

9 April 2015

## Initial Complaint Review and Mediation Scheme

### BRIEFING REPORT - PART TWO

PREPARED BY

SECOND SIGHT

This Report is confidential and is not to be disclosed to any person other than a person involved in the processing of Applicants' claims through the Scheme.

## Introduction

- 1.1. This Report has been prepared by Second Sight, which is the trading name of Second Sight Support Services Limited, the company appointed by Post Office to conduct an independent investigation into a number of matters raised by Subpostmasters, or former Subpostmasters.
- 1.2. When Second Sight was first appointed by Post Office at the request of Members of Parliament in July 2012, a number of undertakings were given by Post Office in order to satisfy MPs that Second Sight would be able to conduct a truly independent investigation into the matters of concern.

- 1.3. Those undertakings included the following:

- Unrestricted access to documents held by Post Office (including documents subject to confidentiality and legal professional privilege); and
- No limitation in the scope of work determined necessary by Second Sight.

- 1.4. Those undertakings were reflected in the *"Raising Concerns with Horizon"* document signed by Post Office on 17 December 2012 and sent to the Justice for Subpostmasters Alliance ('JFSA') and to Mediation Scheme Applicants. A key paragraph was:

*"In order to carry out the Inquiry, Second Sight will be entitled to request information related to a concern from Post Office Limited, and if Post Office Limited holds that information, Post Office Limited will provide it to Second Sight."*

This statement was intended to accurately reflect the undertakings set out in 1.3. above.

- 1.5. Many Subpostmasters and Applicants to the Mediation Scheme will have relied on that paragraph, when reporting matters to Second Sight.
- 1.6. The investigative approach adopted by Second Sight, with the approval of Post Office, was to identify discrete issues raised by Subpostmasters or former Subpostmasters and conduct an in-depth investigation into those issues. These narrowly focussed investigations were referred to as 'Spot Reviews'.
- 1.7. Second Sight issued an Interim Report on 8 July 2013 incorporating the preliminary results of four Spot Reviews. Shortly afterwards Post Office announced the creation of a Mediation Scheme (the Scheme) to deal with the issues raised by a number of Subpostmasters and former Subpostmasters. At that stage the investigative work that led to the Interim Report being published was incomplete and it was intended that the further work, needed to support the Scheme, would enable the original Inquiry to be completed.
- 1.8. One of the principle findings at that stage was the need to look at the totality of the user experience of Horizon. Horizon is much more than just the software element and many of the

concerns reported to us clearly demonstrated problems with the interface between Horizon and other systems and the lack of effective investigative support from Post Office.

1.9. The Scheme received 150 applications before the deadline for applications expired on 18 November 2013 and 136 cases are now being processed in the Scheme. Second Sight issued a *Briefing Report - Part One* on 25 July 2014, which dealt with:

- a) General information about Post Office, its branches and the role of Subpostmasters;
- b) A description of the training and support functions as well as the Post Office audit and investigation processes;
- c) An overview of the Horizon system and associated equipment;
- d) An introduction to the application of double entry accounting in Horizon;
- e) A description of significant branch operating and reporting procedures and the associated processing of transactions;
- f) An outline of the treatment of losses and surpluses; and
- g) An analysis of typical errors.

1.10. As a result of analysing the 150 applications to the Scheme, we identified 19 commonly mentioned issues (often described as '*Thematic Issues*') that were raised by multiple Applicants. In the interests of efficiency we agreed with Post Office that, rather than deal with these commonly mentioned issues within individual Case Review Reports ('CRRs'), we would prepare a *Briefing Report - Part Two*, that would deal with all of them in a single document that would be sent to all Applicants.

1.11. Although the 19 commonly mentioned issues were identified as a result of analysing just 150 applications to the Scheme, the nature of the underlying issues may be applicable to a much wider group of Subpostmasters.

1.12. We issued a first version of this *Briefing Report - Part Two* on 21 August 2014. That document recognised that a number of issues were still under investigation. Post Office issued a response to the first version of that Report on 22 September 2014.

1.13. Investigations have continued since the release of the first version of our *Briefing Report - Part Two* and this updated Report presents further information relating to the commonly mentioned issues dealt with in the 21 August document and takes account of further information supplied by Post Office.

1.14. At the time of finalising this updated Report (9 April 2015) approximately 20 out of 136 cases are still being investigated by us. It is therefore possible that new information will come to

light that is relevant to the matters dealt with in this Report. If this happens, we will discuss with Post Office how best to communicate such further relevant information - possibly in the form of a supplemental report.

## 2. Limitation of Scope in Work Performed

2.1. We have experienced significant difficulty in obtaining access to a number of documents we believe are necessary for the purposes of our investigation, notwithstanding Post Office's commitment to make requested documents available to us. The documents requested from Post Office fall into three main categories:

- a) the complete legal files relating to investigations or criminal prosecutions commenced by Post Office that relate to Applicants;
- b) the complete email records relating to a small number of Post Office employees working at the Bracknell office of Fujitsu in 2008; and
- c) detailed transactional records relating to items held in Post Office's Suspense Account(s) and to disputed transactions in a number of third party client accounts held by Post Office.

2.2. The following paragraphs describe these matters in more detail.

### Access to the complete legal files

2.3. A number of Applicants have raised issues concerning the investigative and prosecution processes they experienced.

2.4. Typical concerns mentioned include:

- a) An audit visit that was in reality only a cash and stock count;
- b) An investigation process that had difficulty in considering the possibility that Horizon itself might have caused any losses and often failed to establish the root cause of the unexplained losses;
- c) Criminal charges that were dropped just before trial despite the Applicant having been suspended without pay for a long period (two years or more in some cases);
- d) A charge of theft being brought when there appears to have been only limited evidence to support that charge and where that evidence was not tested by the Court, as the charge was dropped just before trial; and
- e) A prosecution process that appeared to be focussed more on debt recovery than in the interests of justice.

2.5. Our review of applications, where criminal charges were brought, provides some limited support for these concerns. However the issues raised by individual Applicants can only be investigated by a review of the complete legal and investigative files held by Post Office. So far, with the exception of only a few cases, Post Office has not provided us with access to the complete legal files that we have requested. It has, however, reported that:

*"Having now completed its reinvestigation of each of the cases, Post Office has found no reason to conclude that any original prosecution was unsafe".*

2.6. We however, consider that a complete and independent review of these criminal cases is the only proper way to identify whether there are instances of possible misconduct by prosecutors acting on behalf of Post Office and whether or not miscarriages of justice may have occurred.

2.7. Post Office has informed us that reviewing the individual "*investigative and prosecution processes*" that Applicants have experienced does not fall within the terms of our engagement. We find this position surprising since it is the consequences of those processes that have given rise to many of the issues that Applicants wish to mediate. Also, the position adopted by Post Office is contrary to the position taken by the Working Group which was set up to administer the Scheme, of which Post Office was a member.

2.8. In the light of this apparent conflict of views between the Post Office and the independent body set up to administer the Scheme ('the Working Group') chaired by Sir Anthony Hooper, a retired Court of Appeal Judge, we would normally have asked the Working Group to provide guidance on this matter. Unfortunately, it has not been possible to do this, as on 10 March 2015 Post Office announced that the Working Group had been wound up with immediate effect. This was the day before we were due to circulate a draft of this Report to all members of the Working Group. It was also the day that Post Office notified us that our contract to conduct an independent investigation into the matters raised by Applicants was being terminated. Consequently, Post Office instructed us to issue a final version of this Report no later than 10 April, irrespective of whether or not our independent investigation was complete.

#### Access to the emails of Post Office employees working at Bracknell

2.9. A significant number of Applicants have stated that they believe that transactions and balances on Horizon were altered without their consent. It has been reported to us that some changes appear to have been made outside of normal working hours and that some of those changes suggest that some form of unauthorised remote access to transaction data may have occurred.

2.10. We have seen a witness statement from an Applicant who claims to have seen evidence of this type of activity in August 2008, occurring in the basement of the Fujitsu office in Bracknell. Post Office has stated that it is not possible for the type of activity described to have occurred. However, we believe that, despite Post Office's reassurances and statements from its employees and those of Fujitsu, the most compelling evidence on this point will be in contemporaneous emails from the relevant period.

- 2.11. We first requested access to the relevant emails in 2013 and we were provided with some emails from 2009. We have very recently been provided with a small number of emails from August 2008, but this sample was too small to draw any meaningful conclusions about what was really going on in the basement of the Fujitsu office in Bracknell.
- 2.12. We deal with this matter in more detail in Section 14 of this Report. Our current, evidence based opinion, is that Fujitsu / Post Office did have, and may still have, the ability to directly alter branch records without the knowledge of the relevant Subpostmaster.
- 2.13. We recognise that this conclusion is contrary to Post Office's position on this matter and it is regrettable that we have not been provided with the further evidence we have requested in order to reach a properly researched conclusion on this important issue.

#### Transaction data relating to third party client accounts

- 2.14. Post Office operates a number of client accounts with business partners such as Royal Mail, Bank of Ireland, HMRC, DWP, DVLA and many others. Transactions from branches relating to these business partners are allocated to the appropriate client account before being reconciled with information provided directly by the business partner. Normally these transactions are matched without difficulty but occasionally errors occur or disputes arise where the transaction details shown on Horizon and the transaction details reported by the third party client differ.
- 2.15. In these circumstances an adjustment referred to as a Transaction Correction (TC) may be generated in order to correct an error previously made in a branch. Post Office has advised us that its policy is to write off unexplained debit balances on third party client accounts, but that any unexplained credit balance will be left open in case the matter is subsequently resolved. Eventually these long outstanding credit balances will be transferred to Post Office's General Suspense Account and may be taken to its Profit & Loss Account (P&L Account) if they have remained unresolved for more than three years.
- 2.16. A number of Applicants have reported that they have suffered unexplained losses or have received TCs relating to transactions with Post Office's third party clients. We informed Post Office, on 18 June 2014, of our wish to investigate the possibility that some of those unexplained losses could be represented by transactions subsequently taken to the credit of its P&L Account.
- 2.17. We have been advised that, in each of the financial years 2012, 2013 and 2014, amounts in excess of £100,000 have been taken to the credit of Post Office's P&L Account and we have asked for a detailed breakdown of those amounts, together with corresponding transactions from the individual third party client accounts. This is a complex issue and, whilst Post Office has agreed to provide us with this information where possible, this matter has not been resolved at the date of this Report.
- 2.18. In addition to the credits being taken to Post Office's General Suspense Account we have been informed very recently that at each year end substantial unreconciled balances existed on

many of the individual suspense accounts. These unreconciled balances for the 2014 financial year were approximately £96 million in respect of Bank of Ireland ATMs and approximately £66 million in respect of Santander. These unmatched balances represent transactions from individual branches that occurred in the preceding six months.

2.19. We have not been able to investigate these items but we remain concerned that these unreconciled balances may include transactions that ultimately should be credited back to individual branch accounts.

### 3. Our updated Briefing Report - Part Two

3.1. The limitation in scope reported above has, in our opinion, significantly restricted our ability to complete our investigation into some of the issues commonly raised by Applicants to the Scheme. It is particularly regrettable that two of the issues raised: access to the complete legal files and to the Bracknell emails, appear to represent a policy decision, taken at a senior level within Post Office, which is contrary to the undertakings previously provided to Second Sight, to Applicants, to the JFSA and to MPs.

3.2. We are also aware that Post Office's current view is that:

*"Post Office does not accept that an analysis of the evidence in the Applicant's criminal case, whether served during the course of that case or not, is either within the scope of the mediation scheme or something which is within Second Sight's remit."*

3.3. We disagree with this view and previously we would have asked the Mediation Working Group to advise us on this matter. However, for the reasons described in paragraph 2.8. it has not been possible for us to do this.

3.4. We are also aware that Post Office considers our comments on a number of other issues as falling outside the scope of the Working Group and beyond our remit. These issues include:

- a) the Contract between Post Office and its Subpostmasters;
- b) the transfer of risk between Post Office and Subpostmasters; and
- c) the error repellency of Post Office's business systems.

3.5. These three issues are all, in our view, connected as described below.

The Contract between Post Office and its Subpostmasters ('the Contract')

3.6. Our detailed comments on the Contract are set out in Section 6 of this Report. The Contract makes it clear that Subpostmasters are responsible for losses that occur at their branch. What is not clear, is what support they are entitled to receive from Post Office.

- 3.7. As set out in paragraph 6.8. i) there is no automatic entitlement to investigative support when problems arise. There is also no automatic entitlement to be provided with data held by Post Office with the exception of the data routinely made available to the branch by Horizon.
- 3.8. The Contract places Subpostmasters in a difficult position in these circumstances. Post Office generally insists on losses being made good, but the Subpostmaster is not necessarily entitled to receive all of the information and explanations necessary to establish the cause of the loss. We regard this as unfair.

