

Confidential and legally privileged draft

Bond Dickinson

POST OFFICE RESPONSE TO DRAFT PART 2 REPORT

[TO GO ON POST OFFICE LETTERHEAD]

Second Sight
By email only

[DATE]

Dear Sirs

Post Office's Response to Second Sight's Draft Part Two Report ("the Report")

This letter sets out Post Office's comment on the Report. Detailed line-by-line comments are set out in the Appendix and commentary on a number of key issues that run through the Report is set out below.

Scope of Second Sight' Report

The basis of Post Office's relationship with subpostmasters is the Subpostmaster Contract. Post Office acts according to its contractual obligations and requires subpostmasters to do the same. As we have discussed previously, it is not open to Second Sight to seek to impose further duties on Post Office beyond the Contract as there are no such additional duties on Post Office.

Second Sight, as a firm of accountants, are not qualified to opine on legal matters, including issues concerning the "fairness" of the Contract or any criminal matters. Nor have they been engaged under your engagement terms to do so, especially as such matters are not reasonably related (or related at all) to issues "concerning Horizon and any associated issues".

The Contract is essentially an arms-length, commercial transaction. The concept of freedom of contract means that Subpostmasters can, ultimately, choose whether or not to enter the Contract if they are not happy with its terms. .

The NFSP negotiated the terms of the Contract on behalf of Subpostmasters. Indeed, in a network of several thousand Subpostmasters, it is reasonable to expect the contract to have been negotiated in that way. It would be impractical and potentially unfair to certain Subpostmasters for the Contract to be negotiated on an individual basis by each Subpostmaster before he becomes a Subpostmaster.

The risk allocation under the Contract is typical of and reasonably expected in contractual arrangements of this kind. It is a contract of agency. Agents (Subpostmasters), by definition, have custody and/or control over the principal's (Post Office's) assets and interests and are engaged by the Principal in order to protect, safeguard and further the principal's interests on his behalf.

In this case, Subpostmasters are necessarily responsible for ensuring the safe-keeping and proper accounting for the revenue generated for Post Office throughout the Subpostmaster network. Accordingly, the risk allocation in the Contract properly reflects the role the Subpostmaster plays, including the level of his control and responsibility for and trust placed in him by Post Office with respect to Post Office's assets. That allocation is in any event reflected in the general law e.g. in the form of the equitable duty of an agent to account to his principal.

Thousands (and the vast majority) of Subpostmasters have not complained about the allocation of risk under the Contract and have been signing up to it for two decades. The issues raised by Second Sight represent the views of a very small, self-selecting proportion of Subpostmasters.

Confidential and legally privileged draft

Bond Dickinson

Unless Second Sight can substantiate any instance in which an Applicant's entry into the Contract was the subject of any undue influence, unconscionable conduct on the part of Post Office or any other "unfair" circumstances, then the concepts of fairness or bias are irrelevant to Second Sight's work. Second Sight must assess Post Office's and a subpostmaster's actions based on the contract and no other metric.

Evidence base

Post Office considers it essential that the basis for statements/assertions made in the Report is set out clearly to provide context for the mediator and applicants. At present Second Sight have submitted CRRs on XX cases. It is not clear from the MBR whether the evidence base for the statements made comes from those cases, the wider base of CQRs which have not yet been investigated (and therefore, presumably, the claims not tested) or some other source.

The Report, at numerous points (all highlighted below), implies a thorough review of the cases has been undertaken by Second Sight. If that is the case the number of cases examined must be made clear to provide context for the mediator and applicant. Otherwise, there is a risk of suggesting that Second Sight's view are well advanced when in fact they are based on very limited information.

Ideally this should be done in relation to every example quoted, but at the very least, it could be provided by the inclusion in the Report's introduction of a number of key facts, which could then be updated as the Report is updated in light of the results of further investigations.

