
From: Paula Vennells; [REDACTED] GRO
Sent: Fri 28/02/2014 5:49:33 PM (UTC)
To: Chris Aujard; [REDACTED] GRO; Belinda Crowe; [REDACTED] GRO
Cc: Martin Edwards; [REDACTED] GRO
Subject: Re: The mediation process

Chris, this is slower than I expected. We said earlier in the week we would meet SS. We should have been in touch before now. Is Amanda really going to contact them at 17.45 on a Friday evening?? (Not very courteous, even if she is.)
If she is not (ie., calling. Ian now), then I would like you to get in touch personally and suggest times for you and Belinda.

We heard very clearly from the Board that we need to take control of this.

Thanks in advance. Paula

Sent from my iPad

On 28 Feb 2014, at 17:43, "Chris Aujard" <[REDACTED] GRO> wrote:

Thanks Ian; much appreciated. To take the ideas forward, I have asked my PA to try to set up a face to face meeting next week to discuss – she should be in touch soon. Have a good weekend. All the best.
Chris

From: Ian Henderson; [REDACTED] GRO
Sent: 28 February 2014 15:19
To: Chris Aujard
Cc: Paula Vennells; 'Ron Warmington'
Subject: The mediation process
Sensitivity: Confidential

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Chris

I said I would write to you with some ideas as to how the mediation process could be speeded-up and made more efficient.

These ideas are as a result of a brainstorming session and some may not be suitable for adoption, but are included in case they lead to other possible solutions.

The need for Active Case Management

At the moment applicants are largely in charge of the mediation process and the Working Group and other parties such as Post Office and Second Sight react to submissions as and when they occur. This is probably not the most efficient approach. There is a need to adopt a much more active (rather than reactive) approach.

Triage approach to applications for mediation

Whilst it is a principle of mediation that each case must be dealt with on its own, not all cases will be suitable for mediation and some cases may be capable of resolution without going through the entire mediation procedure. This solution has been used already in a small number of cases. Also, there may be benefits to be gained from grouping similar cases together and possibly allocating similar cases to the same mediator.

Now that we have received all of the applications for mediation, apart from a small number of late applications, a scoring matrix for all applications should be created comprising the following items:

1. Is the applicant still serving as a Subpostmaster?
2. What is the monetary value of the claim?
3. Does this include consequential losses and the time value of money?
4. Do the issues raised fall outside the document retention period of Post Office?
5. What are the key issues raised by the applicant? (top 3 or 4 only)
6. Have these issues been raised previously by the applicant?
7. Was the applicant suspended or subject to criminal investigation?
8. Was the criminal prosecution (if any) discontinued?
9. Is the applicant a party to the Shoosmiths or other civil litigation?
10. If the case proceeds to civil litigation what is the most likely outcome?

This matrix can be used for a number of purposes:

1. Excluding very weak or speculative cases.
2. Identifying cases that fall outside document retention periods where little new information is available and the case could be fast tracked.
3. Identifying high risk or high value cases.
4. Advising the Post Office mediation team as to the potential cost of failure. Typically offers made in mediation should be no more than approximately 60% of the most likely outcome of litigation.
5. Identifying cases where alternatives to mediation may be appropriate.
6. Grouping similar cases together for processing or allocation to a single mediator.

Once cases have been grouped according to the categories listed above, it will be much easier to manage the overall process.

The cost benefit of mediation

Mediation is much less expensive than litigation. Mediation will only continue to be of benefit if a realistic assessment of the most likely outcome of litigation is made and any offers made in mediation represent a significant percentage of the most likely litigation outcome. If this is not done, mediation becomes an additional cost, not a cost benefit. At present there is probably a substantial gap between the expectations of some applicants and what Post Office is able to offer. This needs to be evaluated very carefully as unless this gap can be bridged in some way, the mediation process may not provide the intended benefits.

Select and evaluate sample cases

The scoring matrix can be used to identify and group similar cases. There may be benefits to be gained from selecting a small number of representative cases and fast tracking these through mediation. Any lessons learnt can then be applied to similar cases. This is not a proposal to share confidential information between cases. Ideally the same Post Office representative should be involved in all similar cases.

Involve a Mediator in the planning and preparation phases

Whilst Kay Linnell is an experienced mediator and is a member of the Working Group, she will not be involved in the actual mediation. Now that a small number of draft reports have been produced by Second Sight, there may be some benefit in involving a representative from CEDR, or a proposed mediator, in advising on the next steps, with a view to implementing any changes that will streamline the mediation process.

Frontload bookings of mediators

We have been told that it may take up to 2 months for a suitable mediator to become available, once a request for mediation occurs. Whilst we cannot predict exactly which case will be ready for mediation on a particular date, there is a sufficient number of potential cases to justify block booking a number of mediators now, in order to minimise delays when cases are ready for mediation.

Recognise that some Post Office processes are continuing to create substantial potential liabilities

We have previously provided you with our confidential report on Post Office investigations procedures. We note that a small number of mediation applications represent cases when the applicant was suspended due to a criminal investigation taking place, but that no prosecution occurred or the prosecution was subsequently discontinued. It is clear from a number of applications that suspension of a Subpostmaster often has a catastrophic impact on the total costs that may be claimed either in mediation or litigation. You may wish to consider whether alternatives to immediate suspension should be used in some cases.

Give priority to high value or high risk cases.

As mentioned above, some applications are for very substantial amounts. There may be some benefit in dealing with these cases early in the mediation process, if only to reduce the cost element which is increasing on a daily basis.

Track the outcome of mediation cases

Only very limited information on the outcome of each mediation case will be reported to the Working Group. Post Office, as a party to the mediation, will know what has been offered and the response from the applicant. This information could form the basis of a tracking schedule to predict the outcome of future mediation cases.

I hope the points mentioned above are of assistance in dealing with this matter. I confirm that both Ron and I are available next week if you feel it would be of benefit to have a further meeting.

With best wishes

Ian R Henderson CCE CISA FCA
Advanced Forensics - London, UK

Forensic computing expert witness and electronic disclosure specialist

UK Mobile:

GRO

Email:

GRO

Website: <http://advancedforensics.com>

LinkedIn: <http://linkedin.com/in/forensicgod>

Twitter: <http://twitter.com/forensicgod>

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