#### The transfer of risk between Post Office and Subpostmasters

- 3.9. The Contract transfers most of the risk of doing business to Subpostmasters. Our investigations have shown that this is not a static situation and, over time, Post Office has introduced a number of new products, and revised business processes, that may have transferred further risk to Subpostmasters.
- 3.10. Many of these changes seem to have been introduced without adequate consultation. We regard this as regrettable. Examples of business process changes that have transferred additional risk to Subpostmasters include:
- a) the phasing out of ATMs where a third-party, not the Subpostmaster, was responsible for servicing and accounting for the ATM;
  - b) the removal of paper paying-in slips that provided a detailed audit trail indentifying individual transactions;
  - c) the introduction of new products and services, such as Lottery products and Foreign Currency (Bureaux de Change) services, subject to the overriding consideration of whether it is reasonable to do so;
  - d) the removal of the facility to hold shortfalls in Branch Suspense Accounts beyond the end of a monthly Trading Period (partly compensated for by the introduction of the 'Settle Centrally and Dispute' function); and
  - e) the change from mandatory weekly to monthly balancing.

#### The error repellency of Post Office's business systems

- 3.11. A consequence of the progressive transfer of risk from Post Office to Subpostmasters is that, in our opinion, there is little incentive for Post Office to improve the error repellency of its business systems. We are aware that Post Office has implemented some process changes, such as 'Ping', in relation to Lottery Scratchcards, that have improved the error repellency, but we believe that much more could, and should, have been done in this regard.
- 3.12. We regard the lack of error repellency in some aspects of Post Office's business systems as regrettable. Our investigations have shown that the majority of branch losses were caused by

*"errors made at the counter"*. Many of these errors might have been avoided, or mitigated, had more robust, error repellent, systems been introduced.

3.13. Examples of inadequacies in Horizon's error repellency include:

- a) Hardware and technology that is old and suffers from avoidable rates of failure;
- b) Telecommunication equipment that is prone to failure or to poor signal reception in some rural locations;
- c) Limited usability testing prior to deployment of new facilities on Horizon;
- d) An icon based touch screen that does not auto-calibrate;
- e) Software that does not detect and prevent password sharing or multiple logons by the same user at a different branch;
- f) The lack of secure, token-based, user identification that would uniquely identify the actual user;
- g) Software that does not prevent or detect suspicious out of hours transactions; and
- h) Software that does not require additional process steps such as two person approval or an additional approval measure for high value or high risk transactions.

3.14. These examples should be regarded as illustrative rather than exhaustive.

3.15. One of the difficulties that both Post Office and we have faced, in dealing with the concerns that have been raised by Applicants, is that some of the alleged problems occurred more than ten years ago.

3.16. A consequence of this is that many contemporaneous documents no longer exist and memories have faded. We have repeatedly found that Post Office, in dealing with such matters, describes how the (new) system *currently* handles things. Its answers have often been expressed in terms of *what was meant to happen*, rather than what actually happened. Other answers have been expressed *in the present tense*, asserting what now happens, or what now cannot happen.

3.17. While such responses may seem to be helpful in dealing with those many instances where evidence is no longer available, they have, in our view, little or no evidential value. Knowing what Post Office's *current* policies or procedures dictate, or how the *current* system deals with a matter that has been raised, cannot be expected to inform our analysis as to how a situation really was dealt with *at the time that it happened*.

3.18. Notwithstanding these limitations and issues, we continued to investigate the matters covered in the previous version of this Report, and have produced this updated version.

#### 4. The structure and content of this Report

4.1. The Report structure follows a modular approach, with each commonly raised issue, as broadly defined by Second Sight, forming a separate section within the Report. There are some topics on which our investigative work is incomplete. Further questions have been posed by Second Sight to Post Office in respect of those topics and, where our questions have been adequately answered, and where further evidence has been made available to us, the wording used in the previously issued version of this Report has been updated to reflect that. A number of those questions remain unresolved however, and these are clearly identifiable in this Report.

4.2. A copy of the reply by Post Office (without Attachments) to the detailed questions submitted by us on 9 December 2014 is attached at *Appendix 1*.

4.3. The number of occurrences of each commonly raised issue, from the total population of 150 applications to the Scheme, is indicated throughout this Report using the following groupings and descriptions:

Few	Fewer than 15 instances
Many	Between 15 and 70 instances
Most	More than 70 instances

4.4. In this context, the most commonly reported issue (complaints about Training and Support) has been raised by over 130 Applicants, while the least reported issues (concerns about Pensions and Allowances transactions and Motor Vehicle Licences) were each raised by fewer than 15 Applicants.

4.5. In order to put our comments in context, the issues being considered are based on concerns raised by 150 Scheme Applicants from a total population of approximately 8,000 serving Subpostmasters. In its response to the previously issued version of this Report, Post Office stated:

*"Post Office is confident that there are no systemic problems with branch accounting on Horizon and all existing evidence overwhelmingly supports this position".*

4.6. Later, in a letter dated 14 January 2015 that it sent to those MPs who had voiced concerns during the 17 December 2014 Adjournment Debate, Post Office referred to:

*"500,000 people working in the Post Office network"*

and said that:

*"78,000 people use Horizon up and down the country, performing six million transactions, and providing vital services in our communities".*

It continued:

*"against that backdrop, the 150 complaints we are addressing through the Scheme, alleging that Horizon suffers from system-wide flaws, represents a tiny fraction of the total number of people who have used, or are using, the system effectively (0.03% and 0.19% respectively)".*

- 4.7. Whilst we recognise that the number of complaints about which we have been informed indeed represents a tiny fraction of the total user population, we must point out that the impact, on most of the Applicants, of their problems with Horizon, and of their experience with Post Office generally, has had significant personal impact.
- 4.8. The identification of a commonly mentioned issue first occurred at the time that an Application Form, or its related Case Questionnaire Response (CQR), was initially considered by us. As the Scheme process continued the underlying concerns were further explored and conclusions were set out in the Post Office Investigation Report (POIR) and then in our Case Review Report (CRR). This Report describes these issues in more detail.
- 4.9. In considering the CQRs submitted to us, Post Office's seven year Data Retention Policy has, in some cases, limited the availability of evidential data. This Policy applies to both Horizon transactional data (held by Fujitsu) and also to other business records such as emails, letters, memos, interview recordings, transcripts and Audit and Investigation Reports.
- 4.10. Until recently, Post Office did not appear to operate a '*litigation hold*' process whereby documents that may later be needed to support a complaint or investigation are preserved – irrespective of the seven year retention period.

## 5. Definition of 'Horizon' and its impact on the Scope of our work

- 5.1. The definition of Horizon for the purposes of our work was considered in our Interim Report of July 2013 as follows:

*".... the name Horizon relates to the entire application. This encompasses the software, both bespoke and software packages, the computer hardware and communications equipment installed in branch and the central data centres. It includes the software used to control and monitor the systems. In addition..... testing and training systems are also referred to as Horizon".*

Whilst we have adopted this definition of Horizon, as it had been agreed with Post Office, it has been necessary, for the purpose of our investigation, to extend it so as to properly include the totality of each Applicant's experience of using Horizon. We have therefore found it necessary to also consider issues such as the Audit and Investigative processes and the Contract between Post Office and its Subpostmasters as well as the behaviour of Post Office towards the Applicants to the Scheme when problems arose.

## 6. The Contract between Post Office and its Subpostmasters

6.1. The Contract between Post Office and its Subpostmasters lies at the heart of many of the issues that Subpostmasters wish to resolve by way of mediation. This Section deals with two separate issues. First, the potential impact on Subpostmasters of some of the terms and conditions set out in the Contract and, secondly, issues relating to the notification to Subpostmasters of the terms of the Contract.

6.2. When invited to comment on a previous version of this Report Post Office stated that

*“Matters such as the Subpostmaster contract and other legal matters are not within the scope of the Scheme and are outside Second Sight’s professional expertise”.*

6.3. For the avoidance of doubt, we are commenting on the commercial aspects of the Subpostmaster Contract, a matter which we are confident falls within our professional expertise. We also believe that this issue legitimately falls within the scope of the Scheme.

6.4. The following extracts are taken from the 'Standard Contract' (dated September 1994) between Post Office and Subpostmasters. This is a 114-page document, that now incorporates several post-1994 amendments. A copy of the entire document is available on request. The Contract should be considered in conjunction with other documents such as manuals, booklets and operational instructions issued by Post Office from time to time.

6.5. The Standard Contract is described by Post Office as an arms-length, commercial transaction in the nature of an agency contract. Post Office has also stated that, in its experience,

*"the terms of the Contract are broadly similar to those used in franchising arrangements across the UK".*

6.6. We disagree with this view for the reasons set out below.

6.7. The contract allocates several financial and other risks to Subpostmasters who may not have understood or appreciated those risks, particularly if they failed to seek independent legal advice before taking up their posts. Our comments on the clauses most referred to by Applicants, and therefore most relevant to our review, as set out below, are made solely from a business perspective.

6.8. The Standard Contract spells out the rights and responsibilities of both Post Office and Subpostmasters. The clauses most frequently referred to by Applicants are as follows:

- a) Section 17: (in the November 2002 amendment) lists the *Key Products and Services* (also referred to as the core products and services).
- b) Section 15: (in the November 2002 amendment) refers to responsibility for the training of the Subpostmaster and, in turn, of the staff employed in a branch. Under this Section:

*“Post Office undertakes 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... and the Sub-Postmaster accepts the responsibility to ensure the proper deployment within his Post Office branch of any materials and processes provided by Post Office Ltd and to ensure that his Assistants receive all the training which is necessary in order to be able to properly provide the Post Office Products and Services and to perform any other tasks required in connection with the operation of the Post Office branch.”*

Also

*“Post Office Ltd may request from time to time that where it has obligations as described above the Subpostmaster should conduct specific training (whether through written/distance learning that may require confirmation of completion or via presentations) in relation to certain Post Office Services (such as, but not limited to, money laundering). Failure by the Subpostmaster to arrange for such training to be properly applied will be deemed to be a breach of this Contract by him.”*

- c) Section 1, paragraph 10: requires three months notice of contract termination from the Subpostmaster to Post Office and allows Post Office to:

*“Terminate a Subpostmaster’s contract at any time in case of Breach of Condition by the Subpostmaster, or non-performance of his obligation or non-provision of Post Office Services, but otherwise may be determined by Post Office on not less than three months notice.”*

- d) Section 12: has a number of paragraphs, as set out below, addressing responsibility for losses and shortages. These paragraphs are at the heart of nearly all of the cases being considered in the Scheme.

- e) Section 12, paragraph 12:

*“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.”*

- f) Section 12, paragraph 13:

*“The financial responsibility of the Subpostmaster does not cease when he relinquishes his appointment and he will be required to make good any losses incurred during his term of office which may subsequently come to light.”*

- g) Section 12, paragraph 14:

*“Surpluses may be withdrawn provided that any subsequent charge up to the amount withdrawn is made good immediately.”*

h) Section 12, paragraph 17:

*"Subpostmasters may exceptionally not be required to make good the full amount of certain losses at his office. If he feels entitled to relief in making good a loss he should apply to the Retail Network Manager."*

i) Section 19, paragraph 12: deals with enquiries by officers of the Post Office Investigation Division and states that:

*"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."*

j) Section 19, paragraph 19: allows:

*"persons interviewed by Post Office's Investigators to have a friend present during the interview but that person may only attend and listen to questions and answers. He must not interrupt in any way, either by word or signal."*

6.9. Having considered the Standard Contract in some detail from a business perspective, we are of the opinion that it can, in some circumstances, operate to the detriment of the Subpostmaster, who may not have reviewed or fully understood the terms before deciding to enter into the Contract. We have not seen any evidence that Post Office either advises or requires Subpostmasters to seek independent legal advice before taking up their posts.

6.10. Although Post Office has likened the Standard Contract to a franchise agreement, we note that the British Franchise Association recommends that a franchisee should always seek independent legal advice before entering into a franchise agreement and we are surprised that Post Office does not make a similar recommendation.

6.11. The Standard Contract places a number of financial and other risks with Subpostmasters who may not have properly understood or appreciated those risks, particularly if they failed to seek independent legal advice. Consequently, there is a risk that appropriate risk mitigation measures may not have been implemented by the Subpostmaster.

6.12. We have been told by many Applicants that they were not given a copy of the 114 page Standard Contract until long after they had committed to purchase their branch, or long after they had started work as a Subpostmaster, or even at all.

6.13. Post Office denies this, stating:

*"it is also Post Office's standard operating procedure to ensure that the Subpostmasters have a copy of the Contract no later than the day that they commence their position".*

6.14. We have found that this "standard operating procedure" was not always followed. Instead, it appears to have been common practice for a new Subpostmaster to sign a one-page

*'Acknowledgement of Appointment Letter'* without necessarily having been provided with a copy of the Contract itself.

6.15. In signing that one-page letter, the Subpostmaster acknowledged receipt and acceptance of the terms and conditions of that Standard Contract, without necessarily having ever received a copy of it, and without having had the opportunity to understand and respond to those terms and conditions.

6.16. It is, in our view, worth noting that retaining evidence of the provision of the Standard Contract to the Subpostmaster seems never to have been part of Post Office's Standard Operating Procedures.

## 7. Automated Teller Machines (ATMs)

7.1. Our Briefing Report - Part One provides, in paragraphs 5.23 to 5.29, background information on the installation and operation of Automated Teller Machines (ATMs).

7.2. Problems with ATMs, largely comprising unexplained shortages that were charged back to Subpostmasters by Post Office, have been reported in more than 20% of applications to the Scheme and all of them relate to externally-located Bank of Ireland (BoI) ATMs.