Yours faithfully

Chris Aujard
General Counsel
Post Office Limited

Confidential and legally privileged draft

Bond Dickinson

Appendix

Paragraph in Report	Post Office comment
1	The Report would benefit from a contents page given that not all issues are relevant to all cases.
1.3	After this paragraph may be a good opportunity to explain how far Second Sight's investigations have progressed in terms of the number of cases it has reviewed.
2	See our comments above about this issue being outside of Second Sight's terms of reference. In light of this, this entire section should be deleted. We nevertheless set out below our specific comments on this section.
2.3	The Subpostmaster Contract sets out a two way framework of obligations. It also imposes obligations on Post Office. See XX below regarding subpostmasters' understanding of the contract.
2.4	It may also be useful to include clause 15.2 of the Subpostmaster Contract which makes clear that subpostmasters are liable for the acts and errors of their assistants.
2.5	No explanation or justification is given for the view that " <i>the terms of the contract appear biased in favour of Post Office</i> ". To form this view an analysis is required against some form of industry standard or benchmark. It is noted that Second Sight has no expertise in the field of franchise contracts in order to offer this view. In Post Office's experience, the terms of the Subpostmaster Contract are comparable to, or perhaps even more generous than, those used by many similar businesses in the UK. This view should be withdrawn unless it can be justified. This paragraph goes on to state that the Subpostmaster Contract can " <i>operate to the detriment of the Subpostmaster</i> ". All contracts impose detriment on someone as by their very nature, contracts impose obligations on parties. If those obligations are not complied, then detriment consequence will flow. This point should be explained in more detail or deleted otherwise it is potentially misleading. It is not understood why Second Sight considers it relevant that Post Office is not " <i>prepared to vary the terms and conditions of the Standard Contract at the request of the Subpostmaster</i> ". This point is not developed any further elsewhere in the Report. If it is of no relevance to any conclusion, it should be deleted. In any event, given that the Subpostmaster Contract applies to over 8,000 active subpostmasters it would obviously be completely unfeasible to allow individual variations to the contract. Managing 8,000 individual contract arrangements would be unworkable. Finally, it is noted that the Subpostmaster Contract is negotiated with the NFSP and therefore subpostmasters, through their union, do influence the contract terms.
2.6	The first part of this paragraph relates to subpostmasters understanding the Subpostmaster Contract. The second part of this paragraph relates to Post Office's right to implement new products. These two points appear independent of each other and perhaps should be set out separately to avoid confusion. If a subpostmaster chooses not to take legal advice on the Subpostmaster Contract before entering into it, that is their risk to take. As a matter of law, a person is bound by a set of contract terms even if they do not read them or understand them ¹ . Post Office, like every other organization in the UK, has no obligation to advise that someone takes legal advice

¹ Chitty on Contract 12-002 & Parker v South Eastern Ry (1877) 2 CPD 416

Confidential and legally privileged draft

Bond Dickinson

	<p>on a contract with Post Office. No fault can lie with Post Office in this respect. The Report should make this point clear that the subpostmaster is liable for any misunderstanding of his contract.</p> <p>In the second part of this paragraph, the Report suggests that Post Office could implement new products in such a way that transfers risk to the Subpostmasters.</p> <p>First, section 1, clause 6 of the Subpostmaster Contract states that Post Office can only "reasonably" implement new products. A subpostmaster will therefore not be liable where Post Office has acted unreasonably.</p> <p>Second, as explained above, the relationship between Post Office and subpostmaster is a commercial one, where if the subpostmaster is unhappy with the risk-reward benefit of the Subpostmaster Contract, he can, at any time, terminate the contract.</p> <p>It is therefore incorrect to say that subpostmasters "have no choice other than to accept" changes by Post Office.</p>
2.7	<p>This paragraph appears to relate to the issues raised in paragraph 8 and has no relevance to the contractual issues under discussion in paragraph 2. It should be deleted.</p>
2.8	<p>If subpostmasters are unaware that Post Office Investigation Division (now known as the Security Team) does not have a mandate to provide general investigative support, then this is a product of them not correctly reading the Subpostmaster Contract. The Subpostmaster Contract states clearly (at section 19, clause 12) that:</p> <p>"The main job of the Investigation Division is to investigate, or help the Police to investigate, criminal offences against the Post Office, British Telecommunications and the Department of National Savings. The Investigation Division does NOT enquire into matters where crime is not suspected".</p> <p>Again, the Report should make clear that a misunderstanding of the security team's role is the fault of the subpostmaster.</p> <p>As to the comment that there is "no general investigative function readily available as POID only seems to have a mandate to act (though it is not required to act) where criminality is suspected", this comment does not relate to contractual issues and should be moved to section 22.</p> <p>In any event, this comment is incorrect. As described in section 3 of the Briefing Report – Part One there is significant apparatus at Post Office for investigating issues faced by subpostmasters. Due to the range of issues that could arise, this is broken down in to a variety of departments, services and processes. However, in simple terms, if a subpostmaster wishes to have a disputed transaction or error investigated, they should raise the issue with NBSC who will then escalate it to the appropriate department within POL for further investigation.</p>
2.9	<p><u>Seek comments from security / Jarnail.</u></p>
2.10	<p>Second Sight's conclusion that "often" subpostmasters are not given a copy of their contract needs qualification. The Report should state the number of cases investigated in relation to this issue by Second Sight and the number of cases in which it has been found that the Subpostmaster Contract was not provided.</p>
2.11	<p>At law, a party need not sign a set of terms and conditions in order to be bound by them. It is perfectly accept for a party to sign one document that refers to terms and conditions in another document.² This paragraph therefore provides no assistance and should be deleted. Allowing this paragraph to remain in the Report risks a subpostmaster believing that there is some fundamental problem in them not having signed a copy of the Subpostmaster Contract.</p>

