

LEGALLY PRIVILEGED AND CONFIDENTIAL.

SECOND SIGHT MEDIATION BRIEFING REPORT DRAFT V2 30th July 2014: REACTIVE COMMENTS REGARDING SUBPOSTMASTER CONTRACT.

1. Executive Summary

The in-scope element of the Second Sight report is fundamentally flawed for a number of reasons, detailed in 'Key Points' at #2 below, and expressed in more detail in the table at #4.

2. Key Points.

- 2.1 There is no evidence that Second Sight (2S) have considered that the 'contract' is formed not just by the contract booklet, but a number of other (online) manuals, booklets, and operational instructions issued by POL from time to time, which are supportive. This exposes the limitations and weaknesses of their narrative, as a good quality and unbiased report would have taken a holistic view of the subpostmasters contract.
- 2.2 There is no evidence that 2S have contextualised risk with reward, and that is how a realistic and fair assessment would be undertaken by both parties to the agreement on consideration of signing. Equally, there is no evidence of any benchmarking with other companies that operate their estate on a 'contract for services' basis, nor any recognition that our overall proposition is an attractive one as evidenced by the number of agents nationwide.
- 2.3 The report expresses a series of subjective opinions regarding the contract, many of which are unqualified and un-evidenced. The evidential points 2S have raised are incredibly selective and self-serving. There is no evidence of any attempt to present counter points, or to refer to drafting not selected by agents, even though 2S would have seen this.
- 2.4 The fact that the report is silent on the role of the NFSP is very notable, and would indicate that 2S had considered that it would have been entirely unhelpful to several of their arguments, so disregarded it deliberately.

3. Scope: To examine and comment on the reports comments regarding the subpostmaster contract. I have not evaluated any other drafting.

4. Tabulated comments for internal and external positioning.

Ref.	Items of concern	Internal comment	External positioning
2.3 and 2.6	The reports indicates a 'transfer of financial and other risk' and in the context of new agents.	This reference is opaque, as the report does not say 'transferred from where, whom, or what'. The wording itself is pejorative, as it implies a POL agenda in 'transferring risk.' The risk is not	POL believe that their contracts are fair, and make clear the risks and potential rewards to its 11,500 agents, and would expect that any (new) agent would have taken independent legal and financial advice when doing due diligence as part of their application.

		transferred, it is accepted by both parties.	
2.3	The report speculates that agents may not have understood the risks.	This is just supposition as it is not evidenced that there is an underlying problem here.	Whilst POL should not provide legal or financial advice as a proxy, before, during and after the appointment process POL are equipped and content to discuss the agent's contract with the agent, and have a dedicated team for that.
2.4	The report mentions elements of the contract that agents have referred to.	It is trite but these agents are a self-selecting group, and it is not a sound approach to only look at discrete parts of the contracts when evaluating any dispute; the contract should be looked at in its entirety, and aspects of law should be considered in doing that.	POL would encourage it's agents to read all of the contract before signing it, and to take independent legal and financial advice, before deciding that it is for them, in the context of the rewards available for performing the contract. We believe that the entry level, and the ratio of risk to reward is a good one in the market place, and that is evidenced by the fact that we have an estate of c.11,500 branches run by well-motivated agents.
2.4	The report mentions elements of the contract that agents have referred to.	For a report to be balanced and fair, I would have expected it to make note of the omissions of agents as well as what they had stated. This report leaves out important aspects of the contract, for example section 12 para 3 that makes it crystal clear that agents are not to make private use of POL funds.	Same comment as immediately above.
2.5	The report states that the contract is biased in favour of POL, and can operate to the detriment of the agent.	This is an unqualified statement and is not evidenced. It disregards reward entirely, and methods of mitigating risk, and therefore makes no attempt to discuss the risk:reward ratio. It also completely fails to recognise that contracts are governed by (statutory) unfair terms regulations, and are of course subject to challenge in law.	POL strongly believes that its contracts represent a fair ratio of risk to reward, and that it's terms are fair on both parties. The attractiveness of our proposition is evidenced by the fact that POL are able to attract suitably motivated independent business people in a competitive labour market, that contribute to the success of our brand. POL strongly believes that it would be misleading to view its contracts with its agents through the very small and narrow prism of dispute resolution.
2.5	The reports states that there is no sighted evidence that POL advises	The report does not say whether such evidence had been requested. Currently, POL go to great lengths in its	POLs agents are self-employed business people who would be used to agreeing contracts with their suppliers and employees. Despite this, POL does clearly indicate to potential new agents the importance of taking

	it's agents to seek independent legal advice.	Engaging Agents materials to advise potential new agents to take advice.	independent legal and financial advice.
2.5	The report states that POL do not vary the terms of their standard contract.	This is correct. POL could not manage its estate efficiently on the basis of having bespoke terms for its agents, and if it chose to do so it could provide an unfair competitive advantage to one agent at the expense of another.	POL could not manage its estate efficiently on the basis of having bespoke terms for its agents, and if it chose to do so it could provide an unfair competitive advantage to one agent at the expense of another.
2.6	The report indicates that agents are unable to manage risk if they do not understand it.	The contracts make clear the obligations and risks, and the onus is on the agent to seek advice if they do not understand the obligations in their contract.	POL have a dedicated team who are happy to discuss with its agents ways of mitigating risk in their Post Office business.
2.6	The report suggests that agents are hostage to POL decision making.	The report completely ignores the fact that agents can serve notice on their contract, and that POL consults with NFSP on changes affecting agents, including economic changes.	POL does take great care to discuss proposed changes with the organisation that represents subpostmasters, NFSP. We do recognise that some of our agents will wish to serve notice on their contracts and pursue other interests, and when they do that we always seek to appoint a suitable agent in that community.
2.7	The report suggests that un-evidenced losses are recovered from agents.	This is untrue. Agents can dispute losses, and these are frequently held in suspense whilst POL is providing evidence to support the loss recovery. The report makes no mention of the fact that the same system reports back surpluses in agents favour.	POL has dispute resolution systems in place that mean that disputed losses can be held in suspense whilst POL is providing further evidence to support the loss recovery.
2.8	The report states that agents are unaware of section 19.	Rather a self-defeating point to make as it indicates that the agent has not read section 19.	POL would encourage it's agents to read all of their contract with us, and seek independent advise.
2.9	Makes the point regarding legal representation.	This is because the issue is a private matter at this point, the report does not say why it is considered to be unfair.	Should an incident escalate so that the Police are involved, and the agent is interviewed formally, the agent would be allowed to have legal representation.
2.10	Makes a number of points regarding sight of	This is just unsubstantiated, self-serving hearsay evidence. Contract booklets	Contract booklets are not signed by agents, however they do sign to acknowledge receipt of the contract booklet on transfer. Agents are

	the contract	are not signed by agents, however they do sign to acknowledge receipt of the contract on transfer. Agents are able to read the contract as part of due diligence, and seek advice, and request a copy of their contract from HRSC should they misplace it.	able to read the contract as part of due diligence, and seek advice, and request a copy of their contract from HRSC should they misplace it. We are always concerned to find that documents have been misplaced and have taken steps to improve our document retention systems so that the impact pf any human errors is mitigated.
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Paul Inwood

Agents Contracts and Policy Development Manager

4th August 2014.

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