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From: David Oliver

CC: Chris Aujard
ExCo Subcommittee on the
Scheme

25/03/2014

To: Paula Vennells
Chief Executive,
Post Office Limited

**BOARD DISCUSSION OF THE INITIAL COMPLAINT REVIEW AND MEDIATION
SCHEME**

DRAFT

SPEAKING NOTE FOR PAULA VENNELLS

POST OFFICE BOARD MEETING

26 MARCH 2014

1. Linklaters Report

- *Recap the Board position – rising admin cost, Large expectation gap, large management overhead*
- *Secondary Concerns – SS quality poor, capacity limited, timeliness limited*
- *Process gone through to deliver report – CG worked closely with, ExCo executive committee reviewed,*
- *Considerations while hear from Linklaters –*
 - *no simple solution – all need lot of handling*
 - *Cases at number of different stages in scheme*
 - *Stakeholders^{DO1} in different places but particular regard to (MPs, Minister, Tony Hooper, NFSP, current Subpostmasters)*
 - *Speed^{DO2} – need to move quite quickly*
- *Introduce Christa Band Partner Litigation Department Linklaters*

2. Second Sight Work

- *Quality of work a problem – All three reports submitted so far sent back for substantial rework by the Working Group*
- *Tony Hooper engaged in actively managing quality – gone so far as to provide Secodn Sight with a template for their reports*
- *Thematic report due cop today expect the quality and content to be an issue*

3. Financial Ombudsman Service

- *Positive meeting with CEO and Legal Director*
- *Some good ideas – Characterising the claims, framework for mediators to work inside, withdraw the criminal cases from the Scheme.*
- *Will be continuing engagement but limited in their ability to assist*

4. James Arbuthnot Meeting

Page 2 Comments

DO1 Need to update post JA meet
David Oliver1, 24/03/2014 11:15 AM

DO2 How do we address without leading with our chin?
David Oliver1, 24/03/2014 11:17 AM

DRAFT

5. How should we assess our options

- Post Office's commercial interests
- Administration costs
- Timescales (closure and modification)
- Impact on existing Subpostmasters
- Reputational damage

6. Options Flowing from Linklaters

- *Modify and continue*
 - *Revised ToRs for SS*
 - *Revised ToRs for WG*
 - *Terminating Second Sight's engagement – and potentially replacing eg with GT/BDO*
 - *Develop Criteria for Decision (similar to FoS suggestion)*
 - *Clarify Post Office position (eg review of Horizon, independent legal advice)*
- *Close down*
 - *Full Closure*
 - *Partial Closure – eg remove Criminal cases and civil cases*

7. Management of the options

- Donation to fund

8. Next Steps

- *ExCo committee to oversee development of options with Linklaters input*
- *Sensitise key stakeholders (BIS ministers, TH, JA, NFSP,*
- *April Board paper on options*

DRAFT

Option	Pros	Cons
Full Scheme Closure with some payment	✓ XXX	✗ CCC
Full Scheme closure without payments		✗
Partial Closure (Criminal and Civil)	✓	✗
Modification (replace or augment Second Sight)	✓	✗
Working Group – amend structure, membership and governance	✓	✗
Group cases	✓	✗
Group cases and force mediation through certain “classes”	✓	✗
	✓	✗

DRAFT

**FILE NOTE: MEETING WITH THE FOS
AT THE FOS's OFFICES ON
MONDAY 17th MARCH AT 4:45PM**

**IN ATTENANCE: PAULA VENELLS (PV)
CHRIS AUJARD (CA)
TONY BOORMAN (FOS CEO) (TB)
CAROLINE WAYMAN (FOS Legal Director) (CW)**

1. The meeting was held at PV's request in order to discuss, in a very general way, the mediation scheme (the Scheme) and see if there were any insights the FOS could offer. The meeting was low key, informal and friendly.
2. PV opened by explaining that the background to the Scheme and POL's initial expectations of it – i.e. that it was something the outcome which in many cases might be an apology and/or a small gratuitous payment. This was to be contrasted with the current situation where, on current estimates, the administrative costs alone would run to many millions of pounds and where the aggregate of the amount of compensation now claimed was running at many tens of millions. It was also explained that no evidence so far suggested that there was anything wrong with the Horizon system, though it may well have been the case that the training and support provided to certain SPMRs could have been better, and that the enforcement function may have been too heavy – handed in its approach to dealing with losses discovered in the branch network.
3. TB's headline view was that, given the large "expectation gap", mediation was unlikely to prove to be a satisfactory mechanism for bringing about closure. It was observed that in such types of cases, the applicants tended to be very emotionally attached to their claims, and that in any event mediation required much time intensive work by both sides, with each outcome being "hand- crafted".
4. A more administratively workable solution was likely to be one that relied on a "framework" of some sort to assess whether or not an applicant should be paid compensation, and if so the quantum of it. In this context, it was suggested by TB that it was entirely sensible for the guiding design principles to be ones based on notions of "fairness" to applicants, not necessarily ones based on legal principles. It was acknowledged by TB that in preparing such a framework, there were arbitrary lines that had to be drawn and that there would be winners and losers – indeed, it may be seen to be unfair on those that hadn't applied to join the Scheme, but to some extent that was unavoidable.

DRAFT

5. In understanding what was “fair”, it was useful to understand how decisions would be viewed by the public at large; similarly in preparing the framework it would be useful to undertake some “dry runs” and see what result was achieved with respect to a number of selected cases. A pragmatic approach was encouraged as one likely to be most successful, but bearing in mind countervailing pressures associated with the need to deal with tax payer’s money in a prudent way.
6. TB further suggested that adopting a framework approach was not necessarily inconsistent with using mediators. Indeed the Scheme as currently configured could still be used, save that the role of the mediator might be re-structured to determine how the framework should be applied in any particular case. For example if one of the (aggravating) factors in the framework was that of whether the security team had acted in a “heavy- handed manner”, the role of the mediator could be simply to help the parties agree whether or not they had, in the particular case in question, in fact been heavy – handed.
7. The question of when the compensation decisions should be made was discussed. Both TB and CW were of the view that this should be toward the end, if not at the very end, of the overall process, after a substantial number of cases (if not all) had been reviewed/investigated. This was to ensure fairness and consistency.
8. Ideas for dealing with the “expectation gap” were discussed, with TB suggesting that one way forward might be for POL to commission independent (and potentially joint) legal advice from a leading QC which could be made available to the JFSA and all applicants. It was understood that such advice would show that any claim founded on legal principles was likely to result in a very low compensation payment.
9. The various factors that could form part of the “framework” were discussed. Ideas considered included :
 - The length of service of the SPMR
 - Whether was any evidence that the SPMR had been treated in a heavy handed way by the Security team
 - How far off the SPMR was from retirement at the time he/she was summarily terminated/suspended.
 - Whether there had been any admission of guilt by the SPMR.
 - Whether there had been any loss of value in the SPMRs non-post office business
10. PV raised the question of whether the FOS could offer its services on a consultancy basis to POL. CW thought that this would not be possible given the FOS statutory objective, but TB offered to make himself available to talk to the (sub –committee of

DRAFT

the) Board on an informal basis to share his experience. PV and CA thanked TB and CW for their time.

Chris Aujard
17 March 2014