² Chitty on Contract 12-013

Confidential and legally privileged draft

Bond Dickinson

2.12	Subpostmasters will have also have retained a signed copy of their appointment and therefore are equally at fault if a copy of that appointment is not available.
3	<p>It is noted that a number of the points below were raised by Post Office in their previous comments on this section of the Report. These comments have not been reflected in the Report even though they highlighted some material inaccuracies and errors.</p> <p>The Report principally focuses on the situation whereby the amount of cash dispensed from an ATM as recorded on Horizon by a subpostmaster is different from the record kept by Bank of Ireland (BOI). Even if these accounts are (to use Second Sight's expression) "out of sync" this would not cause a loss to the branch.</p> <p>The reason for the discrepancy between the two sets of accounts, as set out in the Report, is that the account on Horizon would be incorrect due to the subpostmaster inputting incorrect figures. Once the Horizon account was corrected (by way of a reconciliation against the BOI accounts), the Horizon account would match the amount of cash in the ATM. Hence there is no cash loss.</p> <p>This is a critical issue that is not addressed in the Report despite being raised in Post Office's previous comments on this section.</p> <p>Post Office is gravely concerned that this section, as currently drafted, will give Applicants the impression that the "out of sync" issue could be the cause of physical cash losses in their branch when this is, without any doubt, not the case.</p>
3.3	<p>For the reasons set out above, the complaints highlighted by Second Sight in this section should be quantified and put in context eg.</p> <ul style="list-style-type: none"> • The number of Horizon users • The number of ATMs across the network (by reference to the timing of the complaint/s) • The number of applications received in the Scheme • The number of those applications referring to ATM related issues • The number of applications fully investigated by Post Office and reviewed by Second Sight, and • The number of those cases which have raised ATM issues
3.4	<p>ANGELA – are there any "other ATMs" other than BOI and HANCO?</p> <p>This paragraph refers to "reports" – this should precisely state the name of the document eg. Case Questionnaire Responses.</p>
3.5	It is not understood on what basis the Report finds that the system of operating ATMs in Post Office's network is considered to be <i>"a more complex arrangement than that deployed by most high street and other banks"</i> .
3.6	<p>The number of Applicants raising the "air gap" issue should be quantified. As far as Post Office is aware, no Applicant has used this phrase.</p> <p>Also this paragraphs contains a quoted extract but the source is not stated.</p>
3.11	<p>To the extent that a subpostmaster misunderstood the instructions, this was their fault and they are liable for any loss as a result. Attention is drawn to Section 1, Clauses 13 and 14 of the Subpostmaster Contract that makes this point very clearly.</p> <p>Alternatively, the Report suggests that the out of sync issue <i>"will sort itself out"</i>. Post Office has not seen Second Sight's evidence for this statement. In any event, this statement is correct. If a subpostmaster has entered the wrong ATM cash dispensed figure on Horizon, then a transaction correction will be sent to the branch to correct this error.</p>

