

**From:** "Parsons, Andrew" <[REDACTED] GRO>  
**To:** Anthony de Garr Robinson <[REDACTED] GRO>  
**Cc:** Owain Draper <[REDACTED] GRO>, "Loraine, Paul" <[REDACTED] GRO>  
[REDACTED] GRO, "Porter, Tom" <[REDACTED] GRO>, Jade Cassell  
[REDACTED] GRO

**Subject:** RE: LOR [BD-4A.FID26859284]

**Date:** Wed, 6 Jul 2016 20:09:41 +0000

**Importance:** Normal

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Yes of course - I'll be in the office from about 7:45 so call whenever is good for you.

A

Andrew Parsons  
Partner

Direct: [REDACTED]  
Mobile: [REDACTED] **GRO**

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-----Original Message-----

**From:** Anthony de Garr Robinson [mailto:[REDACTED] GRO]  
**Sent:** 06 July 2016 21:05  
**To:** Parsons, Andrew  
**Cc:** Owain Draper; Loraine, Paul; Porter, Tom; Jade Cassell  
**Subject:** Re: LOR [BD-4A.FID26859284]

So THIS is a critical part of the analysis where burden of proof comes into the picture.

Query whether we are aware of any cases in which the postmaster can discharge this burden of proof. But I suppose the claimants will say that they are entitled to full disclosure in relation to all TCs they've accepted on the off chance that one may be wrong.

You are going to have to talk me through the differences between TCs, TAs and rems in at some point. And explain why we are calling subpostmasters postmasters now!

Can we speak briefly first thing tomorrow? I'll be busy with a court hearing the rest of the day.

Tony

Sent from my iPhone

On 6 Jul 2016, at 20:39, Parsons, Andrew <[REDACTED] GRO> wrote:

True.

If the postmaster can show that the TC is wrong, POL will reverse it even if the postmaster has initially accepted the TC - the postmaster is not bound by his initial mistake in the face of clear evidence of an error by POL. That said, this scenario would apply to a tiny percentage of cases.

The more tricky scenario is where the TC is wrong, no-one spots the error, it then becomes the latent cause of a shortfall. In that circumstance, Angela will say the responsibility for shortfall still lies with the postmaster (even though one cannot rule out the possibility that it may have been caused by an original error by POL).

The importance of this second scenario is the vast majority of cases involve a shortfall where the underlying error that caused the

shortfall is never discovered. If Angela is right, that doesn't matter, because the postmaster is liable anyway (unless he can point to a particular TC from POL that was wrong but in which case the error would no longer be latent).

A

Andrew Parsons  
Partner

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-----Original Message-----

From: Anthony de Garr Robinson **GRO**  
Sent: 06 July 2016 20:23  
To: Parsons, Andrew  
Cc: Owain Draper; Loraine, Paul; Porter, Tom; Jade Cassell  
Subject: Re: LOR [BD-4A.FID26859284]

Thanks, Andy.

If POL send through a TC that is wrong and the postmaster accepts it erroneously, I have difficulty in understanding why the postmaster should be bound by his mistake, IF he can prove it was a mistake. Isn't that what the cases relied on in Castleton say?

Tony

Sent from my iPhone

On 6 Jul 2016, at 20:11, Parsons, Andrew <**GRO**> wrote:

Tony

I've not spoken to the clerks re fees - Jade - would you mind updating us.

I'm happy with all your points below save for para 3.

I don't think Angela was saying that sometimes errors happen in branch and sometimes they happen at POL, but its ok because the data available lets you determine the source of the error so one can allocate responsibility for a shortfall. Indeed, I am 100% confident this statement is wrong as there are dozens of cases where we have not been able to identify the error that led to a shortfall and yet POL have still held the postmaster responsible.

What I think she was saying was that if there was a shortfall in a branch, the only cause of that shortfall can be an error (or theft) by a postmaster. The reason for this is that the postmaster has 100% control over the only two variables in this equation:

- They have physical control over the stock and assets; and
- They have decision making control over what transactions get entered into their accounts.

It's the difference between the accounts and the assets that gives rise to the shortfall - hence Angela will confidently say that if there is a shortfall the postmaster must have made a mistake.

