

Message

From: Gavin Lambert [GRO]

on behalf of 

Sent: 25/11/2014 16:56:26

To: Paula Vennells [GRO]

CC: Mark R Davies [GRO] Patrick Bourke [GRO] Tom Wechsler [GRO]

Subject: FW: Draft reply to Gavin

Attachments: PV-Board-AP.docx

Paula - further background on Sparrow from colleagues cc'd, in addition to Mark's note from this morning.

1. **Role of the working group: Tony's view the decision as to whether a case should go forward to mediation is entrusted to the WG**

The central role of the Working Group is to decide on whether any given case ought to be mediated, being informed but not bound, by the recommendation of SS. This is, in our view, reasonably clear from the Scheme documentation, and certainly clear from the operation of the Scheme in practice (until recently when JFSA took the unilateral decision to refuse to discuss cases in which POL disagreed with SS's recommendation). It is also very clear from Sir Anthony's own contributions to the Working Group, notably in his decision in case M054, following submissions he invited from both POL and JFSA on the very question on the WG's role in determining whether or not a case should go to mediation:

*"In my view this document (Overview of the Initial Complaints and Mediation Scheme) makes it clear in a passage under the heading "Will my case definitely be referred to mediation?" that **the decision as to whether a case should go forward to mediation is entrusted to the WG.***

The JFSA stresses the need for independence and the role of SS. In my view, the necessary independence is achieved by giving to the Chair of the WG the casting vote.

I exercise my casting vote in favour of the proposition that the WG decides whether a case is suitable for mediation."

He has also expressed some discomfort at being deprived of JFSA's views on those cases in which POL disagrees with the SS recommendation to mediate, since it leaves him (thanks to his casting vote) as the determinant voice in all cases.

2. **Risk of challenge to our public position from Tony: over view = low**

The short answer is that he is bound by a confidentiality agreement. The longer answer is, notwithstanding that he is bound by confidentiality, it is **difficult to envisage SAH wanting to be at the centre of a potential stink** – there simply is no upside to him doing so, particularly in circumstances where POL would, presumably, wish to praise as well as thank him for his important work.

Tony has never fully articulated his view on mediation in all cases and he has never said that he agreed with that proposition. However, **he is certainly more disposed towards agreeing mediation in some cases where Post Office is not.** His position appears to be that in setting up the Scheme, Post Office has

set a certain level of expectation that a significant number of cases would be mediated. He also disagrees with our legal advice and position on mediating criminal cases. And although he has voted against SS's recommendations in the past, his position appears to have hardened as POL has voted against the majority of cases proceeding to mediation in the most recent WG meetings and he may have lost some sympathy with our position. **However, we think the chances that he will expose this publicly are very small.**

Moreover, the question presupposes that not 'pre-agreeing' to mediate all cases is somehow 'wrong'. We already know that agreeing to mediate any criminal cases carries very significant levels of risk and we have been advised in the strongest terms not to do so. Mediating most of the other cases would likely generate a strong, and inaccurate, perception that POL was 'at fault'. And mediating cases in which the evidence generated by the various investigations point clearly to the Applicant's responsibility would be odd.