

MINUTE

Working Group for the Initial Complaint Review and Case Mediation Scheme

17 October 2014

MATRIX CHAMBERS

Attendees

Sir Anthony Hooper (Chair)
Alan Bates (JFSA)
Kay Linnell (JFSA)
Ron Warmington (Second Sight)
Ian Henderson (Second Sight)
Chris Holyoak (Second Sight)
Chris Aujard (Post Office)
Belinda Crowe (Post Office)
Angela Van Den Bogerd (Post Office)
Tom Wechsler (Post Office)
Andy Parsons (Bond Dickinson)

Agenda

1. Minutes of 16 September meeting
2. M061 & M149 eligibility
3. Information Security
4. Standing case agenda:
 - 4.1 Priority cases
 - 4.2 Bankruptcy cases
 - 4.3 Post Office investigation progress
 - 4.4 Second Sight review progress
 - 4.5 Cases Second Sight have reported on (except those listed under agenda item 5)
 - 4.6 Queries from applicants/advisors (Letter from Philip de Nahlik)
 - 4.7 AOB
5. Cases for decision:
 - a. Second Sight do not recommend mediation:
M017
 - b. Second Sight recommend mediation:
M001
M003
M005
M021
M029
M035
M052
M062
M065

1. Minutes of 16 September Meeting

The minutes of the last meeting were agreed subject to the following changes:

- Page 5 – Reference to M057 to be corrected to M076;
- Page 6 – The final sentence and action under item 4 should be deleted; and
- Page 8 – para 2 – the minutes be amended to reflect that Second Sight did not recognise Post Office's description of the assurances given on productivity on 11 September.

Referring to page 6, item 5 Second Sight had written to Post Office with questions on the suspense account but had yet to receive a response. The Chair noted the complexity of the questions. He asked if there was a surplus in the account would it be taken into Post Office income. Post Office confirmed that it would after 3 years. Post Office and Second Sight agreed to clarify Second Sight's precise needs for information.

Action: The Chair asked Post Office for figures taken into income from the suspense account to be broken down by year.

Action: Second Sight and Post Office to discuss and agree what additional information Second Sight need relating to the suspense account.

2. M061 and M149 Eligibility

Further to the Working Group's earlier decisions on eligibility and the Chair's subsequent letters, correspondence had been received from the applicant's husband and their representative in case M061; and the applicant's Member of Parliament in case M149 making representations for the cases to continue through the Scheme. It was agreed that the neither case met the eligibility criteria set out for the Scheme, specifically that they were not "current or former Subpostmasters" nor "counter clerks employed by the Post Office".

The following points were made in discussion:

- Post Office could decide to make an exception for these cases given the time that had elapsed and allow them to proceed;
- although possible to make an exception, a decision to allow the cases to proceed could place the Post Office in a difficult position with applicants who had been previously identified as ineligible for the Scheme and those who had not applied having understood the eligibility criteria at the outset of the Scheme;
- applicants may have incurred significant cost in producing an application and this should be taken into account when deciding whether to allow the cases to proceed within the Scheme;
- Post Office had already offered to investigate each case thoroughly through "business as usual" processes and was prepared to consider a response to any significant financial outlay in producing a case by either of the two applicants in question; and
- Post Office had stated in its correspondence that it would "continue" its investigation in case M149. This should have said "would carry out" or similar as the investigation had not commenced.

Action: The Chair asked for a letter to be sent to the applicant (cc'ed their advisor) in M061 setting out that the Working Group confirmed that the case was not eligible for the Scheme but that the Working Group would be keen to hear how much had been expended in making the claim.

Action: The Chair asked for a letter to be sent to the applicant (cc'ed their MP) in M149.

3. Information Security

Belinda Crowe said that it was timely to remind the Working Group of the protocols on information security. There was a lot of information on Huddle, much of it sensitive. Key points to remember were:

- if any information is downloaded to any device it should be deleted in full as soon as it is no longer required;
- personal data should only be emailed in exceptional circumstances and password protected; and
- the Secretariat would be removing information and data from Huddle where the Working Group has concluded its consideration of the case.

