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AGENDA

Working Group for the Initial Complaint Review and Case Mediation Scheme

16th June 2014

Attendees

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

Apologies

Ian Henderson (Second Sight)

Agenda

1. M054
2. M127
3. Bankruptcy
4. Aver's extension requests from 2nd June.
5. Minutes from the last two face-to-face Working Group meetings
6. AOB
 - M073

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AGENDA ITEM 1: M054

BD briefing on M054:

- 1 **No dispute to resolve.** There is no evidence to suggest that the Applicant is not responsible for the losses in this case. SS agrees with this conclusion in its CRR which concludes "*that, on the balance of probabilities, the Applicant was responsible for at least £9,500.00, and possibly all, of the total shortfall discrepancy of £11,886.77*".
- 2 **Mediation of limited value.** This case does not turn on a specific event or action by the Applicant – the losses accumulated over a long period. There is therefore no specific point on which further discussion with the Applicant at mediation may bring greater clarity that may in turn change Post Office's position above.
- 3 **Risk to Applicant.** The Applicant may incur legal costs in excess of the Post Office contribution in preparing for mediation. Given that Post Office is not minded to settle this case, a mediation may only serve to put the Applicant in a worse financial position. Asking the Applicant to attend a mediation where Post Office is not offering a settlement may also be emotionally frustrating.
- 4 **Disproportionate cost.** It would be disproportionately expensive to mediate this case given that Post Office is highly unlikely to offer any settlement. The WG TOR requires the WG to manage Scheme resources efficiently:

4.6 To manage the administration of the Scheme so as to ensure that the Scheme's processes and procedures are offering value for money for taxpayers (which for clarity does not extend to any assessment of the merits / value of any settlement proposed or reached between Post Office and any SPMR).
- 5 **Better alternative.** It would be more appropriate and cost-effective for Post Office to discuss the case directly with the Applicant without mediation. The WG TOR expressly allows for this approach.

3.3 Where appropriate, the Scheme must offer a reasonable forum, by way of mediation or through direct discussions, for an Applicant and Post Office to seek a resolution of that Applicant's legitimate concerns.

3.4

Background:

Total loss £11,886.77

- PO does not recommend this case for mediation (although this was not explicitly stated in our response)
- PO made no comments on the main body of the SS report but made clear that this should not be construed as acceptance by Post Office of those points on which we have not commented
- PO asked SS to reconsider its recommendation as to whether this matter is suitable for mediation
- The SS CRR concludes that, on the balance of probabilities, the Applicant was responsible for at least £9,500.00, and possibly all, of the total shortfall discrepancy of £11,886.77
- PO agrees that this is the correct overall conclusion. Given this, PO considers it unlikely to be an efficient use of time or resources to mediate this case as there is very little to support the Applicant's complaint
- We would however be prepared to consider discussing this case directly with the Applicant outside of mediation with a view to assisting her to understand the PO position

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AGENDA ITEM 2: M127

Background on M127:

Total loss £87,661.86

- PO maintains that responsibility for the losses lies principally with the Applicant
- The Applicant has admitted, both to PO during its suspension investigations in 2010 and in her application to the Scheme, that she did not follow the correct accounting procedures for the ATM installed at the branch. PO considers that this had a direct bearing on the losses subsequently incurred by the branch
- PO does not agree that it did not provide adequate training to the Applicant. PO provided the standard training package to the Applicant upon installation of the ATM, and further training could and would have been provided had it been requested by the Applicant (which it was not)
- PO does not accept that it had any duty to proactively recommend additional training to the Applicant. This is not reflected by any obligation in the Subpostmasters Agreement
- PO does not understand the Applicant's claim that the losses incurred at the branch were not "real". While the detail of Applicant's position in this regard remains unclear, PO does not agree with the Applicant's argument or reasoning, which has not been supported with any evidence
- PO does not believe that this case is suitable for financial settlement
- However, no final decision has been made whether to agree to mediate or not – it is advised that PO members of the WG gauge the response from other members at the face-to-face meeting on 16 June and takes a view then

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FURTHER INFORMATION: M022

Background on M022:

Total losses £87,202.13

- PO agrees to mediate this case but we are aiming for early settlement
- Angela spoke with the Applicant on 09/06/2014 (there was no agreement on settlement) and sent a follow-up letter on the same day
- Post Office accepts that it could have in some areas better supported and communicated with the Applicant regarding the £86k of losses that occurred at his branch
 - Training – In response to the Applicant's request, we could have provided him with ATM training
 - Investigation – The losses at the branch could have been investigated in more detail at the time of the events in question which may have brought greater clarity to the issues now raised through the Scheme
 - Communication – We could have communicated better with the