

MINUTE

Working Group for the Initial Complaint Review and Case Mediation Scheme

16 September 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)
Kim Evans (Second Sight)
Chris Aujard (Post Office)
Belinda Crowe (Post Office)
Angela Van Den Bogerd (Post Office)
Rodric Williams (Post Office)
David Oliver (Post Office)
Andy Parsons (Bond Dickinson)

Agenda

1. Cases for decision
2. CEDR paper
3. Howe & Co correspondence
4. Letter to all applicants and advisors re: confidentiality (JFSA)
5. Post Office paper on Suspense Account
6. Standing case agenda (Items 6 – 13)

Including:

- Second Sight schedule delivery
- Post Office schedule

1. Cases for Decision

The Chair opened the discussion of the cases for decision by the Working Group. JFSA restated its position that where Second Sight had made a recommendation for mediation the Working Group had no role. The Chair explained that the matter of the role of the Working Group in deciding whether a case should be mediated had been decided – he had heard representations and made his ruling that the mere fact that an application had been accepted is not determinate of the fact that it would be mediated and Working Group's role was to decide.

JFSA registered a standing vote to mediate all cases where Second Sight so recommended and declined to participate in discussions on those cases.

The Chair asked JFSA to assist him in discussions by offering a view and Post Office expressed the view that there were important issues that would benefit from discussion in all of the cases on the agenda and that input from all Working Group members would be welcome.

The discussion then moved to the cases:

M002

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

- Post Office was concerned that the case was old and lacked sufficient content on which mediation could be based.
- Post Office pointed out that the Scheme documentation made it clear that old cases or those lacking information might not proceed to mediation.
- Second Sight explained that there were a small number of areas where further information had come to light which they felt meant the case was worth mediating as they hoped that mediation may achieve some form of closure.
- JFSA supported mediation in this case and did not feel that the absence of evidence/information (destroyed by Post office under its retention policies) should lead to an applicant being penalised, especially as they did not consider that Post Office investigated the case properly at the time.
- JFSA considered that consequential losses flowed from the failure to investigate and justified mediation.
- Post Office agreed, with reservations, to mediate the case so that if mediation is not successful as a result of lack of information that could be fed back to the Working Group (in a way which did not breach confidentiality) to inform future decisions on suitability for mediation in cases where there is an absence of evidence/information.

ACTION: Case M002 to proceed for a half day mediation.

M009

The Working Group agreed, after a brief discussion that this case was similar to M002 in terms of age and availability of information and should therefore be treated the same.

ACTION: Case M009 to proceed for a half day mediation.

M015

Second Sight presented its findings on case M015. In discussion the following points were made:

- Second Sight noted that it was a weak case for mediation and there was no dispute that the Applicant had committed false accounting.
- Second Sight noted the clear articulation of consequential loss in this case.
- Second Sight also raised an issue of a “Second Black Ops team” within Post Office—referred to as “Thematic 18” – which was allegedly incentivised to bring about the cheap closure of branches and who had been involved in the improper transfer of branches to other parties. Second Sight offered no evidence or information and the idea was dismissed by Post Office in “the strongest possible terms”.
- Second Sight concluded that, in common with a number of other ‘false accounting’ cases they had no idea what caused the loss. If the Applicant had not falsely accounted the losses would have shown up earlier and would have been easier to investigate.
- Post Office raised the handling of consequential losses – explaining that where it was not possible to identify the cause of a loss in branch, it was not possible to determine who was responsible for any resultant consequential loss. On this basis, the existence of consequential loss alone was not a ground for putting a case through to mediation.
- JFSA commented that Post Office had destroyed the evidence and that as a matter of courtesy the case should be mediated to explain to the applicant where the money had gone.
- Post Office set out that the key issue was that the applicant’s husband had committed false accounting which was a breach of the applicant’s contract and that the facts of the case are the same facts that a charge of false accounting relies on.
- Post Office noted that the case had been investigated thoroughly and it had also sought advice from external advisors. The investigation has identified no evidence which suggests that the prosecution is unsafe, and Post Office has real concerns about whether it would be possible to mediate the case as it cannot consider any facts which have already been determined as part of the false accounting charge and therefore did not support the recommendation to mediate.

