

## The Post Office and the Horizon system

The Post Office is committed to an approach which recognises the critical role played by all those with an interest in the business, from the most remote post office branches to our corporate centre and beyond, to all our stakeholders.

Our purpose statement commits us to an approach where fairness and honesty are core values we expect to be adopted by all involved with the business.

It is this approach which underpinned our wish to understand more about concerns raised by some subpostmasters in relation to the Horizon computer system through which counter transactions are recorded.

In July 2012 we therefore appointed a firm of independent forensic accountants, Second Sight, to investigate these concerns.

We subsequently used our communication channels and a media release to invite the subpostmaster community, including those no longer working in the post office business, to raise any issues for investigation.

Forty-seven were put forward. Having spoken to the subpostmasters about these issues, Second Sight presented recommended in March 2013 that it investigate 10 of these cases.

Second Sight produced its report in July 2013 (ANNEX).

This reported that contrary to some allegations there were no systemic issues of concern within the Horizon system

It did however suggest that Post Office could improve the training and support available for subpostmasters.

In response to the Second Sight report the Post Office committed to create a working party to work collaboratively to complete the review of cases started by Second Sight (PRESS NOTICE ANNEX). This would examine the themes identified by Second Sight and consider all cases brought forward by the Justice for Subpostmasters Alliance and MPs, together with any new themes emerging from these cases. The JFSA were invited to join this working party.

Through discussions with SS and JFSA, Post Office developed the 'Initial Complaint Review and Mediation Scheme' which was announced on the 27th August through a variety of different media [on the 29th October the Post Office announced Sir Anthony Hooper as independent Chair of the Working Group (ANEXES)

At the same time we initiated a stream of work to improve training and support given to Post Office branches (SEE ANNEX A)

### The Purpose of the Scheme

The Scheme is designed to allow each side an opportunity to explain their position and to seek to find some common ground. Where common ground cannot be reached, it is hoped that differences can be identified and resolved. No solutions are to be imposed and both parties are able to reject any recommendations made.

The Scheme was opened to applications from current and former subpostmasters as well as counter clerks employed by the Post Office who may believe that they have suffered loss or been treated unfairly as a result of the Horizon system or any associated issues.

Applications for cases to be considered by the Scheme opened on xxx and closed on xxx. The opportunity to submit cases was advertised via xxx.

A Working Group was set up to oversee the scheme. It is chaired by the independent Sir Anthony Hooper QC, a retired Appeal Court judge. Post Office, Second Sight and Justice for Subpostmasters Alliance (JFSA) are also members of the Working Group.

The process leading to the mediation day is that applications are assessed by the Working Group. Those subpostmasters and ex-subpostmasters with cases deemed suitable for investigation are asked to complete a case review questionnaire. Post Office offers financial assistance to pay for professional support.

The case review questionnaire is submitted and the Working Group determines if there is enough information for a full investigation. Where this is the case, Post Office investigates (this takes approximately four weeks depending on the complexity of the case).

The Post Office report is then passed to Second Sight who investigate (this also takes approximately four weeks depending on the complexity of the case).

Second Sight then submits its report and recommendations to the Working Group. Post Office reviews the report and if in agreement issues a mediation funding agreement. A date, location, and mediator are established with the applicant.

The mediation day takes place with the applicant, the mediator, and a Post Office representative present. If agreement is reached then the case is closed. There is also the possibility to ask for an extension at this stage.

A case is also closed if the Working Group does not approve a case for mediation or an extension is not granted. An agreement between Post Office and the applicant could be reached at any stage prior to the mediation day. Indeed, some cases have already been settled this way.

The mediation scheme is paid for by the Post Office and subpostmasters are eligible for support with legal costs incurred as part of the process.

The Post Office will provide a financial contribution of:

- Up to £1,500 plus VAT towards the reasonable costs of a professional advisor assisting a subpostmaster during the investigation process and completing the case review questionnaire.
- Up to £750 plus VAT towards the costs of a professional advisor in preparing for an attending a half day mediation or up to £1,250 plus VAT for a full day mediation.

#### UPDATE ON THE SCHEME

Much work has now been done in relation to the Scheme and the Post Office has carefully considered information so far available as to the operation of Horizon, the nature of the individual complaints brought and its preliminary response to the issues raised in those complaints.

Having made this assessment, the Post Office remains determined to ensure that each complaint is addressed individually and on its own merits. However, we are equally resolute in wishing to ensure that expectations in relation to the Scheme and its potential outcomes are clear to all involved.