Confidential and legally privileged draft

Bond Dickinson

	<p>The Report goes on to say that following the helpline's advice that the out of sync issue "will sort itself out", the problem was not sorted. This statement is incorrect for the reason stated above. Post Office has not seen evidence in any case examined that supports this proposition. Second Sight is asked to adduce to Post Office the evidence it relies on to support this conclusion.</p>
3.12	<p>This paragraph should make clear that it is a subpostmaster who has input the incorrect figure into Horizon.</p> <p>This paragraph fails to go on to explain the process for remedying this error through the reconciliation with BOI's records and transaction corrections to the branch.</p>
3.13	<p>It is not understood what is meant by "associated reconciliation difficulties". This needs to be defined.</p> <p>It is also unclear on what basis those difficulties are said to have been "<i>commonplace in some branches prior to the February 2008 release of the Manual Update</i>". It would be helpful if second Sight could include the statistical data to support this statement otherwise this statement may mislead Applicants into believing this issues was more widespread than it actually was.</p>
3.14	<p>The extract from the Operations Manual quoted in paragraph 3.14 is stated to support the above views but in fact provides no material of relevance to matters discussed in paragraph 3.13.</p>
3.15	<p>Furthermore, Post Office does not agree that the extracts from the Operations Manual quoted in paragraph 3.16 are unduly complex. The Report concludes that these extracts are said to show "<i>how easy it must have been for some Subpostmasters to make mistakes</i>" but Post Office cannot see anything in these extracts to support this view.</p> <p>Even in the event that such extracts did demonstrate how mistakes may easily have been made (which is not accepted), it is the subpostmasters' responsibility to ensure they understand the instructions, since they are responsible for losses arising as a result of any misunderstanding/mistakes.</p> <p>The selection of these extracts are also somewhat confusing in that the MBR focuses on the "<i>out of sync</i>" issue but these extracts relate to loading cash into an ATM which is unrelated to the "<i>out of sync</i>" issue.</p>
3.17	<p>Of the cases that Second Sight has fully investigated, only 2 refer to the out of sync issue. The Report should make clear therefore that Second Sight's finding is based on only a very limited sample of cases.</p>
3.18	<p>It is incorrect to say that the advice that is alleged to have been given by the Helpline would, if given, run the risk of allowing large shortfalls to build up in any event. The reconciliation of figures between Horizon and BOI happens within a few days of the ATM transaction and will, if necessary, trigger a corrective transaction correction thereby preventing the build-up of accounting shortfalls.</p> <p>For the reasons stated above, there is no evidence that the Post Office Helpline provided incorrect advice. The conclusion drawn in this paragraph is therefore unsustainable.</p> <p>Furthermore, due to the issue of transaction corrections, even where a branch's accounts have got "out of sync, they will have been corrected on a regular basis.</p> <p>Finally, and most crucially, the out of sync issue will never cause a loss of physical cash therefore there is no pressure to falsely account.</p> <p>For the sake of clarity, Post Office does not accept that there is any justification whatsoever for a Subpostmaster to submit a false account which is a criminal offence. This paragraph, as currently drafted, appears to suggest that committing a criminal offence could be justified. Second Sight are asked to expressly confirm in the Report that they do condone such criminal behaviour.</p>

Confidential and legally privileged draft

Bond Dickinson

3.19	Post Office has seen no evidence to suggest that a power or telecommunications failure has caused a loss of ATM data. Second Sight is asked to provide this evidence to Post Office or delete this paragraph.
3.20	<p>Post Office is not aware of any instances in those cases where it has completed its investigation <i>"where a cash withdrawal cannot be completed due to a problem occurring during a transaction"</i>. ANGELA IS THIS CORRECT?</p> <p>The number of <i>"reported instances"</i> of this issue should be quantified along with a statement as to whether those reports have been investigated.</p> <p>It is noted that this scenario will not cause any loss in the branch. If the ATM does not vend any cash, the ATM cash totals receipt will not record any cash being dispensed. The amount of cash in the ATM will therefore balance with the figures recorded on Horizon.</p> <p>It may be that the customer's bank has incorrectly debited the customer's account but that is an issue between the customer and his bank. So long as the subpostmaster has accurately recorded the cash dispensed figure from the ATM receipt on to Horizon, this discrepancy will not be passed to the branch.</p> <p>Given that Second Sight's scope of work is looking at the impact on subpostmasters, this issue should be removed from the Report or the above explanation should be included.</p>
3.23	<p>Retract fraud cannot cause a loss to a subpostmaster where they have followed the correct accounting procedure. Post Office has explained this issue to Second Sight on a number of occasions (including providing Second Sight with a written briefing focussing just on this issue). As yet, Second Sight has not identified any flaw in Post Office's position. The reference to retract fraud should be removed or explained in detail as per the information provided to Second Sight.</p> <p>It is accepted that the other forms of third party theft or fraud are still under consideration. However, these issues were only raised with Post Office last week and have not yet been discussed. It is therefore misleading to suggest that these matters have been <i>"discussed at length with Post Office"</i>. The inference being that Post Office has had time to address these issues and yet had been unable justify its position when in fact these matters have only recently been raised.</p>
4	Need input from POL on this topics which has not been raised by SS before
5	The Report should make clear that prior to 2012, discrepancies on scratchcard activations were a product of the subpostmaster failing to rem in stock to Horizon. This was not an error by Horizon but an error generated purely in branch by branch staff. This applies similarly to discrepancies in Lottery sales.
5.3	This paragraph should make clear that the error and transaction correction being referred to relates to activation issues and not sales.
5.5	The number of reports from Applicants about this issue should be quantified along with a statement as to whether those reports have been investigated.
5.6	The "complication" raised in this paragraph should be explained in more detail. Post Office does not understand what this is a reference to and so it is unlikely that Applicants will understand this either.
5.7	AP TO RE-REVIEW SS INTERIM REPORT
6.2	<p>The reference to the training being <i>"rated"</i> as poor suggests that some form of statistical survey has been conducted. As far as Post Office is aware, this has not happened.</p> <p>The final sentences need to be clarified as to whether these points are (i) Applicant's submissions to Second Sight or (ii) Second Sight's findings – in which case much further</p>

