

## WORKING GROUP 30 APRIL BRIEFING NOTE

### Meeting Objectives

- Challenge Second Sight's Part one report where it makes non factual and evidenced statements, making clear this is unacceptable to Post Office.
- Challenge the M022 report where it fails to make evidenced statements
- Review the Alan bates letter line by line and challenge the factual inaccuracies

## COMMENTARY ON THE ALAN BATES LETTER

### Date of the Letter

The letter was sent on 16 April the day before the weekly conference call.

At that conference call the following issues were discussed:

- XX
- XX
- XX

### Page 1

#### Timescales

POL target of 4 weeks is accurately reflected BUT

- POL made clear at Working Group on XXXX that these were aspirational targets and that cases might well take substantially longer.
- JFSA blocked the attempt to set realistic deadlines for the POL investigations at the Working Group on XXX.

Second Sight target of eight weeks is not accurate:

- Second Sight were set an internal target of 4 weeks – this target date has been reported on in all Working Groups and not challenged by Second Sight or JFSA
- Second Sight have not delivered any report within 4 weeks
- Second Sight have not delivered any report within 8 weeks DN check
- The 8 week timeline is probably reached by taking the 4 weeks for POL away from the 12 week target in the published Scheme documentation.

### Page 2

#### Mediators Briefing Pack

- This was first requested in XXX date in 2013
- The pack would be produced by Second Sight
- To assist Second Sight they were provided with a POL draft on the following dates:

Thursday 13 March	First draft of Factfile sent to SS – cover email attached.
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Wednesday 19 March	Initial comments received from SS – email attached.
Friday 21 March	Proposed meeting to discuss factfile - cancelled by SS – email attached.
Thursday 27 March	Re-arranged date for meeting to discuss factfile – cancelled by SS - email attached.
Monday 31 March	POL responses to SS initial comments sent to SS (via a revised version of the Factfile being uploaded on to huddle in advance of the WG meeting on 1 April)
Wednesday 16 April	Revised factfile with new sections sent to SS + invitation to meet with SS to discuss – see covering email attached.
Tuesday 29 April	SS submit Part 1 Report

### **Scheme Documentation agreed in August 2013**

- Scheme documentation was agreed in August 2013.
- Process set out in the documentation is not that in the letter.
- Documentation included FAQ:

#### ***“Is it possible that the structure of the Scheme may change over time?”***

*Yes – the Working Group is tasked with making sure that the Scheme is operating effectively. It may therefore be necessary to revise the Scheme as appropriate.”*

### **During the time the Scheme was open 150 applications were accepted**

- Not accurate. 147 applications were received in time. 3 late applications were considered on XX date and received.
- Of the 150 applications in total XX were rejected.

### **Others would have applied if they had been aware of the Scheme**

- Scheme was publicised by JFSA and POL
- To date only one application has come through from an MP (Oliver Heald case)

## Stats breakdown on page 2

### Serving SPMRs

- Alan states:

*"As POL became aware of serving SPMRs submitting application forms, POL requested these cases to be held back from fully entering the Scheme until such time as POL had had an opportunity to discuss those cases directly with the SPMRs. Some of these cases remain in that position."*

- This is not an accurate reflection of events. Page one of the Scheme documentation (agreed with JFSA and hosted on their website) states:

*"If a serving Subpostmaster wants to use the Scheme, he or she must have already raised their case with Post Office and have completed all Post Office's internal complaint processes"*

- Further the Scheme documentation FAQs state:

#### ***"What are the eligibility criteria for the Scheme?"***

*You must meet both the following criteria.*

*First, your case must relate to a financial loss or unfair treatment that you believe you have suffered as a result of the Horizon system or any associated issues.*

*Secondly, if a serving Subpostmaster wants to use the Scheme, he or she must have already raised their case with Post Office and have completed all Post Office's internal complaint processes. For example, a Subpostmaster who wishes to dispute a transaction or series of transactions in their branch should first raise this matter with NBSC and assist with any subsequent Post Office enquires. If a currently serving Subpostmaster needs advice on how to raise a matter internally with Post Office they should email branch.support.team*

**GRO**

### Page 3

POL have provided no reports to Second Sight.

- POL submitted first report to SS on 28 November (M009).
- POL invited feedback on report content (AVDB email of 28 November)

*I'd appreciate your comments on the format, style and content of these documents. We're trying to produce these documents in a way that is of most use*

*to you and, in the future, Spmrs – hence the short delay in providing these documents. In particular, these documents have been prepared to assist with identifying:*

- *Points of common ground between POL and the Spmr.*
- *Points of disagreement.*
- *Where there is disagreement, the foundation for a logical and evidenced opinion on the merits of the SPMR's complaint.*
- *And ultimately, by pulling together the above 3 points, a recommendation on whether the case is suitable for mediation.*

*I'm of course very happy to discuss how to review and refine our approach to meet these objectives so that the Working Group will be able to reach a decision when the case is presented to it for a decision on whether mediation is appropriate."*

- SS commented:

