

OFFICIAL SENSITIVE: COMMERCIAL

To: Jo Swinson

From: Laura Thompson: **GRO**

Date: 4 March 2015

Subject: **Post Office mediation scheme: revised approach**

Purpose: Post Office intend to change their approach to the mediation scheme dealing with complaints about Horizon, on the basis that the scheme is not working in the way it was intended. This submission is to inform you of POL's planned changes, and seek your views on how we should engage stakeholders, particularly Parliament.

Recommendation:

- a) That you note the changes POL intends to make to the scheme, the timing and handling of these, and likely stakeholder reaction
- b) That you agree that on balance Government should not notify Parliament by Written Ministerial Statement on the day of the announcement, noting that this is a finely balanced decision and there is the risk of an Urgent Question being tabled (which we will take steps to mitigate)

Timing: Urgent - POL propose to make the changes next week (w/c 9 March), probably Tuesday 10 March to pre-empt the issuing of Second Sight's draft report to the Working Group.

Summary

1. The mediation scheme has been running for around 18 months now and is making some progress, albeit slow, in considering the 136 applications which were eligible. There are around 109 cases remaining in the scheme, and Post Office have completed their detailed investigations for each of these. Those applicants are, therefore, awaiting either their Second Sight report into the case, a decision by the Working Group whether to mediate the case, and/or the mediation itself.
2. It is becoming increasingly apparent that the scheme is not working in the way it was intended and is taking too long to progress to mediation for applicants. POL report (confidentially) that JFSA are refusing to engage in the Working Group, certain MPs have publicly withdrawn their support for the scheme, and both JFSA and the MPs supporting them are increasingly critical of POL. For example, Mike Wood MP declined to meet with POL to discuss the scheme or specific cases of his constituents.
3. Whilst the delays are due in some part to the complexity of the cases and the depth of the investigations by both POL and Second Sight, they also arise from pressure from JFSA, MPs and Second Sight to widen the scope of the scheme given that there has been no "smoking gun" found to date on Horizon. Second Sight are attempting to explore issues outside their remit (or indeed expertise), such as subpostmasters' contracts and POL's prosecutions policy, rather than focusing their efforts on the individual cases they were appointed to investigate.
4. From POL's point of view, the investigation and mediation scheme has demonstrated that there is no evidence of systemic flaws in Horizon and no evidence that any of the

OFFICIAL SENSITIVE: COMMERCIAL

convictions are unsafe. Where POL may have fallen down in individual cases is on training and support, and they are addressing those issues which have not already been picked up. Their priority now is to ensure that the remaining cases in the scheme can be heard as swiftly as practicable (POL have said publicly the aim is this calendar year) and as such, a revised approach is needed.

5. POL's Board have agreed that, effective from next week, they will announce that POL will adopt a presumption of mediating all non-criminal cases remaining in the scheme (except in some very exceptional circumstances). This will render redundant the role of the Working Group so it will be closed. POL will terminate their engagement with Second Sight, but provide funding for any applicants who wish to have Second Sight or other forensic accountants produce a report on their case before mediation.
6. POL believe this approach will enable them to meet their commitment to applicants made at the outset. Even through this accelerated process, POL will still need to commit significant resources to the scheme if they are to meet the commitment made to the Committee that cases would be mediated by the end of this year. For example, POL are currently mediating approximately 1 case every three weeks, but this would need to increase to at least 2 cases per week in order to complete mediation to that timescale.
7. It is also worth noting that the Centre for Effective Dispute Resolution (CEDR), who are running the mediations, have prepared a report for the Working Group on the first 11 cases which have completed mediation. It is likely the report will be published. Overall, it is positive towards POL, although there are elements which could be quoted out of context e.g. the success rate of the mediation is around 45%, compared to 65-75% average success rates for mediations (but CEDR note that expectations of candidates in this mediation scheme may be unrealistic).
8. The BIS Select Committee have not yet published their report into the scheme, following their evidence session on 3 February. It is quite possible they will not publish, as there are several other ongoing inquiries and a short window for publication between now and Purdah. POL are in favour of publishing their change to the scheme before any Committee report is issued.