Confidential and legally privileged draft

Bond Dickinson

	detail is needed to explain and justify those views.
6.4	<p>The Report states that as some branches "<i>only started making mistakes after the new system was launched</i>" then that indicates that some subpostmasters or their staff were "<i>insufficiently trained</i>". This statement is logically and factually incorrect.</p> <p>First, there is no evidence that branches made less errors before Horizon than after. Transaction records are not available for the period before Horizon and therefore there is no way to test the above proposition. Although some Applicants may state this anecdotally, this is based on recalling events from over 14 years ago. It is also noted that Second Sight has only completed its investigation into a small sample of cases.</p> <p>Second, Post Office does not train branch staff – this is the responsibility of the subpostmaster (section 15 Subpostmaster Contract). It could well be the case that a subpostmaster was adequately trained but failed to pass on this training to his staff.</p> <p>Third, this approach assumes that Post Office had an obligation to train all subpostmasters until they were fully competent on the system. This is not correct. Post Office only had to provide reasonable training to a subpostmaster [IS THIS CORRECT – THERE IS NOTHING IN THE CONTRACT]. If following that training, the subpostmaster was not competent in his duties, there were a number of support mechanisms for him to utilise (NBSC, line managers, etc.) and he could request further training. The fact that a subpostmaster was making errors is therefore not evidence that Post Office did meet its duties to provide training.</p>
6.5	<p>The number of "<i>examples</i>" from Applicants about this issue should be quantified along with a statement as to whether those reports have been investigated. It is noted that training records going back before approximately 2007 are not available due to retention policies. It is therefore impossible to form a view on how training may have been delivered in specific cases before this time.</p>
6.7	<p>No evidence is provided at all to justify the view given in this paragraph about the competence of Post Office's auditors, investigators and line managers.</p> <p>The Report also does quantify how many of Post Office's staff this applies to.</p> <p>For the record, Post Office considers this conclusion to be incorrect.</p>
6.8	<p>This paragraph is incorrect. Post Office had no obligation to monitor the quality of training provided to assistants by subpostmasters. This position is clearly explained in the Subpostmasters Contract.</p>
6.9	<p>The fact that Post Office has successfully traded and grown its business over the last 20 years proves that Second Sight's statement about Post Office's business model is incorrect.</p> <p>For the reasons stated above, this paragraph is out of scope and should be deleted.</p>
7	<p>This section of the Report repeats a number of the accusations raised by Applicants to the Scheme. However, it does not address the fact that the call logs for calls to NBSC have been provided to Second Sight in nearly every case. In the cases that Second Sight have reviewed, they have not identified one proven example of the poor advice cited in this section [TO BE DOUBLE CHECKED]. Based on Second Sight's own findings, the conclusions in this section are shown to be incorrect.</p>
8	<p>This section is premised on the fact that a branch has made an error that needs investigating. This critical point, being that the error originates from the subpostmaster or his staff, needs to be stated.</p>
8.1 – 8.8	<p>Further comments from POL on this section would be welcomed</p>

