

CASES FOR DISCUSSION AT F2F

17 OCTOBER 2014

A. Scene Setter and Objectives

This discussion has the potential to be fraught. Not only we will be voting against mediation in all but one case (and only then if pushed), but a majority also involve criminal convictions and/or cautions.

Legal Privilege

However, the meeting does provide the opportunity to communicate some important messages the Working Group as a whole and to its constituent parts. The hope, no matter how forlorn, is that we begin to address some of the major challenges we face in operating the Scheme successfully and fairly, for Applicants and for Post Office. While the Working Group's proceedings are confidential, we know that information finds its way to third parties.

Those issues are, together with a speaking note on each, appear below:

PO approach to Criminal Cases

Legal Privilege

- Aware that PO decisions in criminal cases have been source of discussion
- Once again remind WG that, once its decision is made, it has no further role in the process – the parties are free to decide what to do next
- PO decisions not taken lightly – we have re-investigated cases thoroughly and had the benefit of SS' own independent review – in cases so far, nothing has emerged which is capable of questioning the safety of the convictions
- Each and every case will benefit from these additional and thorough investigations
- PO already under a duty to disclose any matters which come to its attention which could cast doubt on the safety of a conviction
- Said at the outset, and say again, that the Scheme is not an appropriate platform from which to challenge a conviction – that properly with the Courts
- POL never filtered cases entering the Scheme by pre-guessing which cases merited mediation. All Applicants were given a fair chance to prove that their complaint had merit
- If a case merited mediation (ie. there were questions around the safety of a conviction) then a case may be mediated. However, no case so far has presented these circumstances

- JFSA have been clear about the limitations of the Scheme (reference their communication to Applicants below) and we would ask that the WG as a whole also register this

JFSA website:

"Did you have a court finding against you? – If yes, and [although this Scheme will consider that to some degree (READ THE PACK), we, JFSA also recommend that you should enter a parallel scheme with a firm of criminal lawyers who will look into your case with a view to consider using the appeals court to overturn the findings against you. A form to register your case for consideration can be found on the 'Documents' page on the website. Again, please let us know if you submit a registration form regarding appeals, a quick email to horizon [GRO] is all that is required. "

False accounting

- In those criminal cases with false accounting, POL considers the critical factor is the existence of false accounting in a branch not the existence of a conviction:
- False accounting makes determining the underlying error that caused a loss almost impossible
- Indeed, false accounting makes correcting errors in branch much more difficult which causes losses to be incurred that might otherwise have been avoided. False accounting is therefore an operative reason for why losses occur in a branch
- The Scheme is about Horizon not criminal cases. The fact there has been false accounting makes the Applicant's task of showing that Horizon is defective impossible because the branch accounts have been corrupted by the false accounting
- In conclusion, where there is established false accounting, it is very difficult, if not impossible, to have a constructive conversation at mediation that will lead to a resolution or closure for an Applicant

Default Recommendation to Mediate

- A number of cases have come through in which SS recommend mediation despite the weight of evidence pointing, on any reasonable consideration, to the conclusion that the Applicant was responsible for the losses
- While we do still see the potential value in allowing some of these applicants to voice their concerns and benefit from a conversation, it cannot always be sensible to do so in the context of a mediation
- The difficulty for PO is that, the near-default recommendation to mediate from SS places it in the invidious position of appearing to say 'no' at each turn when, plainly, a number of these simply do not identify issues which can sensibly be the subject of mediation

- Subject to the facts of each case, Post Office is well-disposed to mediation but it is not reasonable to expect it to accept responsibility for matters where there is no evidence to support such a finding

B. Headline Position on Cases

There are a total of 10 cases for discussion, 6 of which are criminal cases. One further case (M021) is inextricably linked to a criminal case (M003) and legal advice is to refuse mediation in this case too.

Of the remainder, PO considers that all of them are unsuitable for mediation but is prepared to accept mediation in [Legal Privilege] and [Legal Privilege]. On [Legal Privilege], we do not consider this suitable for mediation on Second Sight's reasoning but we would mediate this as a means of avoiding debt recovery proceedings against the Applicant. This is one of those cases in which the Applicant might have been better off remaining outside of the Scheme. We should register a general reservation about the likelihood of success in [Legal Privilege] if we eventually accept mediation.

Second Sight recommend all cases for mediation, save for one (M017), in which they changed their recommendation following our response to the draft CRR.