7.3. Thirteen of those ATM-related shortages exceeded £20,000, six exceeded £60,000 and one exceeded £80,000. In other cases, large surpluses occurred, which caused concern to some Applicants.

7.4. The normal cash dispensing process on BoI ATMs involves electronic interaction between the Branch's ATM; Wincor Nixdorf (the service and maintenance provider); the LiNK platform and the customer's bank. The ATM cash balancing/reconciliation process involves electronic and also manual interaction between the Branch's ATM; the Branch's Horizon system; Post Office's Financial Service Centre (the 'FSC') and BoI. Branches need to account for the cash that they load into the ATM; for the cash that is dispensed to customers; and for exceptions such as banknotes that the ATM cannot deal with and notes that are 'retracted' (when customers fail to take the offered notes).

7.5. Whilst the loading of notes is a relatively straightforward task, the accounting on Horizon for branch ATMs seems not always to have been properly understood or correctly carried out and we address the most likely reasons for this below.

7.6. The principal problem, reported by many of the Applicants who have raised concerns about their branch's ATM, seems to relate to the manual extraction and use of the '*cash dispensed*' figures from the '*Bank Totals*' receipt that Subpostmasters are required to obtain each day from their ATM, and the daily input of '*cash declarations*' into Horizon. This has been referred to by some Applicants as having to deal with an '*air gap*' between their branch's ATM and the Horizon system.

- 7.7. This is a procedure that seems to us to be fundamentally flawed because what the Subpostmaster is doing here is inputting data into his branch's Horizon system that the ATM itself has generated and already communicated, through the LiNK system, to Bank of Ireland and that Bank of Ireland will the following day onward communicate to Post Office.
- 7.8. Those figures, that are input by the branch staff into Horizon, are then subsequently 'reconciled' by Post Office with the numbers *that came from the ATM itself*. Whilst this process will detect errors made by branch staff in transcribing the ATM's cash dispensed figures into Horizon, it is driven by the figures that the ATM itself has generated. It follows that, if those ATM-generated cash dispensed numbers have, for some reason, been under-stated, and more cash has been dispensed than the ATM reports, then the Subpostmaster will be held accountable for the resultant shortfall. In our view, although Post Office strongly disagrees with us, this introduces a vulnerability to error and fraud that simply did not exist before. We return to this matter in paragraphs 7.28 to 7.38 of this Report.
- 7.9. Any differences arising between those ATM-derived figures and the branch's declaration of the cash that remains in its ATM results in Post Office issuing a Transaction Correction (TC) which will impact the cash total that the branch needs to have in its ATM and its safe. In other words, any shortfall has to be made good by the Subpostmaster.
- 7.10. By comparison, banks and ATM operators other than Post Office, faced with any material ATM-related discrepancy, immediately send out their own investigators to establish the cause of the difference or problem, and this is sometimes found to have been caused by external theft. This triggering of an independent investigation seems not to take place in Post Office. Instead, Post Office simply issues TCs to "*resolve*" (i.e. to correct) any discrepancies, and any Subpostmaster wishing to challenge such a TC has nothing with which to support his claim, other than the 'Bank Totals Receipt' that he has retained in his branch, but that was *produced by the ATM itself*.
- 7.11. In the cases we have examined we found two instances where printed ATM-generated figures had been corrupted by the ATM itself. Whilst acknowledging that erroneous data was produced, Post Office states that it was not the vitally-important 'cash dispensed' figures that had been corrupted, in those two examples, but less important figures showing the number of rejected notes. Post Office also suggests that the data, in those two examples, became corrupted because branch staff had repeatedly filled, emptied and then re-filled cash cassettes such that the ATM became hopelessly 'muddled'.
- 7.12. Post Office denies that such corrupt data could ever cause losses in any branch. We are unable to endorse that reassurance, not least because it is self-evident that, were the more important 'cash dispensed' figures to be incorrectly reported by the ATM, then that would have far more serious consequences. We must also put this matter in perspective by stating that, in our view, the risk described in paragraphs 7.28 to 7.38 of this Report remains a far more serious concern.

7.13. When Post Office replaced some branches' fully serviced ATMs (where Subpostmasters did not have to fill them with cash, or account for the cash going through them) with ATMs where Subpostmasters were responsible for those tasks, that introduced, in our view, new procedural complexities with which some Subpostmasters were unable to cope.

7.14. In that context, we note that, in February 2008, Post Office issued a Manual Update, which it referred to as an '*Operations Manual interim*'. Post Office stated that it was issuing new instructions because:

*"a number of non-conformance issues are still affecting the processes for ATM reconciliation and settlement and to explain the correct end-to-end accounting processes relating to Bank of Ireland ATMs".*

7.15. The Introduction to the *Operations Manual interim* stated:

*"The Bank of Ireland, via the LiNK network, extracts a 16:30 - 16:30 'cash dispensed' figure automatically from your ATM each day. This figure forms the basis of a settlement to Post Office. This figure is the value of cash dispensed from your ATM from 16:30 the previous day until 16:30 on the current working day".*

7.16. It would appear that some Applicants misunderstood parts of the Manual Update, or failed to carry out every process they were meant to. Some Applicants say that they were repeatedly told by Helpline staff, when they were investigating differences that arose as a result of those misunderstandings and failures, that: "*the problem will sort itself out*" (though the problems persisted). Any differences would normally be expected to be 'resolved' by means of Transaction Corrections, but these sometimes led to further errors being made when the specific actions that then needed to be carried out, in dealing with those incoming TCs, were also misunderstood, or wrongly executed, by branch staff.

7.17. Many Applicants have also reported that they subsequently found that the Helpline's advice (which had sometimes allegedly *increased* their branch's apparent shortfall or surplus) was later countermanded. Comments referring to problems in understanding and/or implementing the advice given by the Helpline are found in the CQRs in nearly every instance where the Applicant experienced problems with an ATM.

7.18. A consequence of a user getting things wrong with the ATM's cash dispensed figures and inputting incorrect data, and hence causing an initial discrepancy, was that an 'out-of-sync' situation would develop where the branch's ATM would be expected (by Bol and by Post Office) to have an amount of cash in its cassettes that was materially different from the cash figure that the Subpostmaster had entered into Horizon.

7.19. Based on comments in many CQRs, the problems reported by Applicants, relating to this out-of-sync situation, became, it seems, what can be described as commonplace in some branches prior to the February 2008 release of the Manual Update.

- 7.20. The Manual Update confirms that, by following the new instructions, the process for entering data and balancing ATM cash will change and states that *"moving to the correct process is likely to result in a cash balancing difference"*.
- 7.21. Many Applicants have commented on the complexity of accounting, in Horizon, for their ATM's figures and on the general lack of clarity of the instructions issued by Post Office. This, many have said, led to them making mistakes when trying to comply with those instructions.
- 7.22. Many Applicants have stated that the only training that they received, when their branch's ATM was first installed, was provided by a Wincor Nixdorf engineer who was only able (and it seems only authorised) to teach them how to load cash into the cassettes and how to deal with the mechanical aspects of the ATM. They say that they were left to work out for themselves, primarily using User Manuals, how to carry out the ATM-related accounting on their branch's Horizon system. They also bore responsibility, under the Standard Contract, to train their own staff who, in many branches, would routinely thereafter carry out that accounting on their behalf.
- 7.23. This seems to have resulted in some Subpostmasters and their staff systematically repeating errors, not only in collecting the 'cash dispensed' and other figures from their ATMs and entering those figures into Horizon, but also in responding to the resultant stream of high-value Debit and Credit TCs that Post Office issued to correct the branch's accounts. Vitally, we believe that many of those systematically repeated errors were made because the instructions had been misunderstood, rather than because of carelessness or as a result of attempts to deliberately conceal branch shortfalls. It follows that, not realising that they were doing anything wrong, and consequently not realising that they needed to seek further training, they carried on making the same mistakes and got their branch's accounts into a complete mess.
- 7.24. Many Applicants have also commented on the apparent impact on their branch's ATM of power or telecommunication failures. Other than recording, in some cases, the dates and times of such failures, it was difficult for them to relate those failures to specific deficiencies. It is recognised that there are standard processes in place to deal with power cuts and connectivity interrupts and to ensure that no data is lost or corrupted when those events occur.
- 7.25. Nonetheless, the need, in such circumstances, for an ATM to be re-booted by the Subpostmaster, or for it to be remotely re-booted by Bol, could in our view, introduce a possible risk of data loss or corruption. Post Office has given assurances that this cannot happen, and that it never has happened, but some evidence seemingly contradicts those assurances and we have not been able to carry out tests to determine whether or not data can get lost, or be corrupted, by such interrupts.
- 7.26. Had we seen a practice of routinely, thoroughly and independently investigating ATM-related discrepancies, we would have been less concerned that power and telecommunications interrupts might have generated cash losses for Applicants.

- 7.27. We are aware of 'retract fraud', where externally introduced mechanical devices 'trap' cash that customers are trying to withdraw, but our position on this is that, for the purposes of our investigation, we remain relatively unconcerned about that type of fraud since it impacts principally on customers and their banks, rather than on Subpostmasters. We have consequently concluded that retract fraud has not caused losses to Applicants.
- 7.28. We are far more concerned about other, more sophisticated, types of ATM fraud and theft. It seems plausible to us, although this is not evidenced, that some of the large discrepancies reported by Applicants could have included losses brought about by those more sophisticated attacks. We are referring here to newer risks like 'transaction reversal fraud' and 'malware attacks' that circumvent an ATM's software controls. The risk and consequences of those types of theft, and the need to thoroughly investigate every apparent ATM cash shortfall, seems to us to have been under appreciated.
- 7.29. In referring above to "*malware attacks*", we mean attacks that are carried out by means of software that, when deployed, allows large amounts of cash to be dispensed by the ATM without leaving any record of it having been taken. In its response to our references to malware in the previously issued version of this Report, Post Office said that it:

*"is not aware of any form of fraud (including retract fraud) that creates a loss to Subpostmasters provided they follow the correct accounting procedures".*

- 7.30. In search of greater clarity on this matter, we asked Post Office to provide full details of any instances, in the last three years, where Post Office, Bank of Ireland or Wincor Nixdorf has detected an attack against a branch ATM using either malware or hardware devices.

- 7.31. Post Office has stated:

*"Post Office is not aware of any malware attack on its BOI ATM fleet that has resulted in loss to a branch. Hypothetically, if a loss of cash from a branch as a result of a malware attack was detected, that loss would be passed to BOI and not be absorbed by the branch"*

and

*"Neither Post Office nor BOI are aware of any form of ATM fraud that will create a shortage in a branch if a branch is following the correct ATM accounting procedure"*

- 7.32. We take little comfort from Post Office's reassurance that it is unaware of any malware attacks or of any form of ATM fraud that can create a branch shortage. Post Office has also not confirmed whether it has received similar reassurances from Wincor Nixdorf. Its response has consequently not materially diminished our concerns that some of the Applicants may have suffered as a result of such attacks where the resultant cash shortfalls have been wrongly attributed by Post Office to errors made in the Applicants' branches, or to theft carried out by their staff (or by the Subpostmasters themselves) rather than to the work of external fraudsters.

7.33. Post Office has pointed out that a reconciliation is carried out each day by the LiNK platform to ensure that the sum of all cash withdrawals charged to customers' accounts equals the total cash dispensed by each ATM. We accept that this reconciliation process delivers a reliable control unless the outgoing cash dispensed figures, that are transmitted to LiNK and later printed out by branch staff and input into Horizon, have been fraudulently manipulated, as would be the case if the ATM's software has been successfully over-ridden (e.g. by malware) to ensure that its cash dispensed figures were reduced and that the stolen money was not charged to any customers' accounts.

7.34. We also observe, in response to Post Office's denial that this sort of attack poses a risk to Subpostmasters, that Banking Industry experts have confirmed to us that external ATM cash thefts have been relatively commonly encountered across all banks' ATM networks since 2008, and that the most sophisticated of those thefts leave no traces, other than large amounts of missing cash. We are aware, for example, of one malware attack, in May 2014 (that as far as we know did not involve any Post Office branch ATMs), where £1.3 million was stolen from 51 ATMs in a seven day period (i.e. averaging more than £25,000 per ATM). We are also aware that it was only the fact that many of those ATMs were completely emptied during the attack that led to the banks realising that their ATMs had been attacked.

7.35. In this context, Post Office:

*"accepts that there are other forms of fraud that may be occurring, however it is not aware of any form of fraud (including retract fraud) that creates a loss to Subpostmasters, provided they follow the correct accounting procedures".*

7.36. Post Office responded to our question, as to what sort of *routine* investigations are carried out (by POL/BoI/Wincor) when ATM cash shortages are reported by its Subpostmasters, by saying:

*"Any unresolved cash discrepancies can be escalated by the branch for further investigation by BOI, POL or Wincor as appropriate".*

7.37. We have seen no instances of any investigations that actually were carried out in response to any Applicant's complaint about an ATM shortage for which he or she was later held accountable.