JFSA asked whether papers and the workings of the Working Group were subject to the Freedom of Information Act. The Secretariat said that the Working Group itself was not but papers held by Post Office about the Working Group were subject to the FoI Act.

Action: Post Office to explore whether there were protocols and deletion software that could be shared with the Working Group for Windows and Apple devices.

Standing Agenda

4.1 Priority cases

Case No.	Status
M052	Final report originally received 18 September, revised version received 23 September. Awaiting mediation decision. (see agenda item 5b)
M073	Draft report received 24 September. Deadline for comments extended for applicant until 17 October.
M086	Investigation has been prioritised – PO report due by 17 November.
M119	Investigation has been prioritised – PO report due by 24 November.

4.2 Bankruptcy cases

Case No.	Status
M001	SS Final report received 18 September. Awaiting mediation decision. (see agenda item 5b)
M029	SS Final report received 18 September. Awaiting mediation decision. (see agenda item 5b)
M032	Passed to SS 28 August, Draft CRR submitted 16 October.
M036	Passed to SS 11 September. Draft CRR due 14 November.

Case No.	Status
M069	PO investigation on-going, report due by 10 November.
M081	PO investigation on-going, report due by 8 December.
M089	PO investigation on-going, report due by 10 November.
M100	PO investigation on-going, report due by 20 October.
M118	Passed to SS 16 October. Draft CRR due 28 November.
M122	Passed to SS 01 October. Draft CRR due 05 December.
M128	PO investigation on-going, report due by 22 December
M150	PO investigation on-going, report due by 8 December.

4.3 Post Office Investigation Progress

i) Overdue cases

No cases overdue

4.4 Cases with Second Sight to review Post Office Investigation Reports

i) New scheduling to note

Case No.	Date passed to SS	SS planned scheduled delivery date
M025	03 October	07 November
M038	13 October	28 November
M027	13 October	28 November
M108	16 October	12 December
M118	16 October	28 November

ii) Overdue cases

No cases overdue

4.5 Cases that Second Sight have reported on

Case No.	SS draft report issued	Deadline for comments	SS final report completed / due	WG decision	Sent to CEDR
M001	17 July 2014	04 September 2014	18 September 2014	(see agenda item 5b)	-

M003	11 September 2014	19 September 2014	23 September 2014	(see agenda item 5b)	-
M005	25 September 2014	07 October 2014	14 October 2014	(see agenda item 5b)	-
M007	25 September 2014	23 October 2014	30 October 2014	-	-
M011	25 September 2014	07 October 2014 13 October 2014 (Applicant)	20 October 2014	-	-
M013	26 September 2014	07 October 2014 17 October 2014 (Applicant)	24 October 2014	-	-
M017	15 September 2014	25 September 2014	05 October 2014	(see agenda item 5a)	-
M018	15 September 2014	10 October 2014	17 October 2014	-	-
M021	15 September	25 September 2014	05 October 2014	(see agenda item 5b)	-
M029	27 August 2014	10 September 2014	18 September 2014	(see agenda item 5b)	-
M035	11 August 2014	04 September 2014	21 September 2014	(see agenda item 5b)	-
M039	27 August 2014	05 September 2014	14 September 2014 Handed back to SS for a revised report due TBC	(see agenda item 5b)	-
M042	14 October 2014	TBC	TBC	-	-
M049	03 October 2014	23 October 2014	30 October 2014	-	-
M052	28 July 2014	04 September 2014	18 September 2014 Revised version uploaded 23 September	(see agenda item 5b)	-
M053	10 October 2014	21 October 2014	28 October 2014	-	-
M058	05 October 2014	14 October 2014	21 October 2014	-	-
M062	20 June 2014	22 July 2014	31 July 2014 Revised version uploaded 23 September	(see agenda item 5b)	-
M063	08 October 2014	17 October 2014	24 October 2014	-	-
M065	23 September 2014	02 October 2014	08 October 2014	(see agenda item 5b)	-

