by outsider.

The SPM is technically responsible for the full amount of the loss but relief to be given. This should amount to full relief where the circumstances of the case indicate that the loss did not arise from any negligence on his part or that of his assistants. Where there is evidence of negligence, the amount payable to be determined in relation to the degree of negligence, the SPMs net earnings, length of service, accounting record and financial circumstances generally. The amount should not be such as to cause hardship.

- b. Fraud by Assistant.

The SPM to be technically responsible for the full amount of the loss but relief to be given in cases in which the SPM is in effective control of the Office and where he can show that recovery from the assistant is unlikely. This should amount to full relief (less amount of any restitution order) where the circumstances of the case indicate that the loss did not arise from any negligence on the part of the SPM. Where there is evidence of negligence the amount payable to be determined as in (a) above.

- 11.1 SPM sick or otherwise absent with permission and substitute not appointed by POC Ltd., left in charge.

- a. Fraud by outsider

As 11.a

- b. Fraud by assistant

As 11.b

- 11.2 SPM sick or otherwise absent with permission and Postal Officer in charge.

- a. Fraud by outsider

Full relief

- b. Fraud by assistant

Full relief

LOSSES CAUSED BY THEFT (NOT INVOLVING FRAUD)

- 12. SPM "in attendance", i.e., not sick or not otherwise absent with permission.

- a. Theft by outsider

As 11a

- b. Theft by assistant

Normally no relief, but see 12c

- c. Theft by assistant during period of investigation.

Where the SPM had suggested and sought and taken advice from his Area Manager, full relief to be allowed for any losses from the theft by the assistant incurred subsequent to the notification to the District Manager.

- 13. SPM sick or other wise absent with permission and substitute, not appointed by POC Ltd, left in charge:

- a. Theft by outsider

As 11a

- b. Theft by assistant

No relief

- 14. SPM sick or otherwise absent with permission and Postal Officer in charge:

- a. Theft by outsider

Full relief where loss takes place in Office opening hours. Otherwise, the SPM is technically responsible for the full amount of the loss but relief to be given, and this should amount to full relief where the circumstances of the case indicate that the loss did not arise from any negligence on his part to ensure the security of the premises and the protection of

cash and stock. Where there is evidence of such negligence the amount payable to be determined as in 10a.

- b. Theft by assistant.

Full relief.

REPAYMENT OF SHORTAGS BY SUBPOSTMSTERS IN INSTALMENTS

- 15. Although a SubPostmaster is liable to make good a deficiency as it occurs, or the amount outstanding where partial relief has been granted, there may be instances where to do so would cause undue hardship. In such circumstances a SubPostmaster may request permission to repay a large deficiency by instalments. Such permission should be authorised within the limits determined by the District Manager.
 - 15.1 Before permission is given, the following conditions must be met:
 - 15.1.1 The sub-office accounts must be checked in order to establish the true amount.
 - 15.1.2 Instalments may only be paid by deduction from pay and a signed agreement permitting such deductions must be obtained from the SubPostmaster. Any such agreement should contain a provision that any default in payment by instalments will result in the whole sum outstanding then becoming payable.
 - 15.1.3 Repayments must be reasonable and fixed in relation to the Subpostmaster's earnings from all sources and financial commitments.
 - 15.1.4 Repayments should usually be sufficient to clear the amount within 12 months.
 - 15.1.5 Any surplus resulting from a claim error notice relating to the deficiency for which repayment by instalments has been allowed, should not be withdrawn by the SubPostmaster, but should make good immediately any further shortages resulting from charge error notices which relate to the cash account week (s) for which permission has been given for reported shortages to be repaid by instalments.
 - 15.1.6 If a SubPostmaster incurs a further large shortage whilst still repaying a previous shortage by instalments he should be instructed to clear the second discrepancy in one lump sum payment. Permission should not be given for concurrent instalment repayments.