7.38. In any event, we find it implausible that no such external theft-related cash disappearances have occurred across all of Post Office's 'fleet' of ATMs. We therefore remain concerned that Post Office accepts as correct whatever BoI reports as having been dispensed by each branch's ATM, without immediately and thoroughly investigating every material shortfall reported by its Subpostmasters.

## 8. Motor Vehicle Licences

8.1. Not all branches are authorised to issue Motor Vehicle Licences (MVL) and only a small number of Applicants have reported problems with MVL processing. We have, however, seen a small number of instances of a particular problem. This relates to V11C forms that were misprinted

by DVLA with an incorrect bar code. This seems to have resulted in Horizon recording the sale of a tax disc, at the wrong price.

8.2. Post Office has stated that whilst this situation is undesirable, it would not give rise to a loss at the branch.

## 9. Foreign Currency Transactions

9.1. Whilst only 24 Applicants have referred to problems encountered in processing foreign currency transactions, our investigations of those cases, and particularly those ten cases where deficiencies arose prior to 2004, have identified some matters of serious concern. Indeed, one of those cases generated the largest loss of any of the 150 cases that we have examined. In that particular case, the loss that Post Office discovered during an audit, and that it then claimed back from the Applicant, was over £645,000.

9.2. Our investigative work led to us focussing on the interaction, in each of the branches that had used the Forde Moneychanger ('FM') machine, between that machine and the branch's Horizon system. The FM machine was a multi-currency 'electronic till' that was used in over 1,000 branches until its use was discontinued early in 2004.

9.3. That investigative work resulted in us forming the preliminary conclusion that the accounting for foreign exchange transactions was, prior to 2004, fundamentally flawed. Post Office has rejected our conclusion. The problems that we have observed, in relation to the interaction between the FM system and Horizon, have only been referred to by a small number of Applicants.

9.4. The FM machine, which Post Office has described as "*a component part of Horizon*", was a stand-alone device that converted sterling into currencies that were sold to customers, and also, less frequently, converted back into sterling those foreign currency notes that were bought back from customers. In effect, it was used to transact, and to support the accounting for, each branch's foreign currency transactions.

9.5. Each day's foreign currency transactions were entered individually onto the FM machine, which provided customers with receipts, and branch staff with a paper record of every transaction. None of those individual transactional details could be recorded on Horizon.

9.6. Horizon was, and still is, a *single-currency* system and is only therefore able to account for transactions in pounds sterling. It cannot hold records of individual foreign currency holdings. Each week's figures, for each branch, were consequently entered into Horizon by the branch as 'bulk totals' in pounds sterling.

9.7. The in-branch accounting process involved staff recording in Horizon, once a week, *the net sterling impact* of all of that week's foreign currency transactions and this was shown as one '*revaluation*' figure representing the branch's profit or loss on its foreign currency dealings. This meant that Post Office was unable to 'see' any of the individual transactions. Because of this,

all anti money laundering compliance responsibility necessarily devolved onto the branch but, more importantly in our view, it meant that Post Office was unable to detect transactional errors made in its branches.

- 9.8. This meant that, where any branch transacted at rates that were materially different from the 'approved' rates, Post Office had no visibility of those transactions. We are aware of highly material losses, that were booked to Post Office's Profit & Loss Account in 2003, about which Post Office had no knowledge, until alerted by an external party.
- 9.9. Post Office seemingly remained unaware of the significant losses that it was taking to its P&L Account because, as far as we can tell, those losses were all being subsumed in a mass of revaluation figures from the 1,000 branches that were then offering foreign exchange services. Post Office's accounting policy was to immediately book losses of around 5% of the cost of all the currency it purchased in the Money Markets. It then transferred the currency to its branches at a '*revalued*' cost figure that was 5% lower than it had really paid.
- 9.10. This meant that, even if a branch showed a positive revaluation '*profit*' each week, the reality was that, unless the profit achieved by that branch exceeded the 5% figure (which, at the approved sales rates, it would do) that '*profit*' would not be enough to offset the large (5%) loss that Post Office had already debited to its P&L Account. However, individual branches were able to over-ride the authorised exchange rates and report a '*local*' profit of far less than 5%, without any response from Post Office, even though that meant that it had then suffered an overall loss.
- 9.11. Had a sound multi-currency accounting system been deployed (as it is in any bank that conducts foreign currency transactions), the huge losses that were being made by that particular branch would have been immediately visible and doubtless quickly traced back to the transactions being carried out by one customer.
- 9.12. We have been unable, as yet, to determine whether the systemic inadequacies, that allowed the above-described losses to accumulate in that one case, might also have given rise to unexplained shortages in other branches and/or to more losses in Post Office's own books.

## 10. National Lottery

- 10.1. Not all branches sell Lottery tickets or Lottery Scratchcards. Where these items are sold, they are usually sold from the co-located shop's retail counter, but they have to be accounted for using the Horizon terminal at the Post Office counter.
- 10.2. There is often a significant difference in the opening hours of the counter in the retail shop and the shop's Post Office counter. The retail counter will therefore be selling Lottery tickets/Scratchcards outside the hours when the Horizon system is operating at the Post Office counter. Since branches are not allowed to sell National Lottery products other than through the Post Office, each day's ticket sales have to be recorded, the following morning, in Horizon.

Also, before any Lottery Scratchcards can be sold, they must first be '*Activated*' on the Camelot terminal and then '*Remmed in*' to Horizon.

- 10.3. We have received many reports where Applicants have stated that their branch's Horizon system would get 'out-of-sync' with the quite separate Camelot system, thereby generating material surpluses or deficiencies that were eventually corrected by Post Office issuing Transaction Corrections (TCs) through the Horizon system. The average Lottery-related TC was approximately £650 and many of these TCs were for amounts that were exactly divisible by £160, that being the value of a full pack of Scratchcards.
- 10.4. Prior to 2012 most discrepancies on Scratch Card activations were caused by Subpostmasters failing to 'rem in' to the branch's Horizon system packs of Scratchcards (that they had activated on their Camelot terminal). In February 2012 Post Office introduced a system change (referred to as "*Ping*") that finally eliminated the possibility of synchronisation errors between the Horizon and Camelot systems.
- 10.5. Under the new process, activating packs of Scratchcards initiates a process whereby 'Transaction Acknowledgements' (TAs) are generated and sent electronically every morning to each branch's Horizon system. Now, before any routine transaction processing can be carried out, those TAs have to be 'accepted' by the Subpostmaster or by one of the branch's staff and, once that has been done, all the necessary entries on the branch's Horizon system, including updating the branch's stock of activated cards, are processed automatically.
- 10.6. This represents a considerable improvement on the prior process which, in our view, has materially reduced the opportunity for error. It has also reduced the opportunity for undetected theft of activated Scratchcards.
- 10.7. It follows that these Lottery-related problems appear to have been most serious and frequent prior to February 2010, at which point Post Office made that significant change to its Standard Operating Procedures. Although some problems still occurred during the next two years, the February 2012 system change eliminated the possibility that a branch could have packs of inactive Scratchcards recorded in Horizon or have activated packs that were not recorded in Horizon.
- 10.8. We have also been told by Applicants that, before those important procedural improvements, and that system change, were implemented, inconsistent and sometimes conflicting advice was provided by visiting Post Office trainers and by the Helpline, which further exacerbated their problems.
- 10.9. Occurrences of the out-of-sync problem appear to have been particularly prevalent in branches where an associated retail shop sold Lottery tickets and Scratchcards late into the evening, well after the Post Office counter had closed. A further complication often occurred on the final Wednesday evening of the monthly Trading Period when Subpostmasters were required to reconcile the Horizon and Camelot figures as a priority task on the Thursday

morning, rather than at 17:30 on the Wednesday, but this requirement was not always advised by the Helpline.

10.10. It is not clear whether the training and support that Applicants received always covered this important point and, where it was not covered, or where it was not adequately covered, then it seems Applicants and their staff sometimes made errors, and then systematically repeated them. To make matters worse, not realising that they were making those errors, they failed to seek from Post Office the further training that they needed.

10.11. When that happened, relatively high-value Debit and Credit TCs, that when viewed over an extended period would almost completely offset each other, would routinely be issued to the branch.

10.12. The receipt of such a repetitive stream of TCs generated two serious problems in affected branches: first, the branch's books would routinely be out-of-balance and those Subpostmasters who became conditioned to this state of affairs had to decide how to deal with sometimes substantial, transient surpluses and shortfalls. Secondly, the routinely out-of-balance situation would hide real discrepancies from view, such that they remained uninvestigated and uncorrected, thereby turning potentially recoverable errors into real losses.

10.13. Post Office's position on this is that:

*"if the correct procedures are followed, no loss will be suffered by the branch".*

10.14. In our view this is a simplistic and dismissive response that fails to acknowledge the real difficulties being faced by branches prior to those February 2010 process changes and the February 2012 introduction of TAs.

10.15. Post Office's response seems to ignore the fact that, as with the streams of high-value TCs issued to some branches in respect of ATM discrepancies (see paragraph 7.23 above), the frequent receipt of substantial, frequently offsetting, Debit and Credit Lottery-related TCs created a '*pendulum effect*' where mistakes that had been previously made in the branch were hidden because of its almost permanently out-of-balance situation, such that, as mentioned in paragraph 10.12, above, potentially correctable mistakes became real losses that had to be made good by the Subpostmaster.

## 11. Training, Support and Supervision

11.1. The nature and extent of training provided by Post Office has developed over the years as described in our Briefing Report - Part One. In our opinion, the training was probably adequate for people who had reasonable levels of IT skills, numeracy and accuracy, though further product-specific training, rather than the use of Operating Manuals, was perhaps required for some Subpostmasters, especially those whose branches delivered a wide range of products and services.

- 11.2. We have been told by most Applicants that whilst their basic training was probably adequate in regard to general '*Business as Usual*' transaction processing, it was predominately sales focused and weak in regard to End of Day, End of Week and in particular, End of Trading Period, balancing. We have been advised by most Applicants that there was little or no coverage of how to deal with discrepancies (both surpluses and shortfalls); how to identify the root causes of recurring problems; or how to deal with Transaction Corrections.
- 11.3. Many Applicants have commented that, in the years prior to the installation of the Horizon computer system in 1999, they typically had only minor monthly surpluses (less than £30 seemed to be the norm) and that they first experienced large discrepancies shortly after Horizon was installed. Some have asserted that their problems became worse after Horizon Online ('HOL') was introduced (for most branches this was in 2010).
- 11.4. The fact that many Applicants have reported that they or their staff only started making serious mistakes after Horizon was launched, or after the branch migrated to HOL, could indicate a lack of understanding of how the system was then meant to operate and be used. That, in turn, could indicate that they had either been insufficiently trained; that they had been unable to properly train their staff; or that the new screen-based counter processes had introduced new ways of making mistakes that neither they, nor perhaps Post Office, was aware of.
- 11.5. We note that the duration of basic training has varied widely over the years and is now far more extensive than it was in 1998 - 2010 (the pertinent period for many of the Applicants). Post Office refers to the current routine provision of two weeks' training for Subpostmasters. Many Applicants have reported in their CQRs that they received fewer than two days' training and were simply handed Operating Manuals for self-study and to train their counter staff.
- 11.6. Post Office's trainers, and in some cases Applicants' line managers, do not seem to have been well regarded by many Applicants and appear to have been considered particularly weak when dealing with ATMs; Lottery processing; Motor Vehicle Licences; Foreign Currency and other specialist products.
- 11.7. Subpostmasters are responsible for training and supervising their own staff since Post Office has no contractual responsibility to train branch staff, other than in its Crown Offices. Post Office provides Subpostmasters with what it has judged to be relevant training materials for themselves and their staff, but it does not operate an effective quality control function in order to ensure that this further training is properly delivered. We have also found that further training for Subpostmasters was predominantly delivered in response to user demand, rather than being determined by Training Needs Analysis.
- 11.8. The problem with demand-driven training is that it only works when the users *recognise* that they need further training. It seems to us that, where mistakes are being systematically repeated, then the individuals who are making those mistakes will not be aware of that (or they would stop making them), so they are unlikely to realise that they need further training. Absent the necessary further training, mistakes become habitual and, where the Subpostmaster is the

one making those mistakes, then it follows that his staff will never be taught how to do things properly.

11.9. We recognise the complexity of the current product range and question whether a counter process involving over 170 products, operated by more than 78,000 people, of vastly differing levels of intellect, experience, numeracy and attention to detail, can ever be expected to work well without a fully effective and comprehensive training and support regime that covers everyone.

## 12. The Helpline

12.1. Many Applicants' CQRs have included examples where the Post Office's Helpline has, in their view, failed to provide worthwhile support when contacted. The relevant call log (when available) often does not provide sufficient detail, about exactly what advice was provided, in order for us to form an evidence based conclusion. Specific criticisms include:

- a) difficulty in contacting the helpline due to its limited availability;
- b) unhelpful, script-based, responses; and
- c) instructions received during one call that are said to have later, sometimes months later, been countermanded by another.

12.2. As previously stated, a frequently recurring response by the Helpline, relating to shortfalls, is said to have been:

*"don't worry about it, it will sort itself out".*

12.3. Many Applicants have reported that problems did not sort themselves out, nor was any indication given by the Helpline as to how long they should wait before realizing that a problem that had not sorted itself out would probably then not do so, nor how they were supposed to balance the books during the intervening period.