M072	08 October 2014	17 October 2014	24 October 2014	-	-
M073	24 September 2014	03 October 2014 17 October 2014 (Applicant)	24 October 2014	-	-
M078	14 October 2014	23 October 2014	30 October 2014	-	-
M097	10 October 2014	23 October 2014	30 October 2014	-	-
M115	05 October 2014	TBC	TBC	-	-
M116	12 October 2014	23 October 2014	30 October 2014	-	-
M126	03 October 2014	14 October 2014	21 October 2014	-	-

Belinda Crowe said that the Secretariat had been trying to make contact with 2 applicants without success. In the case of M042, it was believed that the applicant was away from home. In the case of M115, the applicant had moved home and not left contact details with the Secretariat, their advisor nor JFSA. The Secretariat would continue efforts to make contact with both applicants. The Working Group agreed that no correspondence should be sent to either applicant until confirmation of their contact details and availability had been received.

The Chair asked for future Working Group agendas to contain a list of:

- cases sent to CEDR; and
- those where either party has declined to mediate.

Action: Secretariat to add the requested lists to future Working Group agendas.

4.6 Any other queries raised by Applicants / Advisors

The Working Group had received an email from Philip de Nahlik asking for an extension to the period for comments on the draft CRR in case M063. This was agreed.

Action: Secretariat to respond to Philip de Nahlik granting the extension as requested.

Philip de Nahlik had also written to the Chair asking him to recommend an increase in payments to advisors from the £1500 offered by Post Office. It had always been clear that the Post Office was offering a contribution towards the funding of advisors rather than covering costs in full. The request was rejected.

Action: The Chair asked for a letter to be sent to Philip de Nahlik rejecting his request and restating the position on funding.

4.7 AOB

JFSA asked if it was possible to receive Working Group Papers and the Agenda earlier than a day before the meeting. The Secretariat confirmed that it would be possible for some

papers but others were circulated at the time they were in order to reflect the most up to date position e.g. the case tracker.

Action: Working Group agenda and papers to be circulated as soon as is practicable to Working Group members.

The next Working Group meeting was set for 14 November 2014.

Action: Secretariat to send diary scheduler to Working Group Members. Working Group telephone call of 13 November to be cancelled.

5. Cases for Decision

5.a. Second Sight do not recommend mediation

JFSA said that they were insufficiently prepared to discuss case M017 as they had had insufficient time to consider the papers. They asked for 14 days to consider the papers relating to any case where mediation is not recommended.

Action: Case M017 to be discussed on Working Group telephone call of 30 October 2014.

5.b. Second Sight recommend mediation

At this point JFSA left the meeting as, having cast their vote in favour of mediation in all cases, they did not wish to be present for any further discussion.

Prior to commencing discussion of the cases with remaining the members of the Working Group, the Chair asked who would be the beneficiary of any incorrect transaction, assuming there was no theft. This was most likely to be customers although it was possible for Post Office clients to benefit from incorrect transactions. However, each case was different and be seen on its own merits.

The Chair asked Post Office whether subpostmasters who have not entered the Scheme have, over the years, complained about unexplained discrepancies. He felt this was particularly important to address given the their statements in paragraph 3.17 of their response to Second Sight's draft Part Two report, expressing confidence that there were no systemic problems with branch accounting on Horizon. Post Office said that paragraph 3.17 was not intended to suggest that there had been no other complaints about unexplained discrepancies and they could not say whether there had or had not been such complaints. However, just as with cases within the Scheme, investigations into complaints through the normal business processes had not identified any issues with the Horizon System.

The following points were made in discussion:

- all transactions and data on Horizon were fully auditable; and
- there was a need to identify what happens in a practical sense where, for example, a customer pays a £100 utility bill using a credit card, the credit card is debited but the transaction is not shown as completed on Horizon; and the differences in this example between the old Horizon environment and new Horizon environment.

It was agreed that there was a need to:

- identify if there were any cases where a subpostmaster had been left with a shortfall having made no errors;
- set out 5-6 worked examples where Second Sight can identify a potential cause of loss in branch and Post Office the potential mitigation;
- set out how often Post Office absorbs losses from Crown Offices and the level of tolerance in such errors before an investigation is commenced; and for

- Second Sight's part two report to reach a definitive view on these issues to the satisfaction of all members of the Working Group and the Scheme's Stakeholders (as far as possible).