Confidential and legally privileged draft

Bond Dickinson

8.9	<p>The statement that if a TC is over 42 days old, the subpostmaster had no choice but to accept is incorrect. Each TC will be accompanied with a supporting explanation and evidence. The nature of this evidence is very product specific – Second Sight's approach of dealing with this issue in general is, by its nature, prone to inaccuracy.</p> <p>In many cases, the evidence required from the branch to dispute a TC would not be on Horizon but kept in the branch records. For example, if a TC was generated because the ATM cash dispensed figure BOI's records did not match Horizon's records, a subpostmaster need only submit the ATM receipt to prove that he had keyed in the correct number and the TC would be reversed. As branches are required to keep the ATM receipt for 2 years, contesting this type of TC can occur long after 42 days.</p> <p>Post Office is prepared to investigate any product specific allegation that there is an insufficient audit trail for branches to investigate TCs. However, Second Sight's general conclusion in this paragraph is (in light of the above example) incorrect.</p>
8.10	This paragraph raises issues that are specific to individual cases. There is no general thematic issue here that warrants being the Report. This paragraph should be deleted.
9	<p>The question of transactions being recorded in a branch's accounts after a subpostmaster was suspend has, as far as Post Office is aware, only arisen in one case. This was dealt with comprehensively in Spot Review 6 and shown to be for valid reasons. Unless Second Sight has evidence of this happening inappropriately in another case, this issue has been resolved and should be removed from the Report.</p> <p>NEED TO DISCUSS WITH RODRIC AS THIS CROSSES WITH A PIECE OF WORK HE IS DOING WITH FJ AND DELOITTE</p>
10.2	<p>A "ghost" transactions are defined by Second Sight as "<i>genuine transactions that for some reason appear multiple times in the Horizon records</i>". This not the same as an "<i>Automatic Transaction Reversal</i>" which is the title of this section of the Report. This appears to be two separate issues that should be dealt with independently.</p> <p>For the sake of clarity, Second Sight has presented no evidence of a "ghost" transaction ever having occurred. References to ghost transactions are at present is nothing more than speculation and should not be included in the Report unless there is some evidence to support them. It would be misleading to suggest to Applicant that this may be an issue when it is entirely unsupported by any evidence.</p> <p>Spot Review 1 is cited as an example of an "automatic transaction reversal". This is phrase coined by Second Sight and is misleading as it suggests that Horizon will undertake transaction reversals automatically without any user input. As explained in detail in Post Office's response to Spot Review 1, the reversal of transactions in that Spot Review were caused by the Subpostmaster cancelling the basket of transactions he was conducting for a customer.</p>
10.3	For the reasons stated above and in Spot Review 1, the conclusion that the allocation of the subpostmaster's user ID to reversed transactions through the recovery process is a " <i>system design error</i> " is incorrect. The transactions are allocated to the user logged on to the terminal and who actions the recovery process.
10.5	AP TO SPEAK TO CK ABOUT THE HR REPORT
11.3	NEED ROD ISMAY'S VIEW ON HOW LOST OR INCORRECT REMITTANCES ARE HANDLED.
12	Post Office has explained in its response to Spot Review 12 that subpostmasters will not be liable for cheques lost in transit. This conclusion should be explained in the Report and not left as an open issue.