In setting out this position we are of the view that an assessment as to whether any complaint about the Horizon system is justified must turn on legal principles. This must be the case given the range of stakeholders to whom the Post Office is answerable (THIS COULD BE STRONGER BUT THE LNKLATERS LETTER DOESN'T HELP ME)

Against that background, the issues addressed in this report are as follows:

The proper functioning of the Horizon system;

The contractual relationship between the Post Office and SPMRs;

The legal framework for the recovery of losses by the Post Office;

The Post Office's obligations in relation to training and support;

The right of the Post Office to terminate a contract with a SPMR;

The legal right of SPMRs to compensation; and

The application of the Limitation Act 1980.

### **The proper functioning of the Horizon system**

As set out above, Second Sight's preliminary conclusion, in July 2013, was that it had "found no evidence of system wide (systemic) problems with the Horizon software."

Nothing produced through Second Sight's work since then has shed doubt on this finding.

However, in order to provide further assurance, the Post Office has taken further steps to examine the Horizon system. By way of supplement to Second Sight's work, we commissioned a report from Deloitte. The Deloitte Report [confirms what the Post Office [believes/has been confident] has always been the case: Horizon is fit for purpose and functions in accordance with its design specifications; it is not fundamentally flawed; it does not suffer from any systemic issues. In particular, the Deloitte report:

***[Set out key findings of the Deloitte Report]***

***(annex)***

The Post Office believes that the conclusions Deloitte have reached about Horizon removes any doubts over its functionality or its fitness for purpose.

The Post Office will, of course, consider carefully specific allegations made in a particular case. But in doing so the Post Office will be guided by what Deloitte's view is as to the likelihood of the particular issue impacting on the performance of Horizon.

### **The contractual relationship between the Post Office and SPMRs**

The legal relationship between SPMRs and the Post Office is governed by the 1994 standard form contract. It is important to recognise that the Contract (together with the general law) provides the framework for the allocation of risk between the Post Office and SPMRs. That framework must guide the determination of any liability owed, in either direction, between applicants to the Scheme and the Post Office.

### **The legal framework for the recovery of losses by the Post Office**

Clause 1 of the Contract makes it clear that the relationship is one of principal and agent and that the SPMRs are not employees of the Post Office. The Contract, and agency relationship, have several key consequences. First, they give rise to clear duties owed by SPMRs to the Post Office. Secondly, SPMRs do not enjoy the legal protections and benefits that they otherwise might if they had the status of employees (see, for example, *Commissioners of Inland Revenue v Post Office Limited* [2003] ICR 546 and *Moeze Lalji v Post Office Limited* [2007] EWHC 5 (QB)). Thirdly, such duties as the Post Office might owe SPMRs are established and circumscribed by the terms of the Contract i.e. there can be no broader duty of

care which would extend the contractual duties owed by the Post Office in any respect relevant to the subject matter of complaints in the Scheme.

There are two main issues in the recovery of losses: 1) the way in which losses are calculated and 2) the Post Office's legal entitlement to seek those losses from a SPMR. It is accepted by all that Horizon produces and maintains the accounts on which all parties rely. The Post Office's position is that, as a matter of principle, Horizon accurately reflects the account between the Post Office and that the Post Office is entitled to recover such losses from SPMRs, including the applicants to the Scheme.

The SPMR is, day to day, responsible for inputting transactions to the Horizon system. Horizon provides a record not only of what the SPMR has received from the Post Office by way of stock but also what he has sold, and the cash he has received. Horizon is the only system used to record transactions; the Post Office holds no other relevant records. During the period covered by the complaints to the Scheme, at least once a month and potentially as often as at the end of every week, a SPMR was obliged to prepare and sign a document entitled "Cash Account (Final)" and send it to the Post Office or complete an equivalent process by declaring via an electronic system the amount of cash that he holds. The SPMR also conducted a manual hand count of cash and stock in the branch and compared them to the levels recorded in Horizon.

Section 12, paragraph 4 of the Contract provides:

"The Subpostmaster must ensure that accounts of all stock and cash entrusted to him by Post Office Ltd are kept in the form prescribed by Post Office Ltd. He must immediately produce these accounts, and the whole of his Post Office branch cash and stock for inspection whenever so requested by a person duly authorised by Post Office Ltd."

Therefore, there is a clear contractual basis on which SPMRs are required to account to the Post Office whenever requested to do so. In any event, the duty to keep an account also arises under the general law by virtue of the principal/agent relationship. An agent is required to keep an accurate account of all transactions entered into within the scope of his agency and he has to be ready to produce that account at any time to his principal. If he fails to keep and produce accounts then the principal is entitled to assume everything against him. SPMRs are asked to agree accounts regularly. They signify their agreement by an appropriate entry on Horizon. If a SPMR disputes the state of his account, he is free not to agree that account on Horizon.