12.4. Many of the shortfalls suffered by Applicants to the Scheme have, on the balance of probabilities, been attributed to *"errors made at the counter"* but that does not, in our view, always mean that more extensive initial training would have eliminated all of those errors, although it would obviously have helped.

12.5. What we have observed is that, in many instances, the biggest shortages seem to have arisen as a result of *'errors made while trying to correct earlier errors'*. We attribute this less to inadequate *initial training* than to inadequate subsequent *support* when branch staff, when they were attempting to correct errors that they had previously made, just made matters worse.

12.6. Specifically, it has become clear to us that some Applicants and their staff became hopelessly muddled when they tried to follow the verbally-communicated advice of Helpline

staff. There have been numerous references to shortages doubling, trebling or even quadrupling as branch staff tried to correct, under instruction from the Helpline, errors that they had previously made.

12.7. Post Office's reliance on telephonically-conveyed advice was, in our view, misplaced. We hold the view that, had *written* instructions been issued to branches after their contact with the Helpline, fewer mistakes would subsequently have been made and fewer errors would have been made when attempting to correct those initial mistakes. Such written instructions should, in our view, have informed the branch staff exactly what sort of mistake they had made; exactly what instructions needed to be re-read in order to avoid making such a mistake again; and exactly what had to be done to correct it. We appreciate that this is not how the Helpline function is structured but we believe that it would have improved error repellency and the overall user experience.

12.8. That sort of (generally emailed) feedback has been standard practice among other companies for many years, yet Post Office has continued to rely only on those telephoned conversations. Even the records of those telephone calls, that Post Office has referred to as "*transcripts*" are not transcripts at all: they comprise only those notes that the Helpline operator typed out during the call. As such, they have, in most instances, provided us with only a limited understanding of the advice that was actually given. Also, copies of those notes are not sent to the person who called the Helpline. In that context, it has proved impossible for any of the Applicants, or for us, to challenge Post Office's assertion, made in its response to the previously issued version of this Report, that it has:

*"found no evidence to support the allegations that Helpline would often merely comment that matters would resolve themselves or be dismissive of any enquiry".*

12.9. It is clear to us that some Applicants expected the Helpline, visiting Post Office managers, or Post Office auditors to be able to tell them exactly how their branch's discrepancies had arisen. It is, however, equally clear to us that Post Office's Chesterfield-based Helpline staff cannot be expected to determine from afar how every discrepancy has arisen in every branch, so we regard those expectations as unreasonable.

### 13. Limitations in the Transactional 'Audit Trail'

13.1. Many Applicants have claimed that, whilst acknowledging that some errors were probably caused by their own mistakes, they were often unable to determine the root causes of discrepancies (both shortfalls and surpluses) reported by Horizon, because the underlying transaction data was not available to them.

13.2. Post Office controls the Horizon infrastructure including back-office accounting and reporting functions. A consequence of this is that Post Office may hold Subpostmasters accountable for shortages that they are unable to fully investigate due to a lack of access to data. A Subpostmaster has very limited options in these circumstances and often has to make good losses even where the underlying root cause has not been established or properly understood.

13.3. The concerns fall broadly into three areas:

- a) data that isn't available even on the day of the transaction;
- b) data that was at first available, but after 42 days (later extended to 60 days when HOL was introduced) is no longer available; and
- c) data that isn't available after suspension.

Data that isn't available even on the day of the transaction

13.4. Applicants' concerns principally relate to transaction types where Horizon produces, at the end of day, only an *aggregate amount* and *volume* for that day's transactions. These transaction types are those where customers have paid for goods or services by debit or credit card.

13.5. In the event of an end-of-day discrepancy for one of these transaction types, and without the benefit of a disaggregation of a total amount into its constituent transactional components, Applicants found it difficult, if not impossible, to identify the individual transaction(s) that had brought about the discrepancy.

13.6. Typically, a Subpostmaster would need to find items:

- a) that should have been, but were not, included in the aggregate total; or
- b) amounts that had been incorrectly entered, such as £50.00 entered as £500.00, £39.00 entered as £93.00, a withdrawal processed as a deposit; or
- c) amounts that formed part of the aggregate total, but should not have been included in that total at all.

13.7. Only by finding those errors and omissions could Subpostmasters begin the process of correction and loss mitigation. This may sometimes have involved attempting to contact the relevant customer, but in order to do that they needed not only to identify the incorrect or missing transaction, but also to know the name, and perhaps also the address and telephone number, of the relevant customer.

13.8. Many Applicants have told us that, prior to the introduction of Horizon, it was easy to do this since the paper docket, retained to evidence each transaction, provided this information. It is regrettable that the Horizon system does not appear to provide the same functionality as the previous manual system.

Data that was at first available, but after 42 days (later extended to 60 days) is no longer available

- 13.9. The main concern expressed about data availability is the need to refer to a previous period in the event that a Transaction Correction (TC) was issued by Post Office some while after the transaction (to which the TC relates) was erroneously input into, or omitted from, Horizon. TCs are issued for different reasons and different products may be treated in different ways. If the delay in issuing the TC exceeds 42 days (now 60 days), the Subpostmaster may no longer have data readily available with which to respond to the TC and may have no practical alternative other than to accept it. We have been told by Applicants that, if further data was requested from Post Office, such requests were often rejected on cost grounds.
- 13.10. We are also aware that the difficulty in printing and examining Horizon's 8cm wide 'till rolls' was a significant issue in locating the transaction(s) that had created discrepancies. Post Office asserts that branch staff are responsible for keeping records, typically for two years, and that those records, supplemented by information supplied with TCs, ought to be sufficient.
- 13.11. Late-delivered, high-value, TCs can pose serious difficulties for some branches. If the incoming TC is a Debit (i.e. a TC Invoice), that means that the branch ought to have been maintaining a surplus from the time that the error occurred until the time that the TC is accepted. In that Subpostmasters are contractually entitled to withdraw and retain surpluses, this can mean that they might do that, only to later find that they should not have done so.
- 13.12. More seriously, if the branch has not shown an overall surplus, that is likely to be because an offsetting shortfall was in existence as a result of an unseen, and consequently undetected and un-corrected, error.
- 13.13. Conversely, if the incoming TC is a Credit, that means that the branch ought to have been carrying a shortfall from the time that the error (that the TC is intended to correct) occurred until the time that the incoming TC is accepted.
- 13.14. This means that the Subpostmaster may have had to 'fund' that shortfall with his own money during the intervening period (even though that shortfall was in due course going to be corrected by the incoming TC Credit). In instances where Subpostmasters have been unable to make good such transient (though sometimes very large) shortfalls, it is possible that there will have been a temptation to falsify the branch's accounts while awaiting for the situation to "*sort itself out*".

Data that isn't available after suspension

- 13.15. Applicants have reported that their ability to investigate transactional discrepancies, or to defend themselves against allegations made by Post Office, were often thwarted because, following their suspension (usually on the day of an Audit) they were, as a matter of Post Office policy, denied access to their Branch. In many instances we have been advised that Post Office Investigators also removed records, often including personal documents such as diaries in which Applicants had noted problems that had occurred; to whom they had reported those

problems; what advice and instructions they had received; and what had resulted from following that advice or instructions.

13.16. Applicants have also reported that, despite their requests, they never regained access to any of the records they needed to establish the cause of shortfalls; to gather evidence of theft by branch staff; or, indeed, to prove their own innocence.

#### 14. Transactions not entered by the Subpostmaster or their staff

14.1. Many Applicants have reported that Horizon transactions appeared to have been entered, or cash or stock balances changed, when the branch was closed and no one had access to any of the Horizon terminals.

14.2. Post Office has stated that it is not, and never has been, possible for anyone to access Branch data and amend live transactional, cash or stock data without the knowledge of Subpostmasters or their staff. However, we are aware that certain error recovery and correction processes can result in transaction reversals that carry the System Identity (ID) of the user who entered the originating transaction that the system itself is reversing, or the ID of the user restarting the system (see Section 15 'Transaction Reversals').

14.3. We note that this fails to easily differentiate between entries made by a user and those that are system generated.

14.4. One Applicant to the Scheme has given evidence relating to a facility in the Bracknell office of Fujitsu where he alleged that it was demonstrated to him that it was possible to alter Horizon transaction details without the knowledge of individual Subpostmasters. We have requested that the relevant email files from the period in question be provided to us in order to investigate this matter, but so far Post Office has only provided us with a small number of the files requested.

14.5. Our review of those files has been inconclusive, possibly due to just one month of data being provided, rather than the 12 months requested. We believe that it is essential to examine contemporaneous documents from the relevant time, in order to form a reliable, evidence based, conclusion on this important issue.

14.6. Several Applicants have stated that they believe (or suspect) that their branch terminals have been, or can be, accessed remotely or that their branch data can be amended without their knowledge or approval. Post Office has denied that it is possible to:

*"amend branch data remotely".*

14.7. It says that it does have access to branch data, but in a 'read only' format. It has also stated that, if errors are spotted in the transaction data, the only way to amend the data is to issue a TC or a TA to the branch and that only when the branch 'accepts' that TC or TA is the branch's data amended.

14.8. We note, however, that Post Office has disclosed an October 2008 internal memorandum that included the remark:

*"Fujitsu have the ability to impact branch records via the message store but have extremely rigorous procedures in place to prevent adjustments being made without prior authorisation - within POL and Fujitsu".*

14.9. At the time of our writing this Report, Post Office has not explained whether or not that quoted statement was true at the time or whether, if it was true at the time, no such facility *currently* exists, as it seems to be asserting.

14.10. In our Interim Report we referred to a software bug in Horizon that had impacted a small number of branches. We have recently discovered two further documents that describe in more detail how Post Office handled this issue. In both of these documents a process is described that involves directly altering branch data. The fix for the error reported in the document named *"Correcting Accounts for "lost" Discrepancies"*, created by a senior engineer at Fujitsu in September 2010, stated:

*"7. Fixing the Data for each Affected Branch*

*The data can be corrected by adjusting the appropriate Opening Figures and BTS Data that relates to the current TP. This will result in the Discrepancy needing to be processed when rolling over into the next TP.*

*I propose that if we are to do this then we take a copy of the data for one branch and check out the proposed changes on a test system and then rollover the branch on the test system to ensure that the discrepancy is handled correctly before we attempt to correct Live data.*

*Having done one example in this way, we then need to agree a timetable with Post Office Ltd to correct the other branches and ensure that this is communicated with the Branches to ensure that everyone involved is happy. Note that if it is decided not to correct the data in the branches (i.e. POL would prefer to write off the "lost" discrepancy), then adjustments will be required to the Discrepancy account in POLSAP to align this with the actual level of discrepancy seen at the Branches."*

14.11. This document refers to correcting live data - a procedure that Post Office denied was possible. Of potential significance is the fact that this was not just an internal document made available to a small number of Fujitsu employees, as the copy we were provided with was printed out by the head of Post Office's Legal Prosecution team in October 2010.

14.12. A further document titled *"Receipts / Payments Mismatch issue notes"* appears to be a Minute of a joint Post Office / Fujitsu meeting probably held in August 2010. The document refers to the impact of the bug in Horizon as being:

*“Impact*

- *The branch has appeared to have balanced, whereas in fact they could have a loss or a gain*
- *Our accounting systems will be out of sync with what is recorded at the branch*
- *If widely known could cause a loss of confidence in the Horizon System by branches*
- *Potential impact upon ongoing legal cases where branches are disputing the integrity of Horizon Data*
- *It could provide branches ammunition to blame Horizon for future discrepancies”.*

14.13. The Minute reported three possible solutions.

*“Proposal for affected Branches*

*There are three potential solutions to apply to the impacted branches, the groups recommendation is that solution two should be progressed.*

*SOLUTION ONE- Alter the Horizon Branch figure at the counter to show the discrepancy. Fujitsu would have to manually write an entry value to the local branch account.*

*IMPACT - When the branch comes to complete next Trading Period they would have a discrepancy, which they would have to bring to account.*

*RISK- This has significant data integrity concerns and could lead to questions of "tampering" with the branch system and could generate questions around how the discrepancy was caused. This solution could have moral implications of Post Office' changing branch data without informing the branch.*

*SOLUTION TWO - P&BA will journal values from the discrepancy account into the Customer Account and recover/refund via normal processes. This will need to be supported by an approved POL communication. Unlike the branch "POLSAP" remains in balance albeit with an account (discrepancies) that should be cleared.*

*IMPACT - Post Office will be required to explain the reason for a debt recovery/refund even though there is no discrepancy at the branch.*

*RISK - Could potentially highlight to branches that Horizon can lose data.*

*SOLUTION THREE - It is decided not to correct the data in the branches (i.e. Post Office would prefer to write off the "lost"*

*IMPACT - Post office must absorb circa £20K loss*

*RISK - Huge moral implications to the integrity of the business, as there are agents that were potentially due a cash gain on their system”*

14.14. Although it would appear that “*SOLUTION TWO*” was the adopted solution, it is clear from “*SOLUTION ONE*” that Fujitsu have the ability to:

*“manually write an entry value to the local branch account”.*

The risk of adopting this possible solution was described as:

*"RISK- This has significant data integrity concerns and could lead to questions of "tampering" with the branch system and could generate questions around how the discrepancy was caused. This solution could have moral implications of Post Office' changing branch data without informing the branch."*

14.15. This ability to directly amend branch records is something that Post Office has consistently denied was possible. This recently discovered evidence appears to confirm, that in 2010 at least, it was possible for Fujitsu / Post Office to directly amend branch data without the knowledge of the relevant Subpostmaster.

