

## ANNOTATED AGENDA FOR SECOND SIGHT

### 30 SEPTEMBER 2014

#### Attendees

Post Office	Second Sight
Chris Aujard	Ron Warmington
Belinda Crowe	Ian Henderson
Rodric Williams	Chris Holyoak
Andy Parsons	

#### Aims for the meeting

1. Relationship – new ground rules for engagement going forward
2. Commercials – new fixed price linked to productivity
3. Quality – Ensure SS understand that they need to operate as professionals – no more un-evidenced statements/reports.

#### 1. Rate Of Delivery

*SS plan to clear backlog by October (producing circa 5 a week) and then revert to 3 a week. Ron has stated at WG and again to BC that under no contractual obligation to produce 3 reports. We need to place him under one. SS productivity high last week at 6 draft and 1 final reports*

- Rate of delivery unacceptable as is repeated insistence you are delivering when you are not.
- Stated you are not under contract to deliver 3 cases a week – we will need to change that
- Even with last week's spike (6 drafts and 1 final) you are only producing 1.5 a week

#### 2. Quality

*SS quality has consistently fallen short of expectations in both case reports and other reports.*

- Very disappointed in the quality of the Part Two report – unacceptable that we had to send out a 60 page response due to the inaccuracy of your work
- Case analysis frequently lacks intellectual rigour and logic – manifested in little proper evidence or critical reasoning and a worrying tendency to appear willing to be swayed easily by less than compelling and un-evidenced assertions or special pleadings, including where these contradict the findings of a Court process, eg M052 where you are suggesting we mediate as you now believe the applicant committed perjury, contrary to your initial conclusion
- Also now Part Two complete it appears to being used to provide un-evidenced solutions where SS have not been able to find the cause of the loss

#### 3. Manner of Delivery

*SS engagement has been poor since 2012. They have failed to engage properly on the facts of cases and have been difficult to pin down to meetings requiring senior escalation. Repeatedly blur scope of engagement and make unprofessional un-evidenced allegations.*

- *Been very disappointed in the manner of your engagement –two years you have failed to engage with the team on the substantive issues such as our feedback on your case reports*
- *Frankly am sick of the un-evidenced bluster like your “search for the truth” and thematic 18 – which is not a neither thematic or true. We will writing to you formally following the meeting*
- Tone in which you engage with the team is unacceptable for a professional service provider – expect it to improve from now on

#### 4. Cost of Delivery and Future Proposal

*Second Sight proposal of £3500 per report including, historic average report cost circa £5000.*

- Cost has been high and proposal is still substantially too high
- Willing to consider Fixed fee of £2500 a report
- But must be linked to rate of delivery, only invoice every 12 final reports produced, Must produce at 3 per week to qualify for full fee
- 15% of the fee retained until Post Office agrees satisfactory conclusion of SS's engagement
- £20K bonus payment for successful completion of all Second Sight work by 30 April 2015.

**Briefing Paper: SS Engagement 30/09/2014****Background**

On 24/09/14, SS were sent a letter inviting them to attend a meeting on 30/09/14 to discuss concerns surrounding their delivery of services to Post Office and the Working Group.

Areas for concern included the quality; rate and manner of delivery; and value for money. A face to face meeting, for which this brief has been prepared, is scheduled for Tuesday 30 September 2014.

The following provides evidence for the points raised in the letter.

**Rate of delivery**

**1) At the Working Group on 12<sup>th</sup> June, SS confirmed they would deliver a minimum of 3 reports a week with an increase in production to be expected within a few weeks of the meeting.**

1.1 In addition, on 1<sup>st</sup> July SS signed a letter of engagement. This included a commitment to conduct services provided “In an **efficient** manner and with a view to ensuring that the costs of the scheme are reasonable”.

- More than 15 weeks have since passed,
- 23 final CRR reports have been produced, at an average of 1.5 a week ,
- Only 3 times have SS managed to produce and supply the number of reports they committed to - **despite telling the Working Group on 11<sup>th</sup> September that they were doing so,**
- At the last WG meeting they admitted to a seven week backlog (16.09.2014).

