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Second Sight's Draft Part Two Mediation Briefing Report – (“the Report”)

Record of teleconference on 11 August 2014

Participants

Ron Warmington (Second Sight - SS)
Ian Henderson (Second Sight - SS)
Belinda Crowe (Post Office - POL)
David Oliver (Post Office - POL)
Andy Parsons (Bond Dickinson - BD)

Actions

1. POL to set out comments on the Draft Report in writing
2. POL to respond in writing regarding access to email archives

Introduction

3. Belinda introduced participants (Belinda, Andy and David) and explained that she was speaking in a POL capacity as Chris Aujard was on leave until 26 August and therefore not able to deal with this matter.

Purpose of the call

4. POL explained that the reason for the call was because the Working Group has asked SS to engage with POL to ensure that the Report was correct and outstanding questions answered before the report was completed. However, when SS had finally come in a couple of weeks ago they had not provided a copy of the report in advance and had now produced a further draft which did not take account of information POL had provided and POL wanted to now go through the report as the Working Group had asked.
5. POL stressed that it in no way aimed to fetter SS's independence and accepted that SS may, as independent experts, identify evidence which causes SS to reach conclusions with which POL disagrees or which are uncomfortable for POL. However POL has a right to expect that conclusions are based on evidence and analysis as opposed to unsubstantiated assertions.
6. POL made the following points about the report as drafted:
 - i) SS has been engaged since May 2012 and been paid a considerable amount of money and yet there are matters in the report which SS still have not resolved and are not evidenced.
 - ii) the report is of poor quality and not of the standard it would expect of a professional firm of forensic accountants
 - iii) it does not describe the methodology or any context about the number of applicants in the Scheme compared with the number of spmrs in total or the number of cases where the 'so called' thematic issue has been raised
 - iv) provides little or no analysis of the issues or the basis on which SS have drawn conclusions and therefore it is not clear how those conclusions have been reached
 - v) it seems to be little more than a compendium of untested and uninvestigated allegations presented as fact

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- vi) it contains a number of factual inaccuracies
 - vii) it appears to totally disregard a good deal of information POL has provided to SS
 - viii) it covers matters which are out of scope of the Scheme and SS's expertise specifically in relation to contracts and other legal matters such as criminal investigations
 - ix) it referred to a number of matters on the basis that SS were continuing their enquiries and POL could not see how that assisted applicants where SS's draft CRR referred to the report but the report contained no further useful information so an applicant may simply decline mediation on the basis that they would want to wait until SS had completed its enquiries.
 - x) E.g, in relation to Pensions and Allowances, SS only raised their queries with POL on this a few weeks ago but appear to have identified this as a thematic issue the end of last year. POL has provided a detailed response which took time and resource to compile and yet the report as drafted simply says that investigations are continuing
7. SS expressed the view that POL had only been invited to make minor comments on factual inaccuracies on the Report and that there would be a further opportunity to make more substantive comments.
 8. SS felt the meeting on 31 July with POL (Andy and Angela) had already given POL an opportunity to comment. POL had understood that the purpose of that meeting was, to discuss the Report and resolve any outstanding issues but as the Draft Report had not been provided in advance that had not been possible and the discussion had been restricted to a small number of SS's outstanding questions. SS had agreed to send a draft to POL the following day but had not done so. Instead SS handed over a Draft just before the meeting on 31 July and asked for comments within 24 hours.
 9. SS queried whether POL would respond and whether substantive comments were consistent with what WG had asked (i.e. quick exposure or full response?). POL stated that it was more important that the report was right.
 10. SS asked whether Alan should participate in a discussion of the Draft Report. POL said that the Chair had suggested that SS invite Alan to attend any meeting and POL would welcome that.
 11. POL explained that that the call was to set out POL concerns and come to agree a way to resolve these.
 12. SS confirmed that they had taken into account previous information/comments provided by POL on their earlier draft and to previous questions " to the extent we thought they were worth including".
 13. As for the incompleteness of the report SS felt this should not be a surprise, as they had said it would be a living document. POL accepted that the report could change over time but considering the amount of time SS had been investigating this issue its unacceptable that there were so many unresolved issues.

Access to email archives

14. SS maintained that requests to see email archives relating to an alleged secret unit in the basement of Bracknell had gone unanswered. "you provide the emails, we trawl"
15. POL agreed to respond in writing.

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Scope

16. POL made the point that SS are not lawyers and legal matters are out of scope of the Scheme and SS's professional expertise
17. Contracts - the only issue relevant to the Scheme is the fact that the contract forms the baseline against which POL acts. The terms of the contract are matters of law and SS are not qualified to comment. Chris Aujard has previously made the point that SS does not appear to understand the nature of the relationship between subpostmasters as agents and Post Office as principals. Also it is incorrect to retrospectively impose duties on Post Office in SS' reports when those duties did not exist at the time.
18. SS maintained that 'contracts' had always been on their thematic issues list and that POL had not queried this before. Post Office's response was that it had not before been aware of SS' views on the issues and was only now able to determine that this topic is outside the scope of the Scheme.
19. Likewise, criminal investigations and prosecutions are also beyond SS's expertise as they are not prosecutors. Reviewing these practices are also outside the scope of the Scheme
20. POL generally expressed concern that applicants may rely on the comments SS make in their reports on the assumption that SS is qualified to make such comments when they are not.
21. SS reminded POL that MP's had wanted SS to look at everything and were particularly keen for SS to see whether there had been any unsafe convictions.
22. POL reminded SS they had not been engaged by MPs. If SS is doing any additional work for which it is charging POL then POL needs visibility of that work and to authorise it in advance. SS' engagement relates solely to work as part of the Scheme that does not include reviewing historic prosecutions. SS believed that this wider review was their "other hat" is in the cupboard. POL repeated that as far as it was concerned no-one had commissioned this wider piece of work and that, in any event, it would be outside of Second Sight's expertise.