Case Number	Criminal Case ?	Second Sight Position on Mediation	PO position re mediation
M001	No but civil judgement		Unsuitable
M003	Yes (false accounting – linked to M021)		Unsuitable
M005	No		Unsuitable – a face-to-face meeting should be offered instead – accept mediation if necessary
M017	No		Unsuitable
M021	No (but linked to M003 which is)	Legal Privilege	Unsuitable – a face-to-face should be offered instead – accept mediation if necessary
M029	Yes (false accounting)		Unsuitable
M035	Yes (false accounting)		Unsuitable
M052	Yes (theft and false accounting)		Unsuitable
M062	Yes (caution for false accounting)		Unsuitable
M065	Yes (false accounting)		Unsuitable

C. Individual Cases

M001	
Applicant	Lee Castleton
Advisor	Aver (Emma Porter)
Branch loss	£25,748.75
Non-criminal: Civil proceedings	Claim issued by PO for recovery of loss; matter fully defended and Applicant issued Counterclaim for wrongful termination; judgement was given in PO's favour

- Bankruptcy case (so no debt has been recovered; none has been repaid including significant costs award)
- Claiming consequential losses of **Legal Privilege**
- High profile case
- No evidence provided to undermine judgement in what was lengthy legal proceedings
- Applicant's claim for losses would either be considered an abuse of process (as they have been previously claimed for and dismissed) or are now time barred)
- Second Sight's Draft CRR recommends that this case is suitable for mediation

Likely WG mediation position	Legal Privilege
PO mediation position	Unsuitable for mediation

M003	
Applicant	Peter Holmes
Advisor	Mc Keog & Co (Denise Jackman)
Branch loss	£49,096.16
Criminal	<ul style="list-style-type: none"> • Applicant convicted for false accounting following guilty plea. • Applicant was sentenced to overnight home detention curfew for 3 months and ordered to pay £750 costs • Applicant was not liable to repay loss because he was not SPMR – obligation fell to SPMR (who is the Applicant in case M021)
<ul style="list-style-type: none"> • Case is linked to M021 • Applicant was Officer in Charge (OIC) • Applicant was responsible for all elements of day-to-day operation and performance of branch • Applicant had considerable experience (was SPMR elsewhere for number of years and performed relief SPMR duties at various branches) • Applicant pleaded guilty and was convicted of false accounting • Applicant has failed to provide any evidence that faults with Horizon were to blame for losses 	

- Applicant has failed to provide any evidence that POL contributed or caused losses
- PO will not offer settlement therefore mediation could be emotionally frustrating for the Applicant
- Applicant has claimed substantial consequential losses. PO does not consider the losses claimed by the Applicant to be recoverable principally because PO had no direct relationship with the Applicant as he was an employee of a Subpostmaster. PO does not consider that it has in acted improperly or caused the Applicant the harm now claimed as consequential loss.
- Internal note: the claim is time barred so no civil remedy is available to Applicant

Likely WG mediation position	Legal Privilege
PO mediation position	Unsuitable for mediation

M005	
Applicant	Jennifer O'Dell
Advisor	Howe & Co (John Walker)
Branch loss	£9,616.66
Non-criminal	Civil proceedings suspended as case accepted in Scheme
<ul style="list-style-type: none"> • Applicant OWES PO money • We see mediation as useful in this case, to avoid having to go after this debt in the Courts • Applicant blames PIN pad issues and stamp stock adjustments for losses; she is critical of support and training provided by PO • Having operated the branch for eight years apparently without issues or concerns, it is unlikely that lack of training led to losses • Applicant has failed to provide any evidence that faults with Horizon were to blame for losses • Applicant has failed to provide any evidence that POL contributed to or caused losses • PO will not offer settlement therefore mediation could be emotionally frustrating for the Applicant 	
Likely WG mediation position	WG likely to recommend mediation

PO mediation position	<h1>Legal Privilege</h1>
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M017	
Applicant	Baljit Sethi
Advisor	Denning Solicitors
Branch loss	£17,874.51 (but Applicant claiming a Legal Privilege)
Non-criminal	
<ul style="list-style-type: none">• Applicant's wife was SPMR and he managed the branch as well as being SPMR elsewhere.• Applicant's wife's contract terminated due to not making good losses• At closure of branch, discrepancy of £17,874.51 was revealed which was written off by PO• Applicant claims final cash account showed Legal Privilege Planned closure audit did identify this surplus but transaction error notices generated after the branch was closed resulted in branch accounts showing net loss of £17,874.51 which the Applicant was later notified of (therefore, PO not liable) <ul style="list-style-type: none">• The CRR appears to acknowledge that PO did not owe the Applicant for a surplus at the branch• PO has written off the outstanding debt• There is no basis for claiming consequential loss	
Likely WG mediation position	<h1>Legal Privilege</h1>
PO mediation position	Unsuitable for mediation