The Chair exercised his casting vote in favour of a half day mediation. He expressed the view that this was a classic case for mediation, there was no evidence of theft and that the cause of the losses was unknown. In those circumstances, and with the significant sum of money involved, he considered the case suitable for mediation.

Post Office noted the Chair’s decision but expressed concern as to whether it would be possible to mediate this case given that it rests on the same facts upon which the prosecution relied.

M019

Second Sight introduced the case as a weak case for mediation and that the applicant had no Professional Advisor but noting the large lottery related losses. In discussion:

- The Chair noted that if Second Sight considers a case weak because it has not been put together by a Professional Advisor that point should be made in the CRR.
- Post Office noted that the applicant had repeatedly admitted to falsifying his accounts and was claiming an excessive level of consequential loss of hundreds of thousands of pounds. On this basis Post Office struggled to see how mediation could be constructive.

- Post Office also noted that they had been told that applicants have been encouraged to put in high claims, allegedly by members of the Working Group and that this was hindering the ability to engage constructively with applicants.
- The Chair exercised his casting vote in favour of mediation.

ACTION: Case M019 to proceed for a whole day's mediation.

M030

Second Sight introduced the case noting that it was clear that the applicant's grasp of how to carry out routine transactions was seriously inadequate and that they were either incompetent or had not been provided with adequate training. They highlighted that the Applicant accepted that she had committed false accounting but now denies theft despite previously admitting to, and being convicted of, theft of £94k.

At this point JFSA strongly objected to the approach that Post Office was taking as it set out why it did not wish to mediate cases. JFSA said that they would leave the meeting. Post Office rejected the JFSA position noting that their behaviour and the manner of their challenge was inappropriate. Following this the discussion of the case resumed and JFSA remained in the meeting.

The Chair questioned if there was any new information that might cast the plea into doubt. Post Office clarified that there was not, and noted that all cases were reviewed once the investigation had been completed to check if the prosecution was still sound and if there was a need for additional disclosure. Given this and the fact that the applicant is seeking to have their conviction overturned Post Office asserted that mediation was not the appropriate route to resolve the Applicant's complaint.

The Chair decided to reserve judgement on the suitability of this case for mediation and would provide a written decision with reasons.

M039

Second Sight introduced the case noting that the Applicant was muddled and the issues were well explained in the Post Office investigation report. Second Sight further noted that this was another weak candidate which was very old. It also shared with other cases already discussed issues around false accounting to conceal losses. The Chair noted that Second Sight's investigation into hardware and telecommunications failures was still ongoing in this case and on that basis decided that the decision on this case should be deferred until Second Sight had completed their investigation and in particular the issues set out at Para 5.3 of the CRR.

ACTION: Second Sight to resubmit the case when they have resolve the matters set out at Para 5.3 of the CRR.

M057

Second Sight introduced the case and in discussion the Chair confirmed that Second Sight believed that the applicant was responsible for the loss and that there was no new information that would change this position. On that basis and given paragraph 4.5 of the CRR the Chair exercised his casting vote against mediation.

ACTION: Secretariat to draft a letter for the Chair to M057 informing the applicant of the Working Group's decision that it should not progress to mediation.

M062

Second Sight introduced the case noting that it was again a weak case and old. Second Sight noted that the applicant had made good the losses and accepted a caution for false accounting - she was not looking to have that set aside. Second Sight explained that they did not know the cause of the loss in this case as again false accounting had effectively masked the underlying transactions and therefore they were not able to identify the transactions that gave rise to the loss.

In discussion it was noted that some points of both the CRR and how it reflected Post Office's position as expressed in the meeting could be set out more clearly. On that basis the Chair requested that Second Sight revisit the CRR and resubmit it before the Working Group considers whether it is suitable for mediation.

ACTION: Second Sight to revisit the CRR in case M062

M076

Second Sight set out the background to the case setting out the loss and that on the balance of probabilities they did not believe that Post Office was responsible for the loss.