The key bit to recognise is that the only influence POL has over branch accounting is through transaction corrections (or transactions acknowledgements or rems in - all three are roughly the same thing in accounting terms). In respect of TCs, POL will in all cases provide evidence to explain the TC (as we discussed with Angela). It is nevertheless possible for a TC to be wrong. However, it is incumbent on the postmaster to properly review the TC and its supporting evidence and then flag any error to POL. The postmaster can therefore either

· Dispute the erroneous TC, in which case it does not become part of the branch accounts, and thus cannot be a cause of a shortfall in the branch accounts; or

· Accepts the erroneous TC, in which case it then changes the branch accounts and may be the cause of a shortfall.

Angela's point is that if the postmaster accepts an erroneous TC, they are liable for the consequences of that TC (ie. any shortfall it may create) regardless of the fact that the original mistake was by Post Office. Her reasoning is that the postmasters mistake in accepting the erroneous TC supersedes Post Office's mistake in generating the erroneous TC in the first place.

I know you're in Court tomorrow but when you're next around, give me a call and lets discuss.

Kind regards  
Andy

Andrew Parsons  
Partner

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From: Anthony de Garr Robinson [mailto:**GRO**]

Sent: 06 July 2016 19:01

To: Parsons, Andrew; Owain Draper

Cc: Loraine, Paul; Porter, Tom; Jade Cassell

Subject: RE: LOR [BD-4A.FID26859284]

Dear Andy,

If I were summarising my analysis, I would probably organise my summary in a different way from you. However, your points essentially reflect my thinking, subject to a few important points and a few less important quibbles. Rather than draft my own summary, I have set out my points and my quibbles below, in red.

I am copying this email to Owain to see whether we are all on the same page.

I'll ask my clerks tomorrow where we are on accrued fees - unless you've done that already?

Best wishes,

Tony

From: Parsons, Andrew [mailto:**GRO**]

Sent: 06 July 2016 13:44

To: Anthony de Garr Robinson <**GRO**>

Cc: Loraine, Paul <**GRO**>; Porter, Tom

<**GRO**>; Jade Cassell

<**GRO**>  
Subject: LOR [BD-4A.FID26859284]

Tony

Just following on from yesterday.

We've managed to squeeze a little more money out of Post Office. Total budget for Counsel up to end of July is now £110,000 + VAT. I hope this gives you a little more wriggle room. In light of this, please do feel free to use Owain to draft "section 6" of the LOR.

Your comments on the LOR are understood and very useful. We'll re-work the general structure of the letter and then come back to you to discuss specific points.

Off the back of yesterday's call, (I think) I now have a better grasp of the central tenants of our case. I've tried to capture these below just to see if it matches your thinking.

1. Postmasters have express contractual duties to render accurate accounts in the format POL requires and they are also liable for all losses due to their error (or the errors of their assistants). Yes. And they have an express contractual obligation to follow POL's instructions and procedures, including an instruction to perform transactions and account for those transactions on the Horizon system and instructions regarding the procedures to be followed in using Horizon (see sections 1 and 15 and 22).

2. The branch accounting system (including the role of Horizon within that accounting system) is built around the principle that postmasters approve every transaction that goes into their accounts:

- a. They (or their assistants) enter all transactions conducted in branch; and
- b. They (or their assistants) approve any transactions originating from POL (such as transaction corrections).

[Note - the issue of remote access is critical here - my understanding is that POL will not use a Balancing Transaction without postmaster consent in which case this complies with the above principle but we need Deloitte to confirm this. Absolutely]

3. Because the postmaster enters or approves every accounting entry that makes up the branch accounts, any shortfall in the branch must be due to an error in the branch (either through an accounting error, an error in wrongly accepting a transaction originating from POL or an error in the physical handling of cash / stock). I would not say this. From our telecon yesterday, I think the essential point is that it is possible to ascertain from Horizon whether a shortfall is the result of something done in a branch. The shortfall may be due to an error made in using Horizon (being a failure to follow the contractually required procedures), an error in handling cash or stock, or theft of cash or stock or fraud at the branch. The important point being that, in all of these cases, it is possible to ascertain from the data stored on Horizon and other data/evidence obtained from third parties when the shortfall is due to an error or theft or fraud at the branch and that this is an error or theft or fraud for which the postmaster is responsible.