- 15.1.7 Granting permission for repayment by instalments must not be allowed to develop into a “rubber-stamping” exercise. Where a SubPostmaster seems to be making excessive use of the instalment method of repayment (e.g. 3 cases in 3 years) the facility should be withdrawn and the office should be subject to an audit. If appropriate the outcome should be reported to POID.
- 15.1.8 When the arrangements for repayment by instalments have been completed, FC4.1 Cash Accounts Group, Reconciliation Sub-group, Chesterfield (in Scotland Scottish Accounting Office, AD2) must be advised of the details by forwarding the papers (including the actual authority) and requested to issue accounting instructions (Authority voucher Form PGB 19).
- 15.1.9 Where repayment is over a full 12 month period and audit of the sub-office accounts should be undertaken after 6 months. Where exceptionally, repayment is over a longer period than 12 months audits should be undertaken at approximately 6 monthly intervals. Shortly after completion of any repayment by instalments an audit of the sub-office accounts must be undertaken to establish the accounts are in order.
- 15.1.10 Local Managers must guard against retaining a SubPostmaster in office for purely operational reasons when a large unadjusted shortage persists in the accounts and a firm offer for making good the sum is not forthcoming. A large unadjusted shortage is a matter of degree depending upon the remuneration and other financial circumstances, but warning signs must be apparent when a shortage reaches such proportions as to be clearly beyond early settlement by the SubPostmaster either immediately or by a minimum number of instalments. Retaining the SubPostmaster in office merely postpones the day when his services have to be terminated, at which point there is usually an increased shortage which proves irrecoverable and results in a Post Office cash loss, to which can be added the costs already incurred in extra administration and audits of the sub-office accounts.

REPAYMENT DURING SUSPENSION OF CONTRACT

16. Where repayment of a deficiency is received from a SubPostmaster whose contract is under suspension, it should be accepted without prejudice to any action the Post Office may decide to take. Repayment does not normally affect our legal rights in pursuing prosecution; however, it is long established practice not to prosecute a SubPostmaster who uses official funds for a private purpose, provided that it has been made good before summonses have been obtained, the

amount involved is not large, that he has shown by making good the deficiency promptly that he did not intend permanently to deprive the Post Office of the money, and that there are no discreditable features. It is emphasised, however, that this guidance in no way precludes the District Manager from pursuing prosecution in any case where it is considered such a course is justified.

(Care should be taken, if in exceptional circumstances the decision to prosecute is deferred because repayment is anticipated on sale of the business, private house, etc. that the delay is not such as might prejudice the case of the post Office should prosecution be decided upon).

SO Assistant Prosecution - Compensation/ Restitution

17. Under the terms of PI N5 A0900 5, a SubPostmaster is responsible 'for all losses arising from his own negligence, carelessness or error AND FOR ALL LOSSES INCURRED BY HIS ASSISTANTS' (SO Assistants are the employees of the SubPostmaster and, accordingly, cannot be held contractually liable to the Post Office for losses which may arise as a result of their actions). Whilst there can be no diminution of the Subpostmaster's responsibilities to make good losses without delay, the Post Office has agreed with NFSP that in cases where an Assistant is to be prosecuted by the Post Office, consideration will be given to the advisability of seeking from the Criminal Court a Restitution or Compensation Order in the Subpostmaster's favour in respect of losses suffered at the hands of the offender. If it is considered that such an order would be likely to be the Subpostmaster's advantage, then Solicitor's Office advice should be sought on that point when the papers are forwarded to that Office with the prosecution authority: however, the SubPostmaster should be asked beforehand whether he would wish a Compensation or Restitution Order to be sought on his behalf considering that such action might require him to attend the Court hearing. The instances where Compensation and restitution Orders may be used to practical advantage are limited, not least by the fact that it is unusual for the Assistant to have sufficient assets to ensure that an order for any large amount is complies with; in addition the criminal charges and any offences taken into consideration against the Assistant which determine the extent of compensation may involve sums which form only a fraction of the overall deficiency. A SubPostmaster can, of course, seek to recover his losses through Civil Counts.