The Chair exercised his casting vote against mediation on the basis of the conclusion set out in paragraph 4.6 of the CRR.

ACTION: Secretariat to draft a letter for the Chair to M076 informing the applicant of the Working Group's decision that it should not progress to mediation.

At the conclusion of the case review Post Office reminded the Working Group that it would need to run all of the decisions through an internal process so as to filter the cases with regards to the factual matrix upon which the case rests, specifically where the case involved a criminal conviction and thus whether it is appropriate for Post Office, as a party, to mediate.

2. CEDR letter

There was a brief discussion of the CEDR letter. The Working Group accepted the CEDR explanation and proposal for appraising the Working Group of mediation outcomes.

3. Howe &Co (and Aver) correspondence

The Working Group briefly discussed the Howe & Co correspondence. It addressed the following outstanding issues in the correspondence:

- **Whether mediation should be a 2 stage process** – The Working Group agreed that this proposal misunderstood the nature of mediation and rejected it.
- **Whether further funding should be provided** – The Working Group agreed that no further funding should be provided.
- **Whether all cases should have their mediation delayed until the Part Two Report was finalised** – The Working Group agreed that it should not delay sending cases for mediation and should Howe & Co wish to do so this was a matter for CEDR and the parties.

- **Whether Post Office should be allowed to contact Howe & Co clients directly** – The Working Group agreed that it was a matter for Post Office but noted that direct contact between the parties is a necessary part of mediation.
- **Whether Howe & Co should be granted more time to consider cases** – the Working Group agreed that should Howe & Co require more time to consider specific cases they could request an extension to do so.

ACTION: Secretariat to draft a letter to Howe & Co (and Aver) from the Chair.

4. JFSA letter about confidentiality reminder following the reporting of the Part Two Report in the media

JFSA had not drafted a letter and explained that they would prefer to remind applicants and advisors of the need for confidentiality via one of their routine circulars to applicants rather than drafting a letter from the Chair.

ACTION: JFSA to circulate wording on confidentiality

5. Suspense account paper

Post Office explained that they had provided Second Sight with the paper (now uploaded to Huddle) several weeks ago and had received no substantive feedback on the paper only a request for the underlying data. Post Office explained that this request was too broad and they could not see how it linked to any case that Second Sight investigating. Second Sight undertook to provide their further specific question(s) in writing to Post Office.

ACTION: Second Sight to write to Post Office with specific questions on the suspense account.

Standing Agenda

6. New Case Questionnaire Responses

Case No.	Status
144	Post Office to confirm scheduling at next call.

7. Priority cases

Case No.	Status
M006	Approved for mediation 19 August.
M052	Part Two sent to applicant 26 August. SS Final report due 11 September.
M073	Overdue case see agenda item 10 (ii)
M086	Investigation has been prioritised – report due 17 November
M119	Investigation has been prioritised – report due by 9 October.
M143	Part Two sent to applicant 26 August. SS Final report uploaded 14 September.

8. Bankruptcy cases

Case No.	Status
M001	Part Two sent to applicant 26 August. SS Final report due 11 September.
M015	Final report received 05 September. With WG to decide whether it goes to mediation.
M019	Part Two sent to applicant 26 August. SS Final report uploaded 14 September.
M029	Draft CRR & Part Two sent to applicant 02 September. SS Final report due 17 September.
M030	Part Two sent to applicant 26 August. SS Final report uploaded 14 September.
M032	Passed to SS 28 August, Draft CRR due 17 October
M036	PO investigation on-going, report due by 22 September.
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	PO investigation on-going, report due by 13 October.
M122	PO investigation on-going, report due by 6 October.
M128	PO investigation on-going, report due by 22 December
M150	PO investigation on-going, report due by 8 December.

9. Post Office Investigation Progress

The Working Group discussed Post Office's schedule that it had agreed several weeks ago. The Working Group reconfirmed that schedule and noted that it was important that the investigations – particularly those into cases with criminal convictions were thorough.