4. There is no such thing as a "paper" loss - all shortfalls in branch accounts (even those originating from accounting errors) result, directly or indirectly, in a real loss to POL.

5. Any shortfall in a branch accounts that Horizon shows has been caused by an error/theft/fraud in branch will cause a real loss to POL. It will therefore amount to a breach of contract by the postmaster and the postmaster is liable to account and/or compensate POL for the shortfall.

6. POL has an implied duty to ensure that the branch accounting system does not prevent a postmaster from performing his obligation to render an accurate account (this is perhaps a more positive phrasing of the duty in *Stirling v Maitland*) and a duty to cooperate with POL so far as is necessary to enable the postmaster to perform that obligation (the duty in *Mackay v Dick*). These duties have various practical applications, as set out below. One of these applications is as follows:

- a. The system does not have to be error-free in every case but POL does have to put sufficient procedures and controls to identify and correct errors.

In the context of the Horizon system, the relevant procedures and controls include the following processes:



. Where a transaction / shortfall is disputed by a Postmaster, there is a mechanism whereby they can "park" that disputed element so to allow them to otherwise render an accurate account at the end of every accounting period.

. After correlating all available data, including data from third parties, transaction corrections (TCs) are suggested by POL.

. Another practical application of the Stirling v Maitland/Mackay Dick duties is that the postmaster must be provided with sufficient information to determine whether any TCs are valid or not (eg. data on Horizon, paper records kept in branch, discussions between POL and postmaster, evidence sent by POL with the transaction, providing the postmaster with a route to request more information, etc.)

7. POL has an express / implied duty to offer as much training to a postmaster and his assistants as is necessary to enable the accounting system to be operated properly (ie. in accordance with POL requirements). As regards postmasters, this is an aspect of the Stirling v Maitland/Mackay Dick duties; as regards their assistants, it is the effect of sections 15.2 and 15.7. In either case, the training does not have to be perfect or sufficient to enable people who are stupid or who do not pay attention.

The standard required is that which is necessary, not that which is fit for every sort of person on every occasion (in relation to assistants, this point is reinforced by the postmasters' obligation only to employ assistants who are suitable and by the fact that the contract places the primary responsibility for the sufficiency of their training on postmasters (see sections 17.1, 17.2 and 17.7.1).

A breach of this duty does not automatically negate the postmaster's responsibility in Point 5 above unless the postmaster can show that the lack of training was causative of the shortfall.

8. Section 17.1.4 and/or the Stirling v Maitland/Mackay v Dick duties oblige POL to provide postmasters with a helpline which gives such assistance as is necessary to enable the accounting system to be operated properly. Again, the standard required is that which is necessary, not that which is fit for every sort of person.

9. The Stirling v Maitland/Mackay v Dick duties oblige POL to provide such information and evidence to a postmaster who challenges a discrepancy in a branch's accounts as is necessary to enable to determine whether the relevant figures are correct or not.

a. This obligation is only engaged where the postmaster requests assistance / disputes an issue (ie if a postmaster accepts a shortfall or a TC without dispute, they are bound by it and it then forms part of their accounts for which they are responsible).

b. In practice, Post Office always provides the necessary information/evidence: in fact, it provides the necessary information/evidence for any TC at the outset and it also accommodates requests for further information/evidence where these are made. POL always endeavours to resolve all disputes with postmasters on mutually agreed terms).

c. The fact that POL cannot find the exact root cause of the error does not negate the postmaster's responsibility for shortfalls in their accounts under point 5.

10. In rare cases where POL and a postmaster cannot resolve a disputed transaction despite best efforts being made to do so (i) POL either writes off the branch shortfall or (ii) terminates the postmaster's appointment (typically on 3 months' notice unless there are additional circumstances warranting summary termination eg. false accounting).

a. Where the postmaster resigns or Post Office terminates on notice, there can be no claim against Post Office: it is entitled to terminate without cause and no implied duty of any sort, even an implied duty of good faith, could in any circumstances qualify that entitlement.

b. Likewise, there is no claim where the postmaster has been summarily terminated due to theft or false accounting as - if there has been theft or false accounting - such summary termination will always be justified.

Your thoughts welcomed.  
Andy

Andrew Parsons  
Partner  
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