An agent is bound by his own accounts unless he can show that he made a mistake. Once an account is agreed, the principal can sue on it. In other words, once a SPMR signifies his agreement to an account on Horizon which shows a balance due to the Post Office, the Post Office is entitled to sue on this as an account stated (see, for example, *Post Office Limited v Lee Castleton* [2007] EWHC 5 (QB)). Generally, settled accounts will not be re-opened, unless (as mentioned) drawn up under a mistake or if the agent is guilty of fraud.

Thus it is the reliability of the Horizon system as a matter of principle which is important because its reliability places the burden on the SPMR to show why, on the basis of the limited exceptions above, the amounts said to be owing are not in fact owed. But, there can now be

no real doubt as to its reliability. The circumstances, therefore, in which any applicant to the Scheme could realistically “re-open an account” and object to a particular loss recovery will be limited indeed.

The complaints to the Scheme do not appear to take issue with the Post Office’s right, as a matter of principle, to recover losses from SPMRs. However, there can be no doubt that such a right exists. First, section 12, paragraph 12 of the Contract is headed Losses. It provides:

“The Subpostmaster is responsible for all losses caused through his own negligence, carelessness or error, and also for losses of all kinds caused by his Assistants. Deficiencies due to such losses must be made good without delay.”

Paragraph 13 makes it clear that this obligation does not cease on the SPMR relinquishing his appointment and extends to losses which come to light after he leaves. Further, the fact that the SPMR must be in “error” is a low threshold and implies the Post Office need not establish any “mental element” on the part of the SPMR: he can simply be mistaken without being careless and without there being any question of dishonesty on his part.

Absent the right contained in section 12, paragraph 12, the Post Office would in any event be entitled under the general law to seek loss recovery pursuant to the duty of an agent who holds money for his principal to pay over or account for that money at the request of his principal. Thus there is a sound contractual basis for the recovery of losses, which is supported and supplemented by the general law governing an agent’s duties to his principal.

#### **The Post Office’s obligations in relation to training and support**

The Post Office is obliged to provide training under section 15, paragraph 7 of the Contract. In particular, the Post Office agrees to provide the Subpostmaster with relevant training materials and processes to carry out the required training of his Assistants on the Post Office Products and Services, inform the SPMR as soon as possible where new or revised training will be necessary as a result of changes in either the law or Post Office Services and (as necessary) update such training and materials.

However, it is the SPMR’s responsibility to ensure the proper deployment within his Post Office branch of any material and processes provided by the Post Office and to ensure that his Assistants receive all the training which is necessary in order to be able properly to provide the Post Office Products and Services.

In other words, the Post Office must provide training and keep it up to date but the SPMR is still responsible for the day to day operation of the Subpostoffice and accepts the consequences of any lack of training provided to his Assistants or their failure to put the training into effect.

In any event, in order to show that a claimed failure to provide proper training or support gave rise to a complaint, the SPMR would have to show how any alleged inadequate training or support has caused the loss he claims. The Post Office believes that this will be difficult to do in most if not all cases.

#### **The right of the Post Office to terminate a contract with a SPMR**

Some complaints concern the alleged wrongful termination of Contracts. The Post Office is entitled to give three months' notice to terminate the Contract with the SPMR (under section 1, paragraph 10) for any reason. If in a particular case the SPMR's Contract has been terminated on three months' notice, he can have no remedy arising out of that termination. The Post Office is able, contractually, to terminate the Contract for any reason or, indeed, for no reason.

Section 1, paragraph 10 also entitles the Post Office to terminate a Contract with a SPMR summarily for breach of a condition or non-performance of an obligation by the SPMR. Such cases must be treated on their facts. The Post Office believes that it is likely that in most or all cases, any such loss flowing from the wrongful summary termination of a Contract would be limited to the loss of the SPMR's entitlements during the three months following the termination, because the Post Office would have otherwise been entitled to terminate the Contract (for any reason) on giving such notice. The same comments above as to causation of loss also apply.

#### **The legal right of SPMRs to claim compensation**

As a matter of principle, if in each particular case, the Post Office has a right to recover losses, then there can be no question of the relevant applicant being entitled to "compensation"; in short, there is nothing for which compensation is due. Even if the Post Office was not in a particular case entitled to claim losses (and as I say above, such cases, if any, are likely to be very limited), then it may be that the applicant has a right to recover only *the specific amount of losses* that he paid to the Post Office. This is a restitutionary, not a compensatory, claim. It does not entitle the applicant to supposed related or consequential other amounts, such as for lost earnings, distress, hurt feelings etc.