Kay Linnell commented that she did not believe the reports were thorough and had seen information that would undermine the Post Office prosecutions. The Chair commented that if she had such information it must be disclosed to Post Office as the prosecutors. Post Office endorsed the Chair's comments and confirmed this should be done as a matter of urgency.

i) New scheduling to note

N/A

ii) Overdue cases

N/A

10. Cases with Second Sight to review Post Office Investigation

i) New scheduling to note

Case No.	Date passed to SS	SS planned scheduled delivery date
M077	12 September	14 November

ii) Overdue cases

Case No.	Date passed to SS	SS planned scheduled delivery date	SS revised scheduled delivery date
M011	23 May	12 September	
M017	12 May	05 September	Delivered on 16 September
M018	27 May	05 September	Delivered on 16 September
M021	08 May	05 September	Delivered on 16 September
M058	29 July	12 September	
M065	25 July	12 September	
M072	27 May	12 September	
M073	01 August	05 September	
M126	06 June	05 September	

Second Sight said they would deliver their outstanding overdue reports within the next seven days.

Post Office expressed concern about Second Sight's productivity as they had not been delivering three reports a week despite telling the Working Group on 11 September that they were doing so. Second Sight does not recognise Post Office's description of the assurances given to the Working Group.

Post Office expressed concern at the productivity levels and that, in its view, Second Sight had misled the Working Group about the numbers. Post Office considered that the length of time and rate of delivery was unacceptable given the very significant amounts of money that Second Sight had invoiced so far. Post Office will write to Second Sight.

Second Sight accepted the figures and noted that they were behind in their production of reports and currently had a 7 week backlog but maintained they had been transparent with the secretariat about scheduling data. There were a number of reasons for the delays, notably the production of the Part Two Report. Second Sight also noted that they were not contractually committed to produce three reports a week although they accepted that they had repeatedly committed to do so to the Working Group. Second Sight 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.

The Working Group noted the rate of productivity with some concern given its impact on the applicants and the length of the Scheme and agreed that the table of Second Sight's weekly productivity should be maintained and discussed at each Face to Face meeting.

11. 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 Sept2014	11 Sept 2014	-	-
M002	18 July 2014	04 Sept2014	14 Sept 2014	Mediate ½ day*	-
M006	30 June 2014	05 July 2014	04 August 2014	Mediate	19 Aug 2014

M009	28 July 2014	06 August 2014	20 August 2014	Mediate ½ day*	-
M014	28 July 2014	7 August	05 Sept 2014	Mediate	-
M015	28 July 2014	6 August 2014	05 Sept 2014	Mediate ½ day*	-
M019	08 Aug 2014	04 Sept 2014	14 Sept 2014	Mediate whole day*	-
M029	27 Aug 2014	10 Sept 2014	17 Sept 2014	-	-
M030	31 July 2014	04 Sept 2014	14 Sept 2014	Chair to provide written decision*	-
M035	11 Aug 2014	04 Sept 2014	11 Sept 2014	-	-
M039	27 Aug 2014	05 Sept 2014	14 Sept 2014	Decision deferred pending further SS enquiries.*	-
M052	28 July 2014	04 Sept 2014	11 Sept 2014	-	-
M054	29 May 2014	06 June 2014	11 June 2014	Mediate	-
M057	04 July 2014	01 Aug 2014	08 Aug 2014	Not Mediate	-
M062	20 June 2014	22 July 2014	31 July 2014	Second Sight to revisit the CRR.*	-
M066	11 Aug 2014	04 Sept 2014	14 Sept 2014	Mediate	-
M076	06 June 2014	17 June 2014	20 June 2014	Not mediate*	-
M079	20 Aug 2014	04 Sept 2014	14 Sept 2014	Mediate	-
M143	29 July 2014	04 Sept 2014	14 Sept 2014	Mediate	-

See decisions set out in agenda item 1 above.

12. Any other queries raised by Applicants / Advisors

N/A

13. AOB

Next face to face meeting on 17 October at Matrix Chambers.