Looking at the first ten CRRs produced:

SS invoices show that prior to making the commitment on 12<sup>th</sup> June, SS had already begun work on five of these reports. Thus, SS should have been in an educated enough position to understand the level of work involved in producing a Final CRR and the likely timeframes involved. Despite this:

- They took an average of 11 weeks to produce from the time the Post Office Investigation Reports were shared: seven weeks to reach Draft and an average four further weeks to reach final.
- They were subject to an average three weeks slippage to reach draft, and two working days slippage to reach final.

However, it should be noted that most recently SS have produced:

- 1 Draft & 7 finals for week commencing 08/09/2014,
- 3 Drafts & 3 finals for week commencing 15/09/2014,
- 6 Drafts & 1 final for week commencing 22/09/2014,
- At the last WG meeting SS explained that they were now in a position to reduce the backlog and they expected in future to produce 4 reports a week and definitely no less than three.

**Quality**

**2) The quality of the CRR reports have been subject to minuted WG concerns over their style and quality.**

2.1 On 07/03/2014, the WG **agreed** SS reports (namely M001 & M014) needed to be revisited to (amongst other concerns) “**Ensure conclusions are reasoned and supported by evidence**”

- Despite agreement, CRR’s<sup>1</sup> do not provide detailed referencing for the sources cited - nor do they always provide supporting evidence or reasoning to substantiate the points made. For example:

<sup>1</sup> Based on analysis of the first ten CRRs - for which work had **not** begun prior to the meeting on 07/03/14

- M022 states 'Taking all of these facts and circumstances into account, we believe that Post Office should bear a significant proportion of the responsibility for the losses that did occur'
- M009 states 'we do not find the argument by Post Office... particularly compelling.'
- M057 states 'we believe on the balance of probabilities, that the applicant was responsible for the loss'
- M048 states 'On the balance of probabilities we believe that the losses were caused either by user error or theft...'

No explanation is given as to how the probabilities have been balanced. This is despite, on the 13/03/2014 the chair preparing suggestions for how could approach their work on claims. Guidance included **"In giving its opinion on disputed issues of fact, SS should explain what standard of proof SS has applied, ranging from sure to probable/likely"**

Issues surrounding the quality of reports have however continued. For example:

- On 1 May the Working Group discussed M022. A range of concerns about quality were raised at this point by Post Office, including that:
  - The Applicant would need the Part One report,
  - The depth of analysis was not sufficient,
  - A clearer articulation was needed of the factual basis upon which conclusions were made,
  - Neutral language needed to be used,
  - The evidence used needed to be clearly balanced with any counterpoint brought forward,
  - Un-evidenced statements needed to be avoided,
  - Raising real or implied questions needed to be avoided,
  - It was going beyond SS's areas of expertise.

2.2 CRRs also provide limited (or no) explanation or evidence for why a case is suitable for mediation. For example:

- Section 6 all of the first ten CRRs recommend mediation. Limited (or no) reasoning is given and limited (or no) reference is made to the preceding content in the CRR:
- The explanations given in M006, M022, M028, M048, M076, M127, simply state 'We consider that...' or 'In our opinion this case is suitable for Mediation and the following issue should be considered'.

2.3 More recently, an initial recommendation not to mediate case M052 in its 'Final' CRR was changed to a recommendation to mediate the case in a version 2A of the report. This latter recommendation seems odd given the detail included within the body of the report. Namely:

- An admission and subsequent verdict of guilty to 11 charges of theft (with a further 23 taken into consideration) at St Albans County Court.
- Acknowledgment that "the expiry of document retention periods has resulted in it no longer being possible to offer a fully evidenced opinion on a number of matters raised by the applicant".

The argument for mediation appears to be based upon the idea:

- The Applicant only pleaded guilty to avoid a potential custodial sentence,
- The Applicant then concocted a story as to why she stole the money to persuade the court she was guilty and,
- Had she not pleaded guilty, Post office's evidence would not have stood up to scrutiny in court.

However, the 'Final' CRR (superseded by V2A) acknowledges that "The adequacy or otherwise of the Post Office investigation process has no relevance in the light of the Applicant's guilty plea, since the evidence was never considered by the court. **Since this is the only substantive point raised by the applicant, there are consequently no issues for us to consider.** Issues relating to Post Office prosecution policy, and the conduct of any prosecution and whether or not it should be deemed 'safe', fall outside of our (SS) terms of reference".

The sentence in bold above, was removed from the CRR V2A.