*"Wow, this looks really good....*

*Really appreciate the work done to pull this together.*

*Let's discuss in a few days time*

*With best wishes*

*Ian R Henderson CCE CISA FCA  
Advanced Forensics - London, UK"*

- SS produced reports on three case X, Y and Z for the WG meeting on XXXX.
- TH provided detailed feedback on structure of reports SS not yet delivered any reports in new structure
- SS did not raise quality of POL investigations as a concern with JA when they briefed him for his meeting with PV and AP on 24 January.
- SS commended Post Office investigators at MPs meeting on 24 March
- On 17 April the day after the letter was despatched the Working Group noted that Post Office had sent 20 investigation reports to Second Sight (source case tracker).
- On the 17 April call Post Office agreed to take these reports down while the format of the executive summary was tweaked. This follows an action at the previous face to face meeting to "review" the reports.
- By the date that Alan sent the letter he had downloaded eight POL investigation reports:

Case	AB (JFSA)
M009	Downloaded 27.2.14 at 08:47
M014	Downloaded 27.2.14 at 11:00
M017	Downloaded 21.3.14 at 20:20
M019	Downloaded 21.3.14 at 20:23
M021	Downloaded 21.3.14 at 20:27
M022	Downloaded 21.3.14 at 20:30  Then again 27.3.14 at 19:29  Then again 29.3.14
M028	Downloaded 20.3.14 at 11:16
M054	Downloaded 29.3.14

### **Advisor Costs**

- Insert quote from the FAQs

### **Advisor timeliness**

- Reference the amount of overdue CQRs and amount provided in 2- 4 weeks
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### **POL report quality insufficient to allow Second Sight to undertake their work**

Deep concern about cost and that perfection is being sought where we should work with the material available in the CQRs. Need to be make a decision at some point. And soon. This scheme has to be consistent with value for money for the tax payer.

### **POL have a contractual obligation to investigate where they believe a crime has taken place**

- No such obligation exists

**It seems POL did not investigate in any of the 150 cases**

- This is not true.
- Approximately 1/3 of the case load have some form of criminal conviction.
- We have discussed on numerous occasions cases that are under investigation and the Chair has provided updates to the Working Group on these cases.
- Further we have discussed in detail case M001 with Alan including a detailed discussion of the 5 day High Court Civil trial and the 30 page judgement.

**“POL in these two cases, as they have done with so many others, went straight to prosecution using a fall-back contractual clause that the SPMR is liable for all losses regardless of how they occurred, without ever bothering to investigate the cause behind the incidents”**

- **This is not true.**
- **The two cases Alan refers to were not prosecuted. (M054 and M022) DN check**
- Not clear how the generalisation is arrived at.
- Alan had only downloaded eight reports at this point and Post Office had completed twenty reports it is unclear how this judgement on a caseload of 150 has been reached.
- The clause is a core part of the SPMR contract.
- Prosecutions for false accounting do not rely on the contract but on “the knowing submission of inaccurate accounts.” **DN Andy can you provide the legal basis for the false accounting charges.**

## SECOND SIGHT CONCERNS

1. WG Confidentiality
  - a. Concern: it appears that SS (and AB) are communicating WG discussions to Applicants / Third Parties.
  - b. Example: In the letters from Aver and Howe – they both reference that POL was receiving repeated extensions – this could only have come from inside the WG.
  - c. Objective: Reiterate the need for WG discussions to be confidential.
2. Objective of investigation process:
  - a. Is the objective to "build a foundation for resolution at mediation" or "find the truth".
  - b. The former is quicker and more practical.
  - c. The latter requires SS to become a decision maker – much more onerous in terms of resourcing / time / etc.
  - d. Also the latter is impossible – SS has no power to test credibility of evidence (ie. no cross examination of witness testimony; no criminal sanctions for lying; etc.) and therefore will never find the truth.
  - e. Objective: Agreement to limit investigations to practical conclusions that help mediation process
3. Scope creep
  - a. SS are no looking at safety of convictions and the fairness of the contractual structure between POL and SPMRs.
  - b. Example: this issue has been raised in drafts of both the thematic report and individual reports.
  - c. Both items are outside SS' expertise and so they should not be commenting.
  - d. These are also not "Horizon related" and are therefore arguably outside the scheme.
  - e. Objective: Direction from the Chair to narrow scope of investigation.
4. SS investigation process
  - a. Should this be based only on the information provided by POL and in the CQR, or
  - b. Should SS be free to ask questions of applicants?
  - c. If option "B", what impact will this have on the timetable.
  - d. Objective: push for option "A"
5. SS communication with PAs / Applicants
  - a. No transparency of SS' interactions with PAs or Applicants
  - b. Impacts on managing workflow if mixed messages are being relayed.
  - c. Objective: greater transparency of communications from SS.
6. SS "hardening of CQRs"
  - a. What does this entail?

- b. Are SS maintaining impartiality or are they now helping Applicant's to construct cases?
  - c. How is this impacting on the timings of the process?
  - d. Could the questioning process at 3(b) be integrated here?
  - e. Objective: Get greater clarity on what SS are doing to warrant this work.
- 7. Lack of SS interaction with POL.
  - a. SS are not directing any questions to POL.
  - b. If not getting info from POL then there is a one-sided flow of info from applicants.
  - c. Example: no engagement on factfile despite offers of meetings.
  - d. Objective: Encourage SS to pro-actively consult POL on issues rather than raising matters in front of the WG.

## SECOND SIGHT PRODUCTS

### Factfile