

**DRAFT - PRIVILEGED**

**LOGIC NOTE – CIRCULATION OF THE SECOND SIGHT PART TWO REPORT**

**Summary**

This note sets out the process by which the Working Group overseeing the Initial Complaint Review and Mediation Scheme (the Scheme) came to issue the Second Sight Part Two Report (dated 21 August). This note should be read in the context of the Board's decision to continue to operate within the terms of reference and the downstream impact that entailed. The note also records the steps both considered and discarded and taken by Post Office to improve the quality of the Report and minimise the potential reputational damage.

**Background to the Part Two Report**

The Part Two Report was first suggested by Second Sight at the Working Group in early 2014. The rationale behind the report was that Second Sight were finding it difficult to produce individual case reports which they said was due to finding them very repetitive. Instead Second Sight suggested that they would produce an overarching thematic report which would allow them to write shorter individual case reports by cross referring to the Part Two report. This would reduce costs and make the case reports more manageable. The proposal was agreed to by the Working Group.

Second Sight committed to deliver a completed draft by 26 March 2014 (the first draft was received on 5 August 2014). The Working Group considered a partial first draft in March 2014 which was dismissed out of hand by the Chair as being so lacking in content that it did not even warrant a review by the Working Group. It then seemed that the proposal had been shelved as Second Sight focussed on attempting to produce case reports, however under pressure from JFSA this focus changed and the first section of Part Two on ATMs was produced on 16 June 2014. The ATM Section was initially not approved by Post Office or the Working Group but under the Chair's direction was disseminated to applicants on XX date – Post Office did not object to this course of action as the report carried a clear rider and although it was inaccurate it was assessed as not being very damaging. To have taken any further steps to delay it would have been unlikely to succeed and would have irritated and potentially annoyed the Chair and delayed the mediation of applicants' cases.

The process for taking forward the development of the Part Two report was discussed by the Working Group on XXX. Second Sight were directed by the Chair to increase their engagement with Post Office to ensure that their Report was factually accurate. On this basis Post Office repeatedly sought a meeting with Second Sight to discuss the content. Second Sight agreed to meet to discuss the ATM section and on the day of the meeting provided a hard copy of the draft Part Two Report.

The full draft Part Two report was formally submitted on 5 August and Post Office convened a conference call with Second Sight to discuss the issues with the report. Second Sight refused on the call to engage in substantive discussion of the Report repeatedly asking Post Office to hold back their detailed comments and only to

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provide factual corrections at this stage. Post Office pressed Second Sight on this issue and they agreed to receive and try and accommodate Post Office's comments. Post Office provided a letter from the Legal Department making clear in detail the problems and failings of the report. These comments were partially taken on board in the Final Report which was received on 21 August. As had been expected from the tone and tenor of Second Sight's engagement on the conference call the report was still inaccurate and of a poor quality.

The Post Office response has focussed on a number of areas:

1. Improve the quality of the Report
2. Increase the assertive management of the relationship with Second Sight
3. Attempt to influence the Working Group Sign off of the report
4. Minimise any potential reputational damage

Post Office considered whether it could take steps to prevent publication of the report if it remained inaccurate but decided for the reasons set out below not to pursue this approach.

**1. Improve the Quality**

Post Office has been engaged in a wide range of activity designed to increase the quality of Second Sight's work product in general as well as specific activity focussed on the Part Two report. These are set out below:

- Early and consistent positive engagement with Second Sight attempting to ground all of their work in solid method, clear analysis and strong referenced evidence. This included providing Second Sight with a methodology for structuring their comments.
- Post Office has provided factual content and has worked to ensure Second Sight understood the areas they intended to cover.
- Post Office has provided detailed technical responses in four areas in response to specific questions raised by Second Sight (P&A Fraud, ATM retrace, Suspense Accounts and One-sided transactions).
- Post Office has made itself available to answer any questions from Second Sight at every opportunity and has actively encouraged Second Sight to raise issues direct with Post Office.
- In relation to the ATM section of the Report (which was released before the balance of the report) Post Office led a line-by-line review of that section before the Working Group seeking improvements from Second Sight.
- Post Office provided case reports to a form and standard agreed by the Chair of the Working Group – these reports should have provided the core material for the Part Two report to draw upon.
- Provided detailed comments on each case report Second Sight delivered – Post Office has consistently sought to ensure Second Sight produced evidenced work
- Post Office repeatedly attempted to meet with Second Sight to discuss the draft ATM report following up the earlier technical notes and series of emails.
- Post Office offered to draft or hold a drafting workshop with Second Sight