RECOVERY OF DEFICIENCIES FOLLOWING TERMINATION OF CONTRACT

18. **Initial Action**

- 18.1 Where it is decided to terminate a Subpostmaster's contract and a deficiency exists in the office 'Late Account', the opportunity should be taken in the letter informing him of his loss of office to make an initial approach regarding repayment. He should be reminded of his contractual responsibility as set out in PI N5 A0900 para 5 to make good all losses incurred during his period of office. It is advisable to incorporate an updated statement in the letter listing any credits due which offset against the deficiency. As it may prove necessary to institute civil action to recover the deficiency, the District manager should at this stage be asked to check that form P931 (acknowledgement of Appointment as SubPostmaster) is signed by the SubPostmaster on hand at District Office.
- 18.2 Similar action to the above should be taken where a deficiency exists, or is revealed later, in the account of a subpostmaster who has resigned.
- 18.3 In 'Late Account' cases where sums of under £150 are involved, the circumstances of the case will indicate whether the administrative time likely to be employed in collecting the moneys outstanding would be justified. Balanced against consideration to write off the debt is of course the possibility that further debit errors may come to light substantially increasing the deficiency; PFD'S comments on the accounting record of the SubPostmaster can act as a useful guide in this respect.
- 18.4 The remuneration or other payments due to a SubPostmaster can be withheld to off-set a deficiency in his accounts. The situation that "In the absence of any expense rule forbidding a right of set-off, the general rule is that a party to a contract can set off against sums which he owes under that contract, sums which are owed to him under that contract"/ A different situation might apply however where the SubPostmaster is adjudicated bankrupt. Should legal action be threatened or taken against POC Ltd in respect of remuneration or there payments withheld to off set a deficiency, the papers should immediately be referred to Solicitors Office (via CBHQ/PIRC1).

Response to letter from District Manager

19. If the Financial circumstances of the ex-SubPostmaster leave him unable to repay the loss as a lump sum and he makes an offer of repayment by instalments, it is recommended that any offer which is accepted is, as far as is possible, to the guidelines set out in para 15. As well as to periodic review to see whether the levels of repayments might be increased, and

also to the condition that should repayments fall into arrears, the whole amount outstanding becomes due for repayment.

- 19.1 If the ex SubPostmaster refers the letter to a firm of solicitors, it may be considered advisable to forward the case with a summary of the developments to date, to the Solicitor's Office via CBQH/PIRC1 for advise.
- 19.2 The debtor may refuse repayments on the grounds that he is not satisfied that the deficiency quoted reflects the true state of the SO Accounts and in such circumstances he might be invited to inspect the accounts and documentary evidence supporting the deficiency at the District Office.
- 19.3 If no reply is received to the letter, it is recommended that a second be sent in stronger terms by recorded delivery; if this approach proves unsuccessful, the papers should be referred to the Solicitor's Office, via CBQH/PIRC1 for advise on what legal action can be taken to recover the deficiency . The subpostmaster's appointment papers should be associated with the file and details given of what discreet enquiry has discovered locally of his financial position.

LEGAL PROCEEDINGS

20. Once instructions have been received, the Solicitor's Office may commence proceedings as long as not more than 6 years has elapsed since the cause of action arose. These proceedings will be taken either in the appropriate County Court or in the High Court, depending on the amount on money outstanding.
 - 20.1 There will be a period of time between issue of proceedings and obtaining Judgement even in undefended cases. If there is reason to suppose that the ex-SubPostmaster may dissipate his assets in that time, the Court may grant an interim or Interlocutory Injunction restraining him from disposing of such assets, other than those required for his normal living and business expenses. The Solicitor's Office should be advised of any such possibilities when the papers are submitted. The fact that the ex-SubPostmaster is being prosecuted does not prevent and indeed encourage the Court to make such an Order. In the event of prosecution, mention should be made in the instructing minute to POID of any relevant facts to support such an application.
 - 20.2 Before or after Judgement is obtained, the ex-SubPostmaster may seek to repay by instalments. In County Court cases, payments are usually made through the Court Office. In high Court cases,

such payments are made direct to the Plaintiff's solicitors, in this case the Post Office Solicitor. Once proceedings have been commenced, no legal correspondence should be entered into with the ex-SubPostmaster and any monies received locally or alteration in the sum due must be notified to the Solicitor's Office quoting the CLD reference number.