Stakeholder reaction and handling

9. The proposed changes are almost certain to provoke a negative reaction from JFSA and the MPs supporting them, as well as Second Sight. This may also lead to negative media coverage – one BBC journalist in particular has pursued this issue, mostly at regional level but also on the BBC One Show. There is a substantial risk that POL's decision will be portrayed as an attempt to cover something up or to fetter the independence of Second Sight. However, this should be considered in the context of the publicity which is already around the scheme and is already negative, and likely to continue.
10. Second Sight are due next week (Wednesday) to share a draft of their next report with the Working Group. This report will be confidential to members of the Working Group; however, based on precedent it is extremely likely that this report will be leaked. Second Sight said in their evidence to the Committee that the report will cover "19 or so thematic issues" arising from their investigations. We can expect the report to be

OFFICIAL SENSITIVE: COMMERCIAL

critical of POL, and in all likelihood will discuss issues outside the remit of the scheme and Second Sight's contract.

11. POL intend to make their announcement before Second Sight issue their draft report, so probably on Tuesday 10 March. The proposed choreography for the announcement will be (all actions on POL):

This week	<ul style="list-style-type: none"> • Board agreement (now completed) • Share plans with ShEx / Minister
2 days before announcement	<ul style="list-style-type: none"> • Inform Sir Anthony Hooper (who to date has remained neutral)
Day before announcement	<ul style="list-style-type: none"> • Prepare individual letters for each applicant • Brief NFSP
Day of announcement	<ul style="list-style-type: none"> • Applicants receive letter • Inform SS and JFSA • Issue short factual press notice • Phone call to Kevan Jones MP (and potentially James Arbuthnot MP) • Email to other MPs involved in scheme • Phone call to Ian Murray MP • Phone call to Adrian Bailey MP • Publish Post Office report into scheme

12. While decisions around the scheme are commercial matters for POL, they understand that you have made commitments to Parliament regarding the mediation scheme which we need to ensure are met (a list is set out in the attached Annex). ShEx have considered these commitments and assess that the approach is in line with what you committed. The Working Group was set up and established the scheme, doing so with an independent Chair and the full involvement of JFSA and Second Sight (and has been running for 18 months). All applicants remaining in the scheme (which do not involve criminal convictions) will be able to benefit from an investigation by a forensic accountant, potentially Second Sight. We believe, therefore, that your commitments to Parliament have been met.
13. Government has remained at arms-length from the scheme to date and we recommend that continues. However, you will want to consider whether you would like to inform Parliament of the changes to the scheme yourself, probably through a Written Ministerial Statement. There is a chance that an MP (such as James Arbuthnot or Kevan Jones) may ask the Speaker for an Urgent Question when the changes are announced. Tabling a WMS mitigates that risk to some extent, but does not rule it out completely. The negatives to tabling a WMS are that it implies Government has been involved in (or approved) these proposals, which is contrary to our approach to date. On balance we recommend against tabling a WMS on the basis that POL are informing the key Parliamentarians directly. We will pre-brief our Parly Unit with lines to resist a UQ in case one is tabled. However, this is a fine judgement and one on which you will need to be satisfied.

13.1 Do you wish to table a WMS?

14. Either way, we recommend reactive press only, and suggest this should be a BIS spokesperson quote setting out the main messages that the scheme is independent of

OFFICIAL SENSITIVE: COMMERCIAL

Government and there are no systemic issues with Horizon. We could add that the changes will ensure those in the scheme get resolution as swiftly as possible.

Annex: Commitments to Parliament

Copied to: Ministers' offices, SpAds, Permanent Secretary, Mark Russell, Antony Odgers, ShEx POL team, Parly Unit, Hannah Franklin-Wallis, Christina Murphy

Advice received from:

Finance	SpAds	Press	Legal	Analysts
No	No	Hannah Franklin-Wallis	No	No

Have devolution issues / impacts been considered?