14.16. In commenting on a draft of this report Post Office told us that the references to "amend" and "correct" in the documents mentioned above, are not strictly correct as neither Post Office nor Fujitsu have the ability to directly change or delete existing records. All that can be done is that additional records can be added by Post Office / Fujitsu without the consent (and possibly the knowledge) of the relevant Subpostmaster. This will, however, have the effect of altering balances at the branch, as both debit and credit entries can be made.

14.17. Post Office also told us:

*"All of the above processes for correcting / updating a branch's accounts have similar features. All of them involve inputting a new transaction into the branch's records (not editing or removing any previous transactions) and all are shown transparently in the branch transaction records available to Subpostmasters (as well as in the master ARQ data).*

*The language used in the documents produced by Post Office / Fujitsu and to which you refer is unfortunate colloquial shorthand used by those working on the Horizon system. I can see how it could be read to suggest that Post Office was "altering" branch data but the above explains why this is not the case."*

14.18. This is not something that we have been able to test or validate.

14.19. Clearly, the fact that such an ability exists, is not necessarily evidence that such 'amendments' were actually made. This is not something that we have been able to investigate.

## 15. Transaction Reversals

15.1. As mentioned above, a number of Applicants have reported transactions that appear to have been input when the branch was shut and no one had access to the Horizon terminals.

15.2. A few Applicants have reported that they had entered an original transaction, but had not entered the reversal of that transaction, stating that the Horizon system appeared to have generated a transaction reversal, without their knowledge or their intervention.

15.3. This matter was also highlighted in a report by Helen Rose, Post Office Security - Fraud Analyst - dated 12 June, 2013:

*"... it is just that I don't think that some of the system based correction and adjustment transactions are clear to us on either credence or ARQ logs."*

*"However, my concerns are that we cannot clearly see what has happened on the data available to us and this in itself may be misinterpreted when giving evidence and using the same data for prosecutions"*

15.4. N.B. 'Credence' is a Post Office Management Information Reporting System and 'ARQ logs' is a reference to a request for Horizon information archived through the 'Audit Retrieval Query' process.

15.5. Post Office has stated that:

*"when this situation occurs it will not generate losses at the branch".*

15.6. We believe that, where the system itself has initiated the reversal of a transaction (such as it does when a terminal has not been properly logged off at the end of a day even though a transaction, or a transaction 'basket', sometimes referred to as a 'stack', that had earlier been entered on that terminal, has not been completed), Horizon should assign to that reversal some indication of that fact, rather than leaving the records showing that the user who input the now reversed transaction was the one who reversed it.

15.7. We also believe that Horizon should ensure that the person who originally input that (now reversed) transaction is properly notified of the reversal in order to give him an opportunity to mitigate any loss that might ensue were he to remain unaware of the reversal.

## 16. Cash and Stock Remittances (Rems) in and out of the branch

16.1. A number of Applicants have raised issues concerning 'Rems'.

16.2. 'Rems' are inward and outward remittances of stock or cash (including foreign currency). Large amounts of cash and stock are routinely sent to and from branches using this process. Robust procedures are in place to ensure that the process normally operates reliably and that errors, or theft, are rapidly detected.

16.3. Occasionally however, branches will report that a Rem '*pouch*' was not received or that it contained fewer items, or lower value, than the sender claimed. Similarly, Post Office will sometimes find that a Rem pouch sent by a branch is missing or its content has been overstated by the branch. Post Office deals with these discrepancies by issuing TCs that show the details of the shortfall or overage. Because such discrepancies relate to physical items, it is necessary to rely on witness statements and other documentary evidence as to the exact content of Rem pouches.

16.4. Some Applicants have described instances of foreign currency shipments being accidentally sent to the wrong branch. We are aware that some of these errors have occurred due to Post Office's Business Partner for Foreign Currency, First Rate Travel Services (FRTS) using an incorrect delivery address. Clearly, this introduces the possibility that an Applicant might have been held accountable for a shipment that was never received by his branch.

16.5. Post Office has told us that:

*"if this situation occurs it will be corrected using TCs once that Rem is scanned into Horizon" and that "if the Rem is not received there will be no loss to the branch".*

16.6. It remains unclear to us whether those reassurances totally eliminate the possibility of losses to Subpostmasters. Where, for example, an incoming Rem is never received by the branch that ought to have received it then the shipment may well have found its way into the wrong hands and a loss will sometimes ensue. We take it, from Post Office's reassurance, that such losses are borne by Post Office and/or by FRTS, rather than by any Subpostmaster.

## 17. Missing Cheques

17.1. As with other outward Remittances (see Cash and Stock Remittances (Rems) in and out of the branch above), branches 'Rem' to Post Office's main processing centre (in Chesterfield) all cheques that the branch has taken in each day. These are put together into 'Stripey' envelopes and collected by the Royal Mail after each day's cut-off time.

17.2. For almost all of the cheques that Post Office handles each day, everything normally goes smoothly, but some cheques do get lost or are accidentally spoiled either within the branch or at Chesterfield, while some envelopes do get lost in transit.

17.3. We have also been informed that it is possible for cheques to get damaged in Post Office's cheque processing equipment and therefore not be processed. In such cases, if the cheque is so badly mutilated as to be unreadable, the possibility arises that a branch might be charged, through the TC process, for a missing payment even though the cheque was sent to Chesterfield. Also, where a customer's cheque 'bounces', it will be charged back to the branch if the branch staff failed to follow Standard Operating Procedures. Post Office has stated that it will attempt, where possible, to obtain a replacement cheque from the customer.

17.4. Assertions have been made by some Applicants that customers' cheques (received in exchange for goods or services rendered at the counter) never cleared and they were held accountable for the value of those missing cheques. Post Office has told us that:

*"providing the correct procedures are followed there will be no loss to the branch".*

17.5. The problem, as we see it, with this reassurance is that certain practices seem to have evolved, as Subpostmasters have tried to provide the services that their customers need, which are not in accordance with what Post Office describes as "*correct procedures*".

- 17.6. Examples of this include repeated acceptance of cheques as the Method of Payment ('MOP') when selling Foreign Currency notes (this practice seemingly having remained un-noticed by Post Office for extended periods) and also cheques accepted as the MOP for bulk postage. The latter occurs where, for example, home-based internet traders routinely leave large quantities of outgoing parcels to be processed as time permits, these being settled to cash (even though no cash has been received) and where the customer returns to the branch, usually later in the week, to pay by cheque, at which point those earlier settlements to cash are reversed.
- 17.7. The point here is that, in our view, if branch practices have evolved, in respect of certain products, such that branches are routinely accepting cheques where the "*correct procedures*" say that they should not be accepted, then it becomes questionable whether those perhaps outdated procedures can justifiably be enforced such that Subpostmasters carry all of the risk.
- 17.8. Some Applicants have also complained that the TC process was sometimes so slow (in regard to cheques) that, by the time they had been advised that a cheque had been lost, mutilated or returned by the paying bank, all chances of mitigating their loss were gone.
- 17.9. Post Office has confirmed that Subpostmasters will not be held liable for cheques lost in transit and that, "*if all required procedures have been correctly followed*", they will not be held liable for cheque-related losses.

## 18. Pensions and Allowances

- 18.1. A few Applicants have reported problems with Pensions and Allowances where Post Office's Investigators made allegations that they, or their branch employees, had stolen money by fraudulently manipulating Pension and/or Allowance payments. The allegations were that amounts had been recorded as having been paid out when they were not ('overclaims') or where Green GIRO cheques or Pension & Allowance dockets had been used more than once ('reintroductions').
- 18.2. Post Office's response described the way that overclaim and reintroduction fraud can be perpetrated and how the relatively easy to manipulate dockets have since been replaced by the more secure 'Post Office Card Account' (POCA) which uses 'Chip and PIN' technology. However, Green GIRO cheques are still in use by customers who have (or assert that they have) lost their POCA cards and by those on temporary benefits.
- 18.3. It is clear that, while overclaims can arise as a result of errors innocently made in a branch (e.g. by forgetting to remit a voucher), reintroductions involve a positive decision to re-process a benefit pay-out even though the genuine transaction with the customer has already occurred. Post Office concedes that reintroductions can happen by accident, but the Subpostmaster would still be liable for such errors and it regards multiple reintroductions as being indicative of fraud.

18.4. Post Office has stated that:

*"providing the correct procedures are followed no loss will be borne by the branch and any fraud will be readily detected".*

18.5. We were concerned that some Applicants, who had been accused by Post Office of fraud but not ultimately convicted of it, but who had in some instances been required to repay the allegedly stolen funds, might have themselves been the innocent victims of a far larger 'pattern' of fraud.

18.6. Post Office has informed us that no '*pattern*' of fraud has been detected.

## 19. Surpluses

19.1. As stated in Section 6 above dealing with The Contract between Post Office and its Subpostmasters:

*"surpluses may be withdrawn provided that any subsequent charge up to the amount withdrawn is made good immediately".*

19.2. Post Office defines discrepancies as including both surpluses and deficits (i.e. shortfalls). We believe that the cause of all material discrepancies should be investigated and corrected. This should include consideration that discrepancies might have been caused by the system itself, or by errors occurring outside of the branch. It is only by doing this that the underlying root cause of the discrepancy can be established.

19.3. Feedback from Applicants has demonstrated to us that the preliminary investigative assumption adopted by Post Office appears to be that discrepancies will have been caused by "*errors or problems at the counter or by theft*". Post Office's confidence in the Horizon system remains very high and as such, the system itself will normally be discounted as a source of error.

19.4. In inputting data into Horizon it is possible that errors are made that generate a surplus, unbeknown to the customer or to a third party. For example, a surplus can result where a customer is underpaid at the counter, although this is likely to be detected straight away by that customer. Errors that are less likely to be detected by customers include deposits that are under-credited or not credited at all.

19.5. We understand that, although surpluses are expected to be retained by the Subpostmaster, it is possible to hold them in suspense by '*settling centrally*' so that future shortages and Transaction Corrections can be offset against them. Many Applicants appear not to have been aware of this facility.

19.6. The failure to always investigate and correct material discrepancies is perhaps unique to Post Office's Business Model. Unlike commercial entities that do not operate on an agency basis, Post Office has, in our opinion, little commercial incentive to establish the root causes of

discrepancies because the burden of cost (and risk) is being carried in most instances either by its Subpostmasters, in the case of shortfalls, or by its customers or its clients, in the case of surpluses.

## 20. Cash withdrawals accidentally processed as deposits and other counter-errors that benefit customers at the expense of the Subpostmaster

### Cash withdrawals accidentally processed as deposits

20.1. Mistakes can occur if the counter clerk accidentally touches the 'DEPOSIT' icon on the screen instead of the adjacent 'WITHDRAWAL' one, thus generating a deficit of twice the size of the customer's withdrawal. Such errors by branch staff can be difficult to isolate from the system-produced totals of 'swipe-card' transactions (see Section 13, Limitations in the Transactional 'Audit Trail') unless the customer notices his windfall and then tells the branch about it. Absent such customer honesty and diligence, shortages brought about by such mistakes are very difficult to detect and mitigate.

### Other counter errors that benefit customers at the expense of the Subpostmaster

- 20.2. We have been made aware of cases where Applicants have been held accountable for shortages that have arisen through what Post Office refers to as "*errors made at the counter*", where customers have profited at the expense of the Subpostmaster.
- 20.3. Where a customer has received cash or goods and later discovered that his bank account has not been debited, or his credit card or POCA account has not been charged, it is quite possible that he will keep quiet about it, leaving the Subpostmaster to be held accountable for the resultant shortfall.
- 20.4. In mid-2008 the method of processing receipts into Girobank accounts was changed. Previously, customers completed a two-part paying-in slip. One copy of the paying-in slip was retained by the customer, another was retained in the branch and cross-referenced to the entry made on Horizon. Note: Alliance & Leicester acquired Girobank in 1990 and Santander took over Alliance & Leicester in October 2008 but, for ease of reference, all three organisations are referred to as 'Girobank' in this Report.
- 20.5. Prior to that mid-2008 processing change, the Subpostmaster would have been able to identify the amount of cash that had been recorded in the system by cross-checking with the paying-in slip. Hence, a correction could have been actioned and the branch's books brought back into balance. In such a case, the apparent cash shortage would have been eliminated because the audit trail enabled the specific cause of the shortage to be identified and corrected.
- 20.6. However, after that processing change, paying monies into Girobank accounts was normally actioned via swipe cards (Chip and PIN cards) with no supporting documentation being retained in branch.