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- Post Office repeatedly attempted to secure a line by line review of the Part Two report both as it was developed and after a draft was provided.
- Post Office convened a teleconference after the first draft was received, made clear their dissatisfaction with the report in detail and again sought to work collaboratively on the report to ensure it was factually accurate.
- Second Sight declined to engage on the report on the conference call instead attempting to focus on a process discussion and ask Post Office to solely provide factual comments. Under Post Office pressure Second Sight agreed to consider substantive comments in writing.
- Post Office sent a letter from the Legal Department on 14 August making clear Post Office dissatisfaction at the service Second Sight were providing and providing detailed feedback on the draft Part Two report.
- Second Sight took some of the feedback on board but declined any dialogue on the Report or any explanation of what they had or hadn't accepted as comments.
- Post Office then lobbied the Chair for a full discussion of the Part Two Report – the Chair rejected this as he could see no value in the discussion and used his casting vote to direct that the Report be issued.
- The General Counsel called the Chair to object to the proposed course of action and to stress Post Office's concerns. The Chair acknowledged them but would not intervene on the accuracy or content of the Report and confirmed his direction that the report should issue.
- Post Office instigated a call between Post Office General Counsel and Second Sight to discuss Post Office concern at the quality of the Part Two report and in particular the level of factual errors. Second Sight expressed regret at this and provided assurance that they would seek to rectify the errors moving forward.

Work is ongoing to continue to improve the quality of Second Sight's work despite the issue of the Part Two report:

- Reviewing the time, cost and quality of the first ten final Case Review Reports.

2. **Manage the relationship**

- Engagement letter in place from 1 July 2014
- Changed invoicing arrangements introduced from the July 2014 invoice
- In line with the Post Office Chair's direction Post Office commissioned Second Sight to provide a revised billing schedule to be in place from 1 September. Second Sight have failed to deliver this so Post Office are developing their own proposal which can be imposed if required.
- Formal letter to Second Sight drafted by Linklaters setting out concerns with their engagement – this letter will be XXXX

3. **Influence the Working Group Sign Off**

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- Post Office has attempted to shape the Working Group discussion and approach to the Part two report on a number of occasions and successfully obtained a direction from the Chair to increase the level of engagement.
- Post Office has achieved limited success by:
  - a) Securing agreement to initially proceed with cases without the Part Two Report – enabling Post Office to demonstrate good will in resolving cases.
  - b) Forcing Second Sight to document their concerns in a number of areas (eg ATMs) allowing Post Office to provide a clear explanation of the facts in the case.

**4. Minimise Potential Reputational Damage**

- Brunswick engaged since early June and have been providing ongoing advice on how to handle the Scheme, Second Sight and the Part Two report specifically.
- POL comms working alongside team and feeding in to internal decision making and external comms.
- Confidentiality agreements in place for Second Sight.
- All recipients of report have agreed to confidentiality as part of the conditions of their entry into the Scheme.
- Post Office briefed Fujitsu and have provided comments on the Report and are considering whether they would make a supportive public statement/comment on the Final Report.
- Carried out a data audit of Second Sight's data handling to ensure compliance with relevant standards

**Prevent publication LEGAL ADVICE - PRIVILEGED**

- As part of its consideration of how to handle the report Post Office considered whether it could seek an injunction. POL decided not to take this course of action forward. The legal advice is:
  - It is extremely difficult to obtain an injunction to restrain future publication or to require the author to take different action after the publication has taken place.
  - An application for an injunction will usually fail if the defendant swears an affidavit stating that at trial he will rely on the defence of justification (ie the statements complained of are true) or fair comment (ie statements complained of are opinions expressed on matters of public interest).

Seeking an injunction for Breach of contract (ie ToR) was unlikely to satisfy the Courts requirements for an injunction:

- Serious question to be tried
- Damages not an adequate remedy
- Balance of convenience between parties' positions

**Conclusion**

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Overall to date the distribution of the Second Sight Report has not caused any media interest and the only criticism received to date has been from Howe and Co about the process the report has gone through.

The way Second Sight have responded to the increased pressure on quality, timeliness and accuracy of content has strengthened Post Office's hand. Post Office is now in a strong position to impose revised financial arrangements, to circulate to all applicants a report setting out its position on all of Second Sight's concerns, and to more assertively manage Second Sight moving forward as they have been contrite (to the General Counsel) about the inaccuracies in the Report.

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