- 20.3 If no acceptable payment is forthcoming, Judgement will then have to be enforced by the Solicitor's Office. It is important that as much information as possible concerning the financial status of the debtor is made available to the Solicitor's Office. Enforcement may be through such methods as a Charging Order on land, Attachment of Earnings in the case of an employed person, a Warrant of Execution whereby the Bailiff or Sheriff seizes goods and/or money, and realisation of the value of investments. A bankruptcy Order may have to be sought.

INSOLVENCY OF SUBPOSTMASTERS

21. The Official Receiver will normally notify the District Manager when a receiving order in bankruptcy has been made in respect of a SPMR. The Official Receiver will inform the District Manager as to when he will be attending the SPMR's premises to collect the assets of the individual.
22. For the purpose of recovering cash, stock and property of Post Office Counters Ltd the District Manager should arrange to attend the SPSO premises at the same time as the Official Receiver. The period of notice given to the District Manager by the Official Receiver will invariably be of very short duration. To assist the Official Receiver in identifying items of PO equipment, i.e. scales, datestamps, alarms etc. a copy of form P931 and any other document on which the SPMR has acknowledged receipt of particular items of PO property should be taken to the office by the District Manager representative as proof of ownership. In the absence of a representative from the District Office at the SPSO the Official Receiver will collect and place all PO property in sealed bags and retain them at his office pending a claim from District Manager.
23. As soon as the District Manager is made aware that a receiving order in bankruptcy had been made in respect of a SPMR, consideration should be given to his suspension. The length of the period of suspension will depend on the SPMR's ability to satisfy the District Manager:-
- a) That there are no discreditable features in the bankruptcy or insolvency:
 - b) As to the continued safety of the PO and stock entrusted to his care:

- c) As to his capability of continuing to run the office from the existing premises:
- d) That no less of PO money has occurred.

If the District Manager is satisfied as to the above the SPMR may be allowed to resume office. Where resumption is allowed the District Manager should exercise special supervision, and pending settlement of the bankruptcy proceedings, the SPSO accounts should be checked not less frequently than once a month. If the District Manager is dissatisfied as a result of his enquiries he should terminate the SPMR's contract, summarily, where the SPMR is in clear breach of the terms of his contract e.g. Inability to continue to provide premises, otherwise by giving 3 months notice.

- 24. Where a deficiency is found in the SPSO accounts early action should be taken to approach the Official Receiver to find out the date and number of the receiving Order or Winding Up Order as the case may be, which should be quoted in all subsequent correspondence, and position of affairs.

Before the proof of debt is lodged the amount of the deficiency should first be agreed by FC4.3 Reconciliation Group, Chesterfield.
For Scotland, Scottish Accounting Office AD2.

- 25. The Official Receiver should be told of any remuneration arrears or any other amounts due to be paid to the SPMR in order that he may construct as to their disposal.
- 26. Postal Instruction NI 10015 refers.

TREATMENT OF CASES WHERE AN EX-SUBPOSTMASTER IS IMPRISONED BUT HAS NOT FILED A BANKRUPTCY PETITION OR ENTERED INTO A DEED ARRANGEMENT

- 27. Where no action has been taken to recover a deficiency under Legal Preceding para 18.2 and it is considered that the debtor is likely to remain in prison for more than a year, a letter sent through the prison governor about six months later the conviction reminding the ex-SubPostmaster of his responsibility to repay the late account deficiency often serves to remove any false assumption that on release he will be freed from all obligations in connection with his Post office service.

DEATH OF A SUBPOSTMASTER

28. Where on the death of a SubPostmaster a deficiency exists in the SO accounts, a statement giving details of the shortage should be sent to the solicitor or member of the family engaged in the administration of the estate. In such circumstances the intention would not be to exert immediately any pressure in seeking repayment but merely to register our claim. The debt should not, however, be permitted to be outstanding for more than a period of six months before pressure is applied to seek repayment. If deficiency is disputed, in all but the most straightforward cases the advice of the Solicitor's Office should be sought. (para 19. Also refers).