

MINUTE
INITIAL COMPLAINT REVIEW AND MEDIATION SCHEME
WORKING GROUP 1 MAY 2014

ATTENDEES

Sir Anthony Hooper
Alan Bates (JFSA)
Kay Linnell (JFSA)
Ian Henderson (Second Sight)
Ron Warmington (Second Sight)
Chris Holyoak (Second Sight)
Chris Aujard (Post Office)
Belinda Crowe (Post Office)
Angela Van Den Bogerd (Post Office)
David Oliver (Post Office)
Andy Parsons (Bond Dickinson)

1. Part One of the Mediator's Briefing Pack

The Chair opened discussion of the draft Part one report tabled by Second Sight.

In discussion the following points were noted:

- The introduction needed more on the Horizon system and to be clearer on when it is referring to Horizon online.
- A number of generic points were made by Post Office:
 - The starting point for the report did not ring true as the draft was set up as a supporting document for the thematic report and that was not the purpose of the document.
 - Opinions should be taken out of this document and moved into the Second Sight thematic report.
 - The document contained a number of factual inaccuracies.
 - The document contained a number of references to CQR and other anecdotal material, this should be moved to the thematic report where it would need to be supported by evidence.
 - There are sections of analysis and conjecture in the document which need to be moved to the Part two report, where again they will need to be supported by evidence.
 - The report needed some restructuring to improve clarity.
- A detailed line by line review of the document followed. In particular the following points were noted:
 - The document needed to be clearer on timescales and when it was referring to current practice and past practice including with years where practicable.

- The document needed a larger and clearer explanation of surpluses.
- The document needs a clearer and enlarged section on data.

ACTION Second Sight to provide a revised copy of the Part one report to the Working Group by 9 May

2. M022

The Chair opened the discussion by inviting the Working Group to comment on the report's style only and not on content. It was clarified that once the Working Group had signed off the report it would go in draft to both parties for comment and then Second Sight would have the opportunity to review the comments and revise if they wished. After Second Sight's review it would be distributed to both parties and the Working Group as a final version.

In discussion the following points were made:

- There was concern that the report could not stand on its own and the applicant would need the Part one report as well. Concern was expressed about any delay that this might cause.
- Post Office set out that they had a number of high level concerns about the report as currently drafted:
 - The report was not of satisfactory quality.
 - Using the rules of court as a parallel Post Office would have expected to see a number of features that were absent.
 - The depth of analysis was not sufficient
 - There needed to be a clearer articulation of the factual basis upon which conclusions had been made
 - Issues for mediation should be set out using neutral language and with a different headline message. The following language was suggested: "The following are the principle issues of disagreement between the two parties:"
 - Neutral language needs to be used throughout the whole document.
 - The document needs to clearly balance the evidence used with any counterpoint brought forward – this is often absent at the moment.
 - It needs to set out analyses that come from the facts and then set out the options that flow from these and set out the likely weighting that Second Sight apply to each.
 - It needs to avoid un-evidenced statements such as "extraordinary" particularly where not within Second Sight's field of expertise.
 - It needs to avoid raising real or implied questions.
 - The Scope of the report goes beyond Second Sight's areas of expertise (for example commenting on whether or not a case was suitable for police investigation)

- There was discussion of the key issue that the report needed to address and if it was whether Post Office bore some responsibility for the loss or if it was a wider issue.
- The Chair noted that the documents would be issued under his signature and that he would refer back to the confidentiality statements in the Scheme documentation asking both parties to keep the documents confidential.
- It was noted that both parties would have seven days to comment on the draft and that Second Sight would then consider whether they needed to make any further amendments.
- The Working Group decided that they would like to see the draft of M022 for a final time and therefore requested a copy by close of play on 8 May for turnaround within 24 hours. This review would only be to check how the stylistic comments from the Working Group had been taken on board.
- The draft report would then issue as soon as possible thereafter.

ACTION Second Sight to provide a revised copy of M022 by COP 8 May.

3. Correspondence between Second Sight and the Chair

At the Chair's request an additional paper was tabled setting out correspondence between the Chair and Second Sight on the timescales for delivery of their reports on M054 and M127.

In the meeting Second Sight set out their concerns:

- That the Post Office reports were inadequate.
- Post Office had not asked questions of the applicant.
- That all they were being provided with were extracts of Post Office's record.
- That they were having to do the work which should have been done at the investigative stage.
- That they had concerns about the adherence to the published process.
- That they had expected an in-depth investigation to find the truth which they felt they were not receiving.

In discussion the following points were made:

- Second Sight cannot say that they will not produce a report because they believe the Post Office work is inadequate. If that is their view they need to document, with reasons, that view in their report.
- That the process set out in the Scheme documentation has been changed numerous times by the Working Group and is no longer an accurate representation of the process.

