

Confidential Memo

To: Rodric Williams and Chris Aujard
From: Stephen Hocking
Office/Location: London - Fetter Lane
Extension: **GRO**
Date: 10 June 2014
Matter: Complaints review and mediation

A bullet point summary of the key points from our discussion yesterday:

- Option 3 is relatively high risk, both for a finding that POL is governed by public law, and for a finding that option 3 is unlawful. The key risk is "legitimate expectation", ie, that POL will be held to promises made for reasons of fairness/good administration.
- This is not an ideal case to test whether POL is governed by public law. (1) the subject matter of the case is network wide, and to do with fair determination of disputes, and (2) well chosen claimants would be attractive to the court, which might then seek to stretch the law to find them a remedy.
- The risk of option 3 being found to be unlawful will be much reduced if we run a stakeholder engagement exercise first. This does not reduce the risk that POL will be found to be subject to public law, only that it would be found to be in breach.
- Option 2 should not give rise to a risk of (successful) challenge, as it is working within existing promises. JFSA will have to come close to alleging bad faith. So long as we have evidence based reasons for our position recorded at the time, this will be very difficult for them.
- If robust enforcement of option 2 causes JFSA to walk away from the scheme, we would have a much freer hand to introduce option 3. We would be able to argue that JFSA had made this necessary, and that POL cannot be held to promises that have become unworkable due to the actions of others.