### Manner

**3) There have been a number of incidences where SS has failed to properly engage in the manner we would expect of professional advisors. In particular, in relation to:**

- The spot reviews (ten reviews),
- The detailed briefing notes (four sets),
- The feedback/comments provided on the draft CRRs (24 sets of comments).

3.1 Where revisions are made, they tend to reflect the more minor points of detail raised by the PO and do not always (fully) reflect or acknowledge the more major and substantive points raised by the PO in their response letters. For example:

- With regards to case M127, Post Office comment ‘...no evidence of theft or any other criminal wrong-doing has been found.’ (Post Office Response Letter, p.10). The text of the Final CRR remains unchanged stating ‘It is entirely possible that these two branches were subjected to such attacks, and Post Office’s failure to investigate either of the two substantial shortfalls...means that these types of external theft may have contributed to the losses.’ (M127, p.9). Although reference is made to ‘elegant techniques’, how such theft might work and why it could reasonably be expected to have occurred is not explained.
- The text of the Final CRR for M028 states ‘It is unfortunate that further steps were not taken at the time to conclusively establish the cause of the losses. This appears to demonstrate a weakness in the support framework available to the Applicant’ (M028, p.5). This does not acknowledge or reflect the point made by Post Office that ‘The CRR does not explain what additional steps could have been taken to establish the cause of the losses conclusively. In fact Post Office went to significant lengths to investigate the cause of the shortfalls...’ (Post Office Response Letter, p.10).

### Value for money

**4) Discussions around perceived value for money will likely focus on negotiating a piece rate for CRR reports going forward.**

4.1 Again, referring back to the letter of engagement, signed on 1<sup>st</sup> July - this included a commitment to conduct services provided “In an **efficient** manner and with a view to ensuring that the **costs of the scheme are reasonable**”.

- To date, SS have invoiced PO £650k for work undertaken within the scheme,
- The average cost of attributed to in SS invoices #86-93 for the production of the first ten final CRRs is £4.5k per report (though this is likely to be an underestimate due to gaps in invoice data),
- This equates to an average of just under £1k per page.

#### 4.2 Second Sights Commercial Offer

### **Background**

1. Second Sight will charge Post Office a fixed fee of £3,500 for each final CRR delivered to the Working Group (to include the delivery of both draft and final reports).
2. The fixed fee will be inclusive of participation at weekly conference calls and monthly face to face meetings
3. Out of pocket expenses will be charged at cost.
4. The fixed fee proposal will apply to all new CRRs where work starts on or after 1 September 2014.
5. Normal time and cost fees will be charged up to 31 August 2014 on all cases and subsequently for CRRs that are Work in Progress as at 31 August 2014.
6. Second Sight will absorb the costs of Kim Evans for the month of August 2014.

### **Comment**

In the letter we have indicated the proposal is too high and productivity needs to be linked to fees.

### **Proposed Counter Proposal**

- Fixed fee of £2500 a report – this takes account of the more junior resource being brought in to work on reports – which should result in a lower blended rate
- Agree the fee should cover Working Group participation and preparation.
- Out of pocket expenses at cost
- Any request for further work on a time and material basis must be submitted in writing to the General Counsel and must have specific prior written authorisation from the Post Office before work commences
- Invoices only to be accepted every 12 final reports completed – this should be every 4 weeks.
- 15% of the fee retained until Post Office signs off the satisfactory conclusion of Second Sight's engagement
- £20K bonus payment for successful completion of all Second Sight work by 30 April 2015.
- 5% reduction in fee per report not delivered at the agreed 3 per week schedule.
- Willing to review the cases commenced prior to 31 August 2014 – still awaiting a response to Belinda's request.

### **RED LINE on unit cost**

- Not agree to any unit cost above £3000
- No ability to carry out any work other than report production

### **Overall Recommendations**

In order for the CRRs to deliver against what is required from the Terms of Reference and Scheme documentation, it is recommended that:

- The production of remaining Final CRRs are subject to cost, quality and timeliness control,
- The level of assessment offered in the CRRs is increased, with the reasoning made clear and links provided to the relevant evidence,
- More detailed explanation is given as to why cases are (or are not) suitable for mediation with reference to the findings in the report,
- Explanation of alternative views is provided and an opinion given as to which is to be preferred and why,
- The precision of the referencing and citations is improved,
- Delivery is regularly measured against the Scope of Services and Scheme objectives,
- The level of case specific detail in the supporting invoices is increased.

END