- The Working Group agreed that it was not normally Post Office's role when investigating to ask the applicant questions but that Second Sight could ask questions if they wished.
- The Working Group agreed that it was not for Second Sight to ask Post Office large numbers of questions.
- That Second Sight should ask questions of the applicant as early as possible.

ACTION Second Sight to provide M054 and M127 by Close of business on 15 May. Again 24 hours would be allowed to review how the Working Group's stylistic comments had been taken on board.

4. Oliver Heald QC MP correspondence

The letter from Oliver Heald was discussed. Post Office confirmed that their position was unchanged and that given that the only mitigation offered for not applying was not being aware of the Scheme they would not allow the application into the Scheme. JFSA commented that they disagreed with this position. The Chair noted Post Office's refusal to admit the constituent into the Scheme and that he would write to Oliver Heald accordingly.

Secretary's Note – subsequent to this discussion it was agreed that Post Office would consider the case further and update the Working Group on 8 May.

5. Alan Bates Correspondence with the Minister

The Chair opened discussion of the correspondence between Alan Bates and the Minister which had been passed to him. The Chair explained that he was considering replying and invited comments from the Working Group.

In discussion the Post Office made the following comments:

- They felt that Alan had broken the confidentiality of the Working Group and that this would make it difficult to have frank discussions in the future.
- The letter contained a number of factual inaccuracies particularly around the production of the reports where Post Office felt the letter misrepresented the truth.
- That the timescales apportioned to Second Sight were inaccurate.
- That the approach to existing SPMRs had been misconstrued and that the approach was clearly set out in the agreed Scheme documentation
- That the Working Group had repeatedly been clear on the issue of advisor costs and Alan had agreed the approach.
- That the widespread use of CFAs was very worrying.

- That they did not recognise Alan's description of the Post Office reports.
- That there is no legal obligation on Post Office to investigate criminal cases.
- That there is no causal linkage between the "POL's failure to address Horizon associated issues" and the issues set out in the Second paragraph of Page 4.

In responding to the Post Office points Alan commented:

- That he would not apologise for the letter and that he needed to be able to write such letters.
- That he was and remained extremely concerned at the slow pace of progress of the Scheme.
- That he stood by his criticism of the Post Office reports and the Post Office approach.

Second Sight commented that it was clear that the Post Office reports were inadequate. It was pointed out that they had been in receipt of the reports from November 2013 and had complemented the first report they received, further they had not raised any concerns until March 2014.

In closing the Chair commented that he felt that Alan had not been fair to Post Office over their investigation reports and he would write to that effect. The Chair asked Alan to consider pausing the correspondence at this point and to provide his views in the next day. If Alan paused the correspondence the Chair indicated he would not reply.

Action Alan Bates to consider pausing the correspondence and inform the Chair of his decision.

Standing Agenda

6. Status of current applications awaiting a Case Questionnaire Response

N/A

New Case Questionnaire Responses

Case No.	Status	WG action
M063	Accepted by WG on 10 April	Deadline set for 22 May
M091		Agreed 4 week deadline
M092		Agreed 8 week deadline
M115	Accepted by WG on 10 April	Deadline set for 22 May

Second Sight Confirmed they were in receipt of the following CQRs for hardening:

- M008, M56, M121 and M100 from Howe and Co
- M059, M064, M074 from BTG
- M044 and M108 from Ark Aurora.

ACTION given the number of overdue CQRs with Howe and Co the Working Group agreed that Alan Bates should speak to them and report back to the next Working Group.

7. Post Office / Second Sight investigation progress

Cases under Post Office Investigation:

Case No.	Status	Working Group action
M039	Investigation complete. Finalising report. Extension (not 1 st) to 29 th May required.	Agreed
M041	Investigation complete. Finalising report. Extension (not 1 st) to 29 th May required.	Agreed
M066	Investigation complete. Finalising report. Extension (not 1 st) to 29 th May required.	Agreed

8. Standing and other case updates

Case No.	Status	Working Group Action
M004	Response from Applicant due on 25 th April – no response yet, despite chasers.	TH to send chaser.
M107	Investigation on-going.	Noted
M094	Letter sent to Applicant on 23 rd April.	Noted
M112	2 nd visit with Applicant booked for 30 th April.	AVDB to update at 8 May WG
M114	Letter sent in response to Applicant's	Noted

	latest correspondence on 29 th April.	
M118	Complex case. PO suggests a deadline 10 weeks from now on 10 th July.	Agreed. TH to write to applicant informing them of the deadline
M142	Due to speak to Applicant on 30 th April.	Noted
M143	Working on the investigation report.	TH to write to applicant informing them of the timescales for the completion of the Post Office report.