Confidential and legally privileged draft

Bond Dickinson

	The other issues with cheques (mutilated cheques and bounced cheques) were only recently raised with Post Office by Second Sight and are currently under investigation.
13	Post Office has fully addressed this issue in its written briefing to Second Sight on P&A Fraud. This issue should either be deleted entirely or explained using the information provided by Post Office so that Applicants are aware that P&A losses are not the result of any error in Horizon or Post Office's processes. If Second Sight has any further questions on this topic, Post Office would be happy to address them.
14	I SUGGEST THAT WE DON'T OFFER ANY COMMENT ON THE RETENTION POLICY ISSUES AS POL'S RETENTION POLICIES ARE INCONSISTENT
15.2	<p>The statement that Post Office "does not seem to regard surpluses as worth the same degree or attention as shortages" is demonstrably incorrect.</p> <p>If Post Office discovers a discrepancy, whether it be a shortage or surplus, it generates a transaction correction.</p> <p>Where discrepancies are discovered in branch, it is up to the subpostmaster to dispute the discrepancy with Post Office (by contacting the NBSC). As may not be surprising, Subpostmasters typically dispute more shortages than surpluses. Likewise with transaction corrections, subpostmasters tend to dispute debits more than credits. It is therefore fair to say that Post Office spends more time investigating shortages and surpluses but this because the target of those investigations are driven by subpostmasters and not Post Office. If a subpostmaster does not dispute a surplus (or a shortage) it is fair for Post Office to assume that the discrepancy has been validly attributed to an error in the branch.</p>
15.4	<p>The view expressed in this paragraph, which is entirely unsupported by any evidence, is incorrect.</p> <p>It should be noted that, despite having spent two years investigating Horizon, Second Sight has yet to identify a system wide flaw that would undermine Post Office's confidence in the system. An approach that therefore looks to human and procedural errors before system errors is justified.</p> <p>However, Post Office never goes as far as to say Horizon is blameless. Indeed, as noted in Second Sight's interim report, Post Office has proactively identified and corrected historical issues with Horizon.</p>
15.5	<p>The logic applied in the analysis in this clause overlooks the fact that surpluses can be generated in two ways.</p> <p>The branch could be holding too much cash. This could be done simply by handing over insufficient cash to a customer which is as likely as handing over too much.</p> <p>A surplus could also be generated by inputting the incorrect transaction details into Horizon despite the branch holding the correct amount of cash. It is equally viable that a branch would understate the value of a transaction as overstate.</p>
15.6	Subpostmaster can effectively hold surpluses in suspense by settling centrally any surplus. Indeed a number of subpostmasters regularly do this.
15.7	No financial institution runs an agency model like Post Office so this analogy is inaccurate. For example, high street bank branches are directly owned and run by the bank, they are not contracted out to third party agents.
15.8	The scenario described in this paragraph would never occur. If the subpostmaster has removed a surplus due to an error then they will be holding the cash to make good any later transaction correction related to that error.

Confidential and legally privileged draft

Bond Dickinson

15.9	It is incorrect to say that Post Office "never has to bear the cost of" discrepancies. Post Office has given Second Sight numerous examples of where Post Office bears the cost of an error (for example in relation to missing cheques).
15.10	This paragraph appear to duplicate paragraph 8 above and should be moved or deleted.
16.1	This paragraph is a repetition of the issues in paragraph 8 above. It is however noted that this type of error begins with a mistake by the subpostmaster in incorrectly recording a deposit rather than a withdrawal and therefore the subpostmaster is liable for this mistake.
16.2-16.3	The issues raised in these paragraphs were only raised with Post Office recently and are currently under investigation. As yet, Post Office has not completed its investigation into any case that alleges this problem. The Report should make clear that this point is still under investigation.
16.5-16.10	Angela – can we discuss a possible response to the green giro issues.
17	<p>Second Sight suggests that Horizon is not fit for purpose because it is not sufficiently error repellent. The errors in question are those caused in branch by subpostmasters and their staff. As the Subpostmaster Contract clearly states, Subpostmasters are liable for these errors.</p> <p>For the reasons stated above, any analysis beyond this point is beyond Second Sight's terms of reference.</p> <p>Nevertheless, Post Office notes that:</p> <ul style="list-style-type: none"> • Second Sight has not identified an example where Post Office could have reasonably made the system more error repellent; • There is no explanation for Second Sight's assumption that the system must have a "high degree of error repellency" • This assessment has not been made against any industry or technical benchmark; • This conclusion is formed after Second Sight has only investigated a small number of cases.
18	Angela – this is connected the giro issues above – can we discuss.
19	<p>As Second Sight note, the issue of one-sided transactions is still under investigation. However, the Report states definitively that one sided transactions have occurred (see paragraph 19.1). So far only one case raising one-sided transactions has been investigated (M014) and this was proved to be a temporary processing issue at the customer's bank rather than any issue with Horizon. The Report should therefore not state that one-sided transactions have occurred as this has not yet proved and may be not be correct.</p> <p>This section should be carefully re-phrased as a hypothetical issue rather than an actual issues until more evidence is available.</p>
20.4	As far as Post Office is aware the issue of duplicate postage labels being produced has only been raised in one case. This was dealt with in Spot Review 10 which shows that the Applicant's recollection of this issue was incorrect. Unless there are more cases on this subject, this issue has been resolved and need not been referred to in the Report.
22	Second Sight is not qualified in any way to comment on Post Office's prosecution processes. This section is out of scope and should be deleted.

Confidential and legally privileged draft

Bond Dickinson

	For the record, Post Office considers Second Sight's findings in this section is be wholly inaccurate.
--	--