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# INITIAL COMPLAINT REVIEW AND MEDIATION SCHEME

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**WORKING GROUP**

**14 NOVEMBER**

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**FACE TO FACE WORKING GROUP**  
**14 November 2014**  
**Matrix Chambers**

**Agenda**

1. Minutes of 17 October meeting
2. Letter from JFSA
3. Progress on Part Two Report
4. Standing case agenda:
  - 4.1 Priority Cases
  - 4.2 Bankruptcy cases
  - 4.3 Post Office investigation progress
  - 4.4 Cases with Second Sight to review PO investigation reports
  - 4.5 Cases Second Sight have reported on
    - (a) Proposal for Deferred mediation (Second Sight)
    - (b) Updating applicants where there is a delay in reaching Working Group decision
  - 4.6 Cases that have been passed to CEDR
  - 4.7 Queries from applicants/advisors
  - 4.8 AOB
5. Cases for decision:
  - a) Second Sight recommend mediation:

M003, M005, M013, M018, M021, M039, M063, M078, M126

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## **AGENDA ITEM 2**

### **Letter from JFSA**

JFSA have written to the Chair (Monday 10 November) setting out their concerns over the “current position and direction” of the Scheme.

JFSA complain that the Scheme has moved a long way from its original purpose and specifically:

- restating their view that it is not the role of the Working Group to decide which cases are approved for mediation (quoting selectively from then Scheme ToRs and documentation);
- that no further cases should be released in draft until Second Sight’s Part Two Report is completed;
- that depending on the contents of the revised Part Two report, all previous cases may need to be reconsidered;
- making a number of pointed comments about Chris’s request to Kay Linnell (letter of 14/10) to check her records for any new information relating to prosecutions;
- suggesting that cases are being decided on the issue of “where the money went” rather than the full range of “systemic failures / thematic issues” affecting them;
- that POL have become defensive and entrenched, abandoned the concept of “seeking the truth” and undermined the spirit in which the Scheme was entered into; and
- questioning whether there was any point in continuing with the Scheme.

It is likely that the Chair will seek to address the issues with JFSA although he is also likely to turn to POL for some responses.

### **Post Office’s Position**

Our responses should be high level rather than getting into detail – especially given the meeting with MPs on 17/11 – but if needed:

- the Chair has been clear on the role of the Working Group and how suitability for mediation should be determined;
- there is a strong sense that the starting point for people involved in this process is that PO and the Horizon system are or somehow simply must be at fault – after 2 years’ investigation no evidence has been found to suggest that this is the case;
- Post Office cannot be expected to accept responsibility for matters in circumstances where there is no evidence that it is at fault;
- Post Office has taken its responsibilities very seriously – indeed were there any fault with Horizon it would be in our interests to know about it – specifically:

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- we have reviewed almost 2000 pieces of evidence, completing over 100 investigation reports totalling around 1,500 pages of text;
  - we are committed to completing all the investigations by 22/12;
  - we have invested significant human and financial resource to supporting this Scheme and the applicants, and continue to do so (£3.4m to date, Scheme forecast total spend of £7.4m);
- it is disappointing that the confidentiality of the Scheme is being consistently breached (not least by the reports from mediation contained in para 2 of JFSA's letter);
- it is also disappointing that JFSA are choosing not to play a full part in Working Group discussions. There are a number of cases today where the judgement is quite balanced and their input would be valuable.
- should those in whose interests the Scheme was principally established (JFSA and its members) no longer feel it is capable of meeting their needs, this is something upon which POL will need to reflect very carefully.

On specific point of Chris's letter to Kay, this was in response to a specific comment Kay made in September's Working Group suggesting that she "had seen information that would undermine the Post Office prosecutions". It turns out that she had not.

How POL discharges its statutory duties relating to prosecutions is not a matter for the Working Group.

It is possible that JFSA's letter is set up for them to walk out of the meeting and potentially the Scheme. We should take care not to cause them to do so by being too aggressive in rebutting their points. Equally, should they choose to it may help with our longer term aims to revise the Scheme.