Devolution Issues	Equality Analysis	'Impact on Families'
N/A	N/A	N/A

OFFICIAL SENSITIVE: COMMERCIAL

Annex B: Commitments to Parliament

Statement to the House: 9 July 2013

Ministerial statement	Met?
First, it [POL] will set up a working party to complete the review of cases started by Second Sight, and will consider all 47 cases brought forward by the JFSA and MPs. The JFSA has been invited to join the working party. (col 198)	The Working Group has been established, with JFSA taking part.
Secondly, an independent figures will chair a review to determine how best to adjudicate disputed cases in future. The JFSA and other stakeholders will also be invited to take part in this process. (col 198)	This “safety net” commitment is still to be met (see note below)
Finally, a new branch user forum will provide a channel for sub-postmasters and others to raise issues at the highest level on business processes, training and support. (col 198)	Post Office have established a Branch User Forum and Paula Vennells has pledge to make further improvements on support and training.
The company will take forward the proposals as an urgent priority (col 198)	Taken forward from July 2013
Clearly, if any evidence were to come to light that had an impact on the safety of convictions – I stress that that has not happened as a result of this interim report – Post Office Ltd would have a duty to look further at those issues as a prosecuting authority to ensure that convictions remain safe. (col 200) [In response to Ian Murray]	Mediation scheme pack for applicants explains that “If at any stage during the Scheme new information comes to light that might reasonably be considered capable of undermining the case for a prosecution or of assisting the case for the defence, Post Office has a duty to notify you and your defence lawyers. You may then choose whether to appeal your conviction or sentence.”
It is important that any further work is not only independent, but seen to be independent, and clearly the role of Second Sight in that is important, as is the role of the JFSA. (col 201) [In response to James Arbuthnot]	Working Group is independent and involves both Second Sight and JFSA.
I shall happily give the hon. Gentleman [Mike Wood] that assurance [that Second Sight will be part of the working group]. The continued input of Second Sight is incredibly important, given its familiarity with the case so far and the fact that it enjoys the confidence of many of those involved. (col 202)	Working Group is independent and involves both Second Sight and JFSA, and has done over more than 18 months (the duration of the scheme).
Yes, I am happy to give my hon. Friend [Jonathan Lord] an assurance that the working party will be independent [and chaired by an independent figure]. (col 204)	Working Group is independent and involves both Second Sight and JFSA. It is chaired by an independent Chair, Sir Anthony Hooper.

OFFICIAL SENSITIVE: COMMERCIAL

Ministerial statement	Met?
I can certainly give an assurance that if there are other cases that need to come forward, we would not want to deny those people the opportunity for that to happen. (col 205) [In response to Huw Irranca-Davies]	Scheme was opened up to applications (three month window), and those outside the scheme can approach Post Office in the usual manner.
The Post Office is now ensuring that it visits new sub-postmasters after one month, and again after three months for the new local and main operating models, to deal with any teething issues or further questions that have arisen from their working the process for a few weeks. Improvements to the helpline are also important, so that it does what it says on the tin and is actually helpful to people who call it. One thing that has improved the helpline is making it available for extended hours. (col 206) [In response to David Simpson]	POL has actioned

Note on “safety net” point: This is the one commitment where there is some ambiguity over whether it has been met. It talks about “disputed cases in the future” and that there should be a review on how to consider these. POL consider that their existing mechanisms for raising disputes (not just on Horizon) are sufficient, and that the NFSP will support this. The review has also shown that there are no systemic issues with Horizon so no need for a new approach to dealing with those issues. Our line to date has been that we should deal with the cases within the scheme first, then consider whether lessons can be learned, and we propose to continue with that line, although it appears increasingly that no “safety net” procedures are needed.