M021	
Applicant	Sunil Khanna
Advisor	Howe & Co (Dipti Hirani)
Branch loss	£46,049.16
Criminal / non-	Not criminal <u>although linked case M003 is a criminal case (conviction for false</u>

criminal	accounting by Officer in Charge).
<ul style="list-style-type: none"> • No evidence of failure of Horizon or POL processes • No other evidence to suggest POL responsibility • Applicant had 'hands-off' approach to branch • Second Sight acknowledge lack of evidence and Officer in Charge conviction but nonetheless recommend mediation to achieve 'closure' • Applicant clearly contractually responsible • He has repaid all losses • Applicant believes his Officer in Charge should be liable to PO and seeks refund of monies paid back to PO • Remains serving SPM and conversation may be helpful in maintaining working relationship 	
Likely WG mediation position	Legal Privilege
PO mediation position	Unsuitable for mediation – but will offer face to face and concede mediation if necessary

M029	
Applicant	Hughie Thomas
Advisor	Aver (Emma Porter)
Branch loss	£50,257.69 (of which £19000 was subject to POCA order) IRRECOVERABLE now due to bankruptcy and period of limitation
Criminal	Conviction for false accounting - custodial sentence and POCA order <ul style="list-style-type: none"> • Very old case – few records on either side • Bankruptcy case – PO had to write off £44K • No evidence at all of PO responsibility whether through Horizon or otherwise • Pleaded guilty to false accounting • Still managing to claim consequential losses of Legal Privilege • Mediation in this case would be futile and potentially only inflame Applicant
Likely WG mediation position	Legal Privilege
PO mediation position	Unsuitable for mediation

M035	
Applicant	Josephine Hamilton
Advisor	James Cowper (Robert Holland)
Branch loss	£36,644.89
Criminal	Applicant pleaded guilty to false accounting and was sentenced to a 12 month supervision order; charge of theft was removed after assurances were given that the monies would be repaid <ul style="list-style-type: none"> • Debt repaid together with £1,000 costs • Consequential losses claimed = Legal Privilege

- High profile case
- Applicant's claims would now be time barred
- Second Sight's Draft CRR concludes that this case is suitable for mediation

Likely WG mediation position	Legal Privilege
PO mediation position	Unsuitable for mediation

M052	
Applicant	Wendy Cousins
Advisor	Howe & Co (Steve Darlington)
Branch losses	£13,759.38
Criminal	<p>Pleaded guilty to 11 charges of theft and 23 other offences</p> <ul style="list-style-type: none"> • NB: theft charges related to losses of £18,017.91 but Applicant pleaded guilty to theft of £13,759.38 • Sentence given was 9 months imprisonment suspended for 2 years with requirement to complete 200 hours of unpaid work (and repay PO £13,759.38)
<ul style="list-style-type: none"> • Claiming Legal Privilege • PO remains of the view that the loss in the branch was caused by the Applicant's fraudulent handling of benefit transactions • PO is not responsible for any portion of the loss at the branch 	
Likely WG mediation position	Legal Privilege
PO mediation position	Unsuitable for mediation

M062	
Applicant	Gurmit Singh Gill
Advisor	Howe & Co (Graham Cade)
Branch Loss	£13,633
Criminal	accepted a formal caution for false accounting
<ul style="list-style-type: none"> • Loss repaid by Applicant • No evidence of failure by Horizon or POL processes – but exact cause of loss has not been determined • No evidence to suggest that Applicant is not responsible • SS have offered no view as to the cause of the loss • Legal Privilege • Case does not turn on a specific event or action – losses accumulated over long period of time so no specific point to be discussed at mediation • PO will not offer settlement therefore mediation could be emotionally frustrating for the Applicant • Would be disproportionately expensive to mediate this case given chances of settlement are low 	
Likely WG mediation position under new test:	Legal Privilege

Legal Privilege	
PO mediation position	Unsuitable for mediation

M065	
Applicant	Lynette Hutchings
Advisor	Howe & Co (Neil Shanghavi)
Branch loss	Total of £17,808.76 (2 branches)
Criminal	Conviction for false accounting 24/08/12. 12 month community order, 120 hours of community service.
<ul style="list-style-type: none">• Repaid £6993 losses at one branch, balance on other outstanding• No evidence of Horizon or POL failure• Responsibility for losses clearly with Applicant• Applicant claims audit team instructed her to falsify accounts and claims money repaid under threat of legal action• Applicant claims that insufficient training and Horizon to blame – evidence points conclusively in other direction (eg more training provided than usual)• Given opportunity to put forward her case against termination but did not attend• Legal Privilege	
Likely WG mediation position	
Legal Privilege	
PO mediation position	Unsuitable for mediation