Action: Second Sight to identify if there were any cases where a subpostmaster had been left with a shortfall having made no errors and set out 5-6 worked examples identifying potential cause of loss in branch for Post Office's response.

Action: Post Office to set out how losses from Crown Offices are absorbed and the level of tolerance in such errors before an investigation is commenced.

Action: Second Sight to prioritise their investigation of issues currently unresolved in their part two report.

M001

The Chair summarised the case in the Second Sight Review and the Post Office Investigation Report. In discussion the following points were made:

- the High Court had ruled that the applicant was responsible for the losses in branch, based in part on the testimony of new staff members who had reported no issues with Horizon after taking up post;
- the general reference in paragraph 5.11 of the CRR to Second Sight's part two report to ongoing investigations to a wide range of made it very difficult to determine whether mediation was appropriate in this case or not;
- the list of issues at paragraph 5.10 covered a range of issues many of which were at a different stage of investigation;
- a more appropriate recommendation may be to revisit this case when Second Sight's investigations into the issues identified in their part two report was complete. If it was not possible to identify the causes of losses other than counter-error it may be that mediation cannot be recommended.

Action: Second Sight to rewrite the CRR:

- identifying causes of loss other than counter-error if they exist; and
- expanding on paragraph 1.15 covering the views expressed in the High Court Judgement and any new evidence that has come to light since the judgement.

Action: Secretariat to:

- reschedule consideration of the case when actions above completed; and
- at that time include a copy of the High Court Judgement in the Working Group papers.

M005

The Working Group agreed, after a brief discussion that this case was similar to M001 in that the issues remaining under investigation in Second Sight's part two report needed to be resolved prior to a decision being made on mediation. However, in this case there remained a possibility that this case may be resolved outside the Scheme in a discussion between Post Office and the applicant.

Action: Post Office to explore whether the case may be resolved outside the Scheme in a discussion with the applicant.

Action: Secretariat to reschedule consideration of the case when issues under Second Sight's part two report remaining under investigation are resolved.

M003 and M021

The Post Office asked for cases M003 and M021 to be discussed together as they covered the same events. The applicant in M003 was technically ineligible but the Working Group had decided at a previous meeting exceptionally to allow the case to proceed given the link to the subpostmaster's case – M021. The Chair summarised the case in the Second Sight Review and the Post Office Investigation Report.

In discussion the following points were made:

- it was almost certainly impossible to identify the cause of loss in branch owing to the false accounting by the applicant (M003);
- declaring the correct cash amounts leads to a much stronger investigation and preventative case in almost all (if not all) circumstances, and will generally lead to the cause of losses being identified;
- the applicant (M003) had asked for additional training in June 1999. It was not clear that Post Office had responded adequately to this request. However, losses were not incurred in branch until 2007-08;
- as with earlier cases, broad references to issues with hardware remained unresolved making it very difficult to determine whether mediation was appropriate in this case or not;
- the evidence used in M021 was the same as that in M003; and
- it was noted that the applicant in M021 remained a serving subpostmaster with whom the Post Office had an ongoing business relationship.

Action: Second Sight to rewrite both CRRs to take account of time elapsed between request for training and losses incurred in branch.

Action: Secretariat to reschedule consideration of the cases when issues under Second Sight's part two report remaining under investigation are resolved.

M052

The Chair summarised the case in the Second Sight Review and the Post Office Investigation Report. Within that, the applicant had been convicted of 11 counts of theft. The Chair asked Second Sight if anything within their investigations had cast doubt on the safety of those convictions. Second Sight said that they had not seen the full paperwork relating to the prosecution.

Action: Post Office to share prosecution case statements with Second Sight where they have not already done so.

The Chair closed the meeting owing to time constraints.

Action: The Chair asked the Secretariat to seek to identify a date in the next 10 days to continue discussion of cases scheduled for discussion.