- 20.7. After that processing change, the counter clerk would swipe the customer's card to access the account details and then key in the cash deposit. After inputting the deposit, the system printed out just one copy of a receipt (which specifically states on it "*NOT TO BE RETAINED*") and this was then passed back to the customer along with his swipe card. No documentation is retained in branch and nothing is sent to Girobank.
- 20.8. It follows that, if the counter clerk did not immediately spot an error, any later branch balance would show a difference between the cash holdings on Horizon and the actual cash holdings. However, after the processing change, there would be no supporting documentation available either to the Subpostmaster, or to Post Office centrally. Therefore neither the Subpostmaster nor Post Office's central processing unit would be able to check whether or not the cash deposit entries on the system reflected the actual amount of cash that had been deposited.
- 20.9. Post Office has stated that, although this type of error may occur, it would be an example of an "*error made at the counter*" for which the Subpostmaster would be liable in the normal way if a loss occurs. It also states that, under the new process, "*the audit trail is retained*" and that:
- "Horizon has a number of tools to assist Subpostmasters in identifying or tracing transactions, including transaction logs, event logs and balance snapshots".*
- 20.10. We cannot agree with those reassurances. Under the old (paper) process, the paying-in slips would be sent to the Finance Service Centre (FSC) which compared them with the Horizon transactional records and issued TCs if necessary. Under the new process, this after-the-event control no longer takes place.
- 20.11. Instead, a control process is now carried out *by the customer* who confirms, using the PINpad, that the amount shown on the screen is correct.
- 20.12. Our observation on this is that this new process introduces a risk, to Subpostmasters, that a customer, whose account will be credited with an amount greater than he has deposited, or whose account will be debited with an amount less than he has withdrawn, may either fail to notice the error or, if he does notice it, may intentionally disregard it and choose to keep the windfall.
- 20.13. It is clear to us that the process lost some important functionality when the change was made to phase out two-part paying-in slips. We find that the reliance on branch staff to accurately input data, and on customers to verify that the correct amount has been input into the system, is far from fool-proof, given that not all customers will appreciate that they have such an important role to play in checking that the transaction has been properly recorded and also that the customer may be the beneficiary of any error.
- 20.14. Further, once an error has been made, it can be very difficult to match any erroneous transaction with the customer who made it, and thereby recover missing funds. Relying on the branch staff being able to remember, and being able to contact, a customer who carried out a transaction, could, in our view, result in unrecoverable losses. As Subpostmasters are

contractually responsible to make good any losses arising from those "*errors made at the counter*", it is, in our view, vital that they are able to easily locate and correct such errors and to recover missing funds.

20.15. Post Office asserts that:

*"paying in slips were phased out by Girobank so this change was outside of our control"* and that:

*"the automation of the process" was necessary to reduce the rate of errors made at the counter*".

20.16. While the new process has reduced the risk that errors made at the counter would remain undetected at the counter, it will not have reduced the overall undetected error rate. The only procedural difference being that the customer now communicates the intended transaction verbally and then checks that it has been correctly keyed in but the Subpostmaster no longer has the safety net of staff at the FSC later checking that all customer deposits have been correctly processed.

20.17. Post Office does not seem to have considered the possibility that its perceived reduction in the number of errors made at the counter (since the phasing out of two-part paying-in slips) could be due to the possibility that some of those errors, that were previously detected by the FSC, are no longer being found.

20.18. In regard to our perception that the new process increases the risk of collusive fraud, Post Office has responded by asserting that:

*"the process changes did not introduce a greater degree of fraud risk to Subpostmasters"*.

and

*"the potential for collusive fraud was just as likely with the old process as it is now with the new one"*.

20.19. In stating that, Post Office has, in our view, failed to recognise that, following the process change, the control designed to detect mis-keying at the counter is now carried out *only by the customer*, whereas before, in the event that a surplus or shortfall was noticed later on in the day, that check-back could be carried out in the branch (by reference to the paper paying-in slips that would still be in the branch) and, if no discrepancy was noticed before those slips were sent off, then the mistake would later be detected by the FSC.

20.20. Also, under the old process, collusion between a customer and a counter clerk would involve the customer leaving a falsified paying-in slip in the branch, whereas, under the new process, the customer would not need to incriminate himself in that manner.

## 21. Error and fraud repellency and Horizon's 'fitness for purpose'

- 21.1. Normally, when a business detects errors or fraud occurring repeatedly, investigative and analytical work will be carried out to determine whether changes to its Standard Operating Procedures, to its hardware or software, or to its employee training and support procedures, should be made so as to reduce the likelihood and/or seriousness of future recurrence.
- 21.2. This process of investigation and analysis generates, over time, a '*Virtuous Circle*' of detection, loss mitigation and process correction/improvement, which contributes to the entire system's robustness and efficiency.
- 21.3. In not fully investigating "*errors made at the counter*", even where it is obvious that some of those errors have been systematically repeated in a branch, or even across the network, Post Office seems not to have taken 'ownership' of finding ways to reduce (or manage) those errors.
- 21.4. This has led to a situation where Subpostmasters have been bearing the cost of losses caused by errors and fraud that could, in our view, have been designed out of the system, or where improved operational procedures and training could have reduced the incidence and severity of errors made, both "*at the counter*" and also in branch back offices.
- 21.5. In this context, Post Office states that transactions cannot be lost as a result of being interrupted by power cuts "*as long as the correct recovery procedures are followed*". After a power cut has occurred, the system must be rebooted. Once the reboot has taken place, Horizon should provide on-screen instructions on how to recover any transactions that could have been interrupted by the loss of power.
- 21.6. Post Office's position is that shortfalls cannot occur if the recovery procedures are correctly followed. It also states, in its response to the previously issued version of this Report, that it:
- "remains confident that branch accounts will not be corrupted due to power and telecommunications failures"*.
- 21.7. It incorrectly states, however, in that same document:
- "This recovery process was reviewed in detail by Second Sight in their Interim Report and found to work"*.
- 21.8. The reality is, as we stated in our Interim Report, that we have established, from our investigative work, that the system may not have always performed as it was meant to after a reboot, particularly if a power failure occurred at the same time. We have been told that, in some cases after a power failure, the main processor will automatically restart and commence the recovery process, but that the branch's screens will not automatically turn on. This means that any messages that are displayed as part of the recovery process, will of course not be visible to the user.

- 21.9. Post Office seems to make the assumption that all of the important messages that Horizon sends to the branch screens during the recovery process are visible on those screens and also that they are visible in time to be effective in ensuring that transactions are neither lost nor duplicated. This would appear to be an assumption that may not be correct in some circumstances, such as when a power failure has been the cause of the reboot.
- 21.10. Whereas the detailed instructions contained in the 'Horizon Transaction Recovery Guidelines' show Subpostmasters what they are meant to do if, when they are processing transactions, the system loses power or connectivity, it is clear to us that mistakes are likely to be made at this sometimes challenging time, particularly when the Horizon-produced '*Disconnected Session Receipts*' may have been misunderstood by branch staff or when the recovery process fails.
- 21.11. This process can therefore, in our view, be prone to generating losses, particularly in those instances where the customer has left the branch, sometimes without paying, after it may have appeared, both to him and to the counter clerk, that his intended transaction had been rejected.
- 21.12. Such a situation could result in the customer not paying for, or not receiving payment in respect of, his intended transaction. This will either result in a loss to the Subpostmaster or to the customer. The stress involved in such situations can, in our view, be materially heightened when irritated customers add to the situational pressure or where further power or telecommunications interrupts occur during the recovery process.
- 21.13. For the avoidance of doubt, we regard examples of this having happened as evidencing Horizon's failure to record transactions accurately.
- 21.14. We have formed the view that, as messages sent by Horizon to the branch terminals might not always be visible on the branch's screens, it can sometimes be difficult, or even impossible, for a Subpostmaster to correctly follow those recovery procedures. Another consequence of this is that transactions that appear not to have been processed (but have been) may then be re-entered and if, for example, such an accidentally duplicated transaction results in an extraneous credit to a customer's bank account, then it is possible for that customer to benefit at the expense of the Subpostmaster and to be the only person who can detect and report that error.
- 21.15. We have consequently concluded that it is possible for losses to occur in a branch as a result of power and telecommunication interrupts where it has not been possible for the Subpostmaster to "*correctly follow the recovery procedures*".
- 21.16. Applicants have referred to this issue in respect of Giro transactions that were being processed when power or telecommunications interrupts occurred and the branch's terminals and screens 'froze' or powered off completely. When this happens, Horizon invokes its 'Recovery Mode' and the system goes through a complete reboot, then, when it has finally

rebooted, a message appears (or is meant to appear) on screen (as long as the screen has been turned on again) asking "*do you need to recover any Giro transactions?*".

21.17. A few Applicants have reported that, when faced with that question, they usually did not know whether or not the system needed to recover any Giro transactions. They say that, if they responded in the affirmative, the system then asked for the details of the Giro transactions that needed to be recovered. As the user did not have the relevant details to hand (and could not access the data as Horizon was still completing its reboot process), they say they were forced into responding in the negative and hoping that this was the correct response.

21.18. This often resulted in the 'wrong' answer being entered and transactional errors being generated where transactions that should have been re-entered were not, or transactions that the system had already accepted were erroneously re-processed. Obviously, if such erroneously duplicated transactions included any where a customer had paid in a cash deposit, it was likely that the customer's account would be credited twice even though only one inward payment had been received from that customer.

21.19. This would result in a shortfall that the Subpostmaster would, under the contract, be obliged to make good unless that customer noticed the error from which he had benefitted, and then chose to repay the duplicated amount to the branch.

21.20. The following key question, that arises from the above observations, is:

*"Is Horizon fit for purpose?"*

21.21. In trying to answer this question, we recognise that, in the vast majority of cases, Post Office's Subpostmasters operate their branches year after year with minimal reported problems. For them, the Horizon system appears (subject to our observation in paragraph 4.6 above) to be "*fit for purpose*".

21.22. References here to '*the Horizon system*' are mainly focused on '*Horizon On Line*' (HOL), which evolved from the original Horizon application and was deployed in 2010. Our comments encompass not only the system itself but also supporting processes and procedures. However, some comments received relate to earlier versions of the system, a number of enhancements having been made following user experience and feedback.

21.23. For the Horizon system to be considered fully '*fit for purpose*' for all users, it would, in our opinion, need to accurately record and process, with a high degree of error repellency, the full range of products and services offered by Post Office, whilst providing a clear transactional audit trail allowing easy investigation of any problems and errors that arise. The cases that we have reviewed demonstrate that this design objective has not always been achieved.

21.24. A fully effective system would also need to be able to cope with a diverse collection of end users and operate in areas where power and telecommunications reliability could not be taken for granted. The cases that we have reviewed show us that errors are more likely to occur when unusual sets of circumstances and behaviour are present. We have little doubt that

branches with unreliable hardware, or poor telecommunications and power services and supplies, appear to have suffered a disproportionate incidence of problems.

21.25. We have also come to the conclusion that some of the people appointed by Post Office as Subpostmasters may have been unsuited, from the outset, to the ever-increasing complexity of running a computerised branch. These include those who:

- a) were relatively (or even in some cases totally) new to using a computer;
- b) had insufficient time and knowledge to be able to investigate and resolve shortages without substantial support and assistance;
- c) relied upon staff whom they may have 'inherited' from the prior Subpostmaster and who were either careless, inadequately trained or even dishonest; and
- d) lacked the financial robustness to be able to 'fund' every shortfall as it arose.

21.26. In any event, Post Office's recruitment and selection process, which on paper appears to be thorough and effective, seems to have sometimes failed to reject candidates who, when interviewed, showed signs of inadequacy and later proved themselves to be wholly unsuitable to hold the post of Subpostmaster.

21.27. Where such a person, who was either unsuitable, inexperienced or inadequately trained, was faced with problems, perhaps associated with hardware or telecommunications failures and the system's resultant restart and recovery procedures, it was at that moment that an otherwise repairable situation often turned into a catastrophe. For them, and in those specific and limited circumstances, Horizon could not be described as "*fit for purpose*".

21.28. In this context Post Office does not accept that it bears any responsibility for "*errors made at the counter*" even though it has frequently asserted, in its POIRs, that these were probably the root cause of a branch's losses. A simple example of this issue involves the common mistake of settling a transaction to cash instead of selecting 'Debit Card' or 'Credit Card' as the MOP.

21.29. When that mistake is made, the customer will, in effect, receive goods or services free of charge and the Subpostmaster will later have to make good the resultant loss. Post Office accepts that this is "*a common error*".

21.30. Whilst we recognise that no system can achieve a zero error rate, we hold the view that Post Office should acknowledge that it bears responsibility for detecting and acknowledging those system or procedural flaws that have allowed errors to repeatedly occur and also for then designing and implementing improvements to reduce the frequency and seriousness of such errors.

21.31. We have seen little evidence that convinces us that Post Office has done everything that it could have to discover the root cause of branch losses and to improve its processes and software so as to '*design errors out of the system*'.

21.32. In that the contractual arrangement that underpins the Post Office to Subpostmaster relationship places responsibility for branch errors squarely on the shoulders of the latter, it is to us unsurprising that driving down branch error rates has seemingly not received the attention that we would normally expect to see devoted to such a vital mission.

## 22. One-sided transactions

22.1. Many Applicants have raised concerns regarding transactions involving debit or credit cards where Horizon has processed a transaction but the corresponding charge to the customer's bank account appears not to have been processed. In other cases the opposite situation occurred, where Horizon rejected (or appeared to have rejected) a transaction, but the corresponding charge to the customer's bank account apparently was processed.