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### **AGENDA ITEM 3**

#### **Progress on Part Two Report**

The Chair has asked for an update on progress with Second Sight's Part Two Report. This is predominantly for Second Sight to respond to.

#### **Post Office's Position**

- The Secretariat had a productive meeting with Second Sight (Ian) on 4 November to discuss, amongst other items, progressing Part Two to completion;
- at the meeting, the Secretariat offered assistance from within the team to SS to help them in completing Part Two;
- (Mark) subsequently drafted a plan setting out the timescales and arrangements for its completion. SS, if in agreement with the plan and timescales, may wish to share this with the WG; and
- this plan should allow Part Two to be finalised by 03/02/15.

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## **AGENDA ITEM 4**

### **Standing Case Agenda**

#### **4.1 Priority Cases**

- M073 – to note, last Working Group meeting referred case back to SS for Part Two issues
- M052 – to note, SS await advice from POL re: prosecution files

#### **4.2 Bankruptcy Cases**

- To note – Rod Williams wrote to Moore Stephens on 7 November agreeing to their appointment as Trustees in Bankruptcy in 4 cases – M001 (Castleton), M100 (Thomas), M036 (Atkins), M029 (Foulger)

#### **4.5 Cases that Second Sight have reported on**

- To note – date for final report on M051 is incorrect on both the agenda and the tracker. It should read 21 November.

#### **a) Proposal for Deferred Mediation**

Second Sight have made a proposal for a new recommendation in their final CRRs of recommending a case is suitable for mediation but deferring mediation until after their Part Two Report is complete as it may contain further relevant detail.

This has arisen out of the discussion at the last face-to-face Working Group where the Chair was unwilling to cast his vote where the final CRR left open issue in the Part Two report for further investigation. SS argue that a number of cases pass the “threshold” for recommending without Part Two but that Part Two may also be relevant.

This is a discussion in principal although SS have already used this formulation in several final CRRs.

The tone of their letter suggests JFSA may simply seek to prevent further discussion on cases until Part Two is complete.

#### **Post Office Position**

- Recognise that Second Sight are making a suggestion with the positive intent to allow the Working Group to make progress.
- Reinforces the need to make progress on Part Two.
- Suitability will depend on each case.
- However, concerned that Second Sight’s threshold may be too low in assessing suitability for mediation and that this formulation may be applied to weak cases. In those circumstances, Post Office are unlikely to be able to opt for mediation.

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- Also concerned that delay may not be in the best interests of applicants whose cases merit mediation without Part Two. Moving through the Scheme more quickly offers a greater prospect of closure for the applicant.

**b) Updating applicants where there is a delay in reaching Working Group decision**

- There are a growing number of cases that have been considered by the Working Group but where decisions on suitability have not been reached pending further information. The Secretariat recommend that a standard letter be sent to applicants affected to provide an update on progress.

**4.6 Cases where the Working Group has made a mediation recommendation**

- To note – M066 was mediated this week (Tuesday)

**4.7 Any other queries raised by applicants / advisors**

*Extensions*

Extensions have been requested for comments on draft CRRs on M091 and M116 respectively owing to illness. No reason to object.

*Conditional Leavers Payment*

The Chair has received a letter from the applicant's advisor in case M114 objecting to the condition that they leave the Scheme in order to receive a conditional leavers payment.

**4.8 AOB**

*Frequency of Working Group Calls*

At the last WG call, it was suggested that calls be moved on to a fortnightly basis now that the focus has moved on from scheduling. We support this. JFSA may suggest leaving them on a weekly basis but cancelling each week if not required. We could accommodate this if preferred by other parties.

*M061 & M149*

To note – Post Office has reflected further on the discussion at the last Working Group and decided that despite being ineligible for the Scheme, cases M061 and M149 may exceptionally proceed given the issuers of eligibility were only spotted after the cases had made significant progress through the Scheme. The applicants and their advisors have been informed.