In particular, in cases where the courts have determined criminal or civil liability against an applicant in respect of loss recovery that forms the subject of the complaint, there can be no doubt whatsoever that the Post Office was entitled to the losses. There can also, for that reason, be no doubt that the Post Office is not liable to pay restitution to such applicants for any alleged wrongful loss recovery.

Cases which a court has not been asked to decide (the majority) seem to fall roughly into general allegations as to the unreliability of Horizon and specific allegations as to factors which may have affected Horizon in the particular case. Particularly in light of the Deloitte Report, general, largely unsubstantiated allegations about Horizon would not establish that a particular loss recovery exercise was wrongful and therefore that restitution to the applicant is due.

More specific allegations about the functionality of Horizon need to be looked at on a case by case basis. [The Post Office accepts that in some, albeit limited, cases there may be specific reasons why loss recovery should not have occurred. These will need to be fully investigated and dealt with.]

However, a couple of important points should be recognised here. First, the Post Office can only be liable to pay restitution for wrongful loss recovery for which it is legally responsible i.e. for things which it has caused. For example, some complaints refer to such things as power cuts, incompatible use of other technologies with Horizon, intermittent internet connectivity etc. as being the basis for the complaint. Others claim compensation where there is a real question over whether Horizon or any of the matters of which complaint is being made caused the "loss"

at all. It would be very difficult in such cases to establish liability on the part of the Post Office to pay restitution (or compensation).

Secondly, as I say, the basis for any claim for wrongful loss recovery is restitutionary - i.e. the recoupment of the specific amounts originally paid by the applicant. Even to the extent an applicant could show that the loss recovery was, somehow, a breach of the Contract by the Post Office – thus entitling him to compensation - this would only entitle the applicant to damages for losses that were reasonably in the contemplation of the parties. This would not include such consequential “losses” as loss of reputation, hurt feelings, mental distress or ill health etc. (even if such matters could be shown to have been caused by the wrongful loss recovery, itself a difficult prospect), as several complaints seem to claim.

#### CONCLUSION

As set out at the beginning of this report, the Post Office is determined to give a fair hearing to those who have brought complaints about the Horizon system. Our actions support this intention:

- the commissioning of the Second Sight report
- regular liaison with MPs
- the creation of the Working Group to assess cases
- the appointment to the Working Group of an independent chair and the JFSA and Second Sight
- support with legal fees
- the commissioning of the Deloitte Report

We remain committed to investigating each individual case and to ensuring a thorough approach to addressing disputes in the future.

However, for the reasons set out in this report, the Post Office considers that many, if not most, of the complaints in the Scheme lack or are likely to lack a reasonable legal basis.

The Post Office is therefore keen to moderate the expectations of SPMRs who have brought complaints and hopes that this report may assist in that process

#### ANNEX A

##### **Branch Support Programme**

Alongside the Scheme, the Post Office has also set up a programme of work to examine potential improvements in the effectiveness and efficiency of the support that Post Office provides to subpostmasters in the running of their Post Office branches. We are:

- Reviewing the life cycle of the subpostmaster and all interactions they have with the Post Office centrally.
- Listening to owners, users and recipients of Post Office policies and processes.

- Designing policies and processes that deliver improved ways of working with our subpostmaster network.
- Reviewing all our interactions with subpostmasters and making recommendations concerning the structure of the support they receive to ensure we meet their needs.
- Developing plans to implement changes following the reviews outlined above.

A number of changes have already been made.

- **Improvements in training** – we have improved the training approach by:
  - introducing an introductory call to the new subpostmaster two weeks before they take up post.
  - having earlier contact with the subpostmaster following their initial training and replacing the month one telephone call with a branch visit.
  - reviewing the effectiveness of the balancing work-aid to help subpostmasters identify and hopefully resolve balancing problems earlier.
- **Branch User Forum** - the purpose of the Branch User Forum is to provide a way for subpostmasters and others to raise issues and insights around business processes, training and support directly feeding into the Post Office's thinking at the highest level. The Forum consists of 6 subpostmasters, 2 Crown members and 4 Post Office senior managers.

#### **Longer term changes**

The Business Improvement Programme has 9 work streams that capture all the points at which a subpostmaster interacts with the Post Office while running their branch. These are:

pre-appointment process;	communication;
operational support;	IT;
physical support;	early warning/intervention approach;
performance management;	leavers process.
training;	

The Post Office is committed to reviewing each of these and ensuring that the review is on-going as the philosophy of continuous improvement is embedded into the business.