22.2. One possible cause for this might be that telecommunications failures have occasionally prevented one side of a transaction being processed whereas the other side of it has been processed properly.

22.3. These transaction processing failures would be less troublesome if they were always detected, at the counter ideally, or later by additional control and reconciliation processes carried out by the Subpostmaster or by Post Office itself.

22.4. It is however not yet clear whether Post Office's in-house (after-the-event) reconciliation processes can be relied upon to always detect any one-sided transaction that the Subpostmaster fails to detect.

22.5. Where a customer has been charged for something that he has not received, there is a very high likelihood that he will detect this (for example if he receives a Final Demand for a bill that he believes he has paid) and will then complain.

22.6. On the other hand, where the opposite has happened, and a customer has received cash, or goods, and his bank account has not been debited or his card account has not been charged, it is perfectly likely that he will be unaware of his windfall or will simply keep quiet about it, leaving the Subpostmaster to be held accountable for the resultant shortfall.

22.7. It is important to understand that, where that sort of error occurs, no evidence of it is visible to the Subpostmaster *unless the customer discloses it*.

22.8. Post Office says, in referring to 'one sided transactions' in its response to the previously issued version of this Report:

*"this is an inevitable risk of transacting business across the internet and affects all retailers and banks".*

22.9. Post Office acknowledges that, in certain circumstances, one-sided transactions can occur, but asserts that it has robust procedures in place to detect and correct any such errors. Once again, it says that:

*"if these procedures operate correctly, no loss to the branch will occur".*

22.10. Our observation, in regard to those assurances, is to point out that the risk of such transactional aberrations is, in our view, markedly higher where two electronic systems have to operate in a synchronised way (as is the case with Horizon and the LiNK system), rather than where a single system is used, as is the case with other retailers and banks. We must also point out that few retailers, and no banks, hold their staff accountable for the losses that arise from such risks.

22.11. We note that Post Office's control and reconciliation procedures rely on correct information being supplied by third party clients. It follows that, if incorrect information is provided by any client company, this can give rise to a loss being charged to a branch. We also note that, for most of the past five years, substantial credits have been made to Post Office's Profit and Loss Account as a result of unreconciled balances held by Post Office in its Suspense Account.

22.12. It is, in our view, probable that some of those entries should have been re-credited to branches to offset losses previously charged.

### 23. Hardware issues

23.1. An examination of the hardware in use in a typical branch reveals that much of the equipment appears to be quite old. In some cases it was first installed more than ten years ago.

23.2. There also seems to be little routine hardware maintenance. Instead, faulty equipment is replaced as and when needed. This process, referred to as "*kit swap outs*", principally involves the replacement of broken units with reconditioned ones. Reports of several reconditioned components or units being tried, and failing, before a working one was found, are not unusual. This is because much of the bespoke equipment used by Horizon is no longer manufactured.

23.3. The most commonly raised issues involved counter and back office printers, PINpads, touch screens, telecommunications equipment and base units.

23.4. Many Applicants believe that faulty equipment could be responsible for otherwise unidentified shortages. We have been unable to come to a reliable, evidence based view on this matter, but recognise this as a possibility. Post Office's position on this is that it cannot happen.

## 24. Post Office Audit Procedures

- 24.1. In many cases Applicants have told us that they were not given copies of the Audit Reports relating to their branches and that their enquiries to Post Office, in respect of those Audits, were never answered.
- 24.2. It is clear that Post Office's current practice is that each Subpostmaster is provided with a copy of the Audit Report for his branch. We do not know when this current practice was adopted or whether a similar policy was consistently applied in prior years.
- 24.3. A few Applicants have referred to having misunderstood Post Office's use of the term 'audit', saying that most of the 'audits' that they experienced were merely cash and stock counts that offered them no comfort in regard to how their branch (and sometimes the existing branch staff that they had been required to employ when they were appointed as Subpostmaster) was really operating.
- 24.4. Some Applicants have also questioned the competence of the auditors sent out to their branches, saying that some of them did not appear to have any professional qualifications in auditing or accounting and that many of them seemed to have scant knowledge of how the Horizon system was meant to operate.
- 24.5. For those Subpostmasters, particularly those who had prior experience of working in large companies, they felt themselves to have been denied the reassurance that a "*proper audit*" would normally have given them. We note that, once again, the Standard Contract places no obligation on Post Office to provide such a service to its Subpostmasters.

## 25. Post Office Investigations

- 25.1. As a result of our investigations we have established that Post Office's investigators have, in many cases, failed to identify the underlying root cause of shortfalls prior to the initiation of civil recovery action or criminal proceedings. This includes cases where Applicants brought to the Auditors' or Investigators' attention their own suspicions as to the underlying root causes of their branch's losses.
- 25.2. Many Applicants, and almost all the Professional Advisors, assert that there was inadequate investigation prior to suspension (in all cases without pay); termination; and civil/criminal action.
- 25.3. Based on the cases examined so far, Post Office's investigators seem, in our opinion, to have defaulted to seeking evidence that would support a charge of false accounting, rather than carrying out an investigation into the root cause of any suspected problems. Evidence to support a charge of false accounting is often easily obtained since, when confronted during interview with evidence of obviously over-stated cash figures, the accused person will often readily admit to falsifying the end of Trading Period Accounts.

- 25.4. With the exception of any interview conducted in accordance with the Police and Criminal Evidence Act (1984) we note that the interviewee is not allowed to be legally represented, although Post Office says that they may be accompanied by a 'friend'.
- 25.5. Post Office's true position in respect of such 'friends' and what they are allowed to say and do during, for example, interviews where contract termination is under discussion is, however, far from clear.
- 25.6. In that context, Post Office reassured Ministers, in its 17 December 2014 'Response to the Westminster Hall Adjournment Debate', that:
- "another person can attend with the Subpostmaster. This can be a friend, or another Subpostmaster or assistant or a representative of the National Federation of Subpostmasters. They can make a statement in support and working practice is that they can speak on behalf of the postmaster, if the postmaster agrees to this".*
- 25.7. Two months later however, in a letter dated 15 February 2015 to a Subpostmaster, in which he refused that Subpostmaster's request to have his solicitor attend a 'Branch Incident Appeal' a Post Office Agents Contract Manager said:
- "We allow Subpostmasters to be accompanied at interviews or at appeal by a 'friend'; however it does not allow the friend the opportunity to represent the Subpostmaster"*
- and
- "A friend may only attend and listen to questions and answers. He must not interrupt in any way, either by word or signal: if he does interrupt he will be required to leave at once and the interview will progress without him".*
- 25.8. We cannot accept, in the light of that 15 February letter, that the assurance that Post Office has given to MPs really is its "*working practice*".
- 25.9. Interviews are usually recorded and, if an admission of false accounting has been made, this will virtually always trigger a '*Guilty*' plea by the defendant and often an associated repayment proposal. As a result, Post Office's investigators seem to have found that obtaining admissions of false accounting was the key to achieving relatively rapid, and (to Post Office) inexpensive, asset recovery.
- 25.10. As a consequence of this, Post Office's investigators seem to have de-emphasized the importance of unearthing the true root causes of the "*mysterious shortfalls*" that some Applicants claimed to have suffered. When faced with requests from Subpostmasters for investigative help, this has often been refused.
- 25.11. It is clear, from comments made by Applicants, that those refusals were contrary to their expectations and it seems to have come as a surprise to many of them when they learned that Post Office's Investigation Division has no mandate to provide general investigative support to

Subpostmasters. The following quote, from one Applicant, was echoed by others who said that they really believed that they were entitled to receive investigative support from Post Office:

*"I believe that POL never embarked upon a genuine and meaningful investigation of what was the root cause of the discrepancies"*

and, referring to section 12 of the Standard Contract, he says:

*"In light of this I believe that there was simply a culture at POL to hide behind this clause without having to discharge their duty to properly investigate".*

25.12. It seems that few Applicants were aware that Post Office's refusals to provide on-site investigative support were in line with Section 19, Paragraph 12 of the Standard Contract, which states that:

*"The Investigation Division does NOT enquire into matters where crime is not suspected".*

25.13. We note that this 'double-negative' wording (and Post Office's established practice) does not mean that the Investigation Division can be expected to carry out investigative work *where crime is suspected*. This has led to situations where some Applicants have found that, even where one or more of their employees was suspected - both by themselves and by Post Office - of having stolen branch funds, no investigative work was carried out.

25.14. This then left them with a contractual responsibility to repay the resultant losses, but with no help from Post Office in recovering any of the stolen money from those who had taken it. In some instances Applicants faced with this situation received no meaningful help from the police either, the police having adopted the position that the investigation ought to be carried out by Post Office's investigators.

25.15. We asked Post Office to provide details of its Policy and Standard Operating Procedures in regard to helping Subpostmasters recover shortfalls that they have made good as a result of proven theft by branch employees and it has answered as follows:

*"Recovery of losses caused by theft by branch assistants is a matter for Subpostmasters as the assistants are their employees. Post Office may help, as a matter of goodwill, but there is no policy in this regard".*

25.16. It has been pointed out to us that Post Office's instructions to (and its training of) its investigators seems to have disregarded the possibility that the Horizon system could ever be in any way relevant to their investigations. A consequence of this flawed approach to investigations is that many opportunities to develop process improvements have been missed.

25.17. This issue becomes even more important when criminal charges are brought against a Subpostmaster. Post Office's policy is to bring a private criminal prosecution against the Subpostmaster rather than to report the matter to the Police and then allow the Crown Prosecution Service to prosecute.

- 25.18. By bringing private prosecutions (which it is entitled to do) Post Office itself becomes responsible for ensuring that its lawyers adhere to the Code for Crown Prosecutors which includes ensuring that any cases that it brings to the Courts pass the tests that the CPS itself would apply.
- 25.19. These include determining whether it has sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge and whether a prosecution is required in the public interest.
- 25.20. By carrying out those tests itself, Post Office runs the risk of being accused of circumventing those checks and balances that a separate and *independent* body would otherwise have carried out.
- 25.21. We are aware of cases where criminal charges have been brought which appear to have been motivated primarily by Post Office's desire to recover losses. In some cases, those criminal charges do not seem to have been supported by the necessary degree of evidence and have been dropped prior to trial, often as part of an agreement to accept a guilty plea to a charge of false accounting, so long as the defendant agreed to repay all of the missing funds.
- 25.22. We have also been told of agreements whereby no mention was to be made in Court, by the defendant, of any criticism of the Horizon system.
- 25.23. We remain concerned that some of these decisions to prosecute may have been contrary to the Code for Crown Prosecutors with which Post Office, as a private prosecutor, is required to comply. In order to investigate this matter we had requested access to the complete legal files held by Post Office in a number of cases.
- 25.24. Post Office has stated that this subject is outside the scope of our investigation. We strongly disagree with this view.

## 26. Conclusions

- 26.1. When we started our work on these important matters in July 2012, we believed there was a shared commitment with Post Office to "*seek the truth*" irrespective of the consequences. This was reflected in us being provided with unrestricted access to highly confidential and sensitive documents, including legal advice relating to individual cases. This position was recognised and well received by other stakeholders, including the Rt. Hon. James Arbuthnot MP and the JFSA.
- 26.2. However, as time progressed, and particularly in the last 18 months, it has been increasingly difficult to progress our investigations due to various legal challenges by Post Office. There have been considerable delays in receiving responses to requests for information and legal issues have been raised, such as Data Protection and Legal Privilege, as being the reason various documents could no longer be provided to us.

- 26.3. We found that types of document previously provided to us without restriction, were no longer being provided. Some of these documents were also not being provided to Post Office's in-house team of investigators.
- 26.4. We can only conclude that this represented a policy decision by Post Office at a senior level, possibly based on legal advice. We consider this regrettable, particularly in the light of assurances previously provided to ourselves, MPs and the JFSA.
- 26.5. In expressing our disappointment in finding ourselves unable to complete our independent investigation in the way that we considered necessary, we wish to place on record our appreciation for the hard work and professionalism of Post Office's in-house team of investigators, working for Angela Van Den Bogerd, Post Office's Head of Partnerships.
- 26.6. Our work would have been much harder and taken much longer without the high quality work carried out by this team. We have also received excellent support from the administrative team set up by Post Office to support the Working Group.
- 26.7. We also valued the guidance provided by the Mediation Working Group, chaired by Sir Anthony Hooper, until its abrupt dissolution on 10 March 2015.
- 26.8. We have described in this report the results of our investigations (some of which are incomplete) into the issues and concerns raised by multiple Applicants. As we have previously stated, when looking at the totality of the '*Horizon experience*' we remain concerned that in some circumstances Horizon can be systemically flawed from a user's perspective and Post Office has not necessarily provided an appropriate level of support.
- 26.9. We believe that Post Office should be much more alert to possible problems with Horizon and encourage its staff to develop a much greater degree of '*professional scepticism*' in this regard.
- 26.10. We hope that this report, although incomplete in a number of important respects, will shed some light on the important issues raised by the 136 Applicants accepted into the Mediation Scheme.



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9 April 2015



Ron Warmington CFE, FCA

Second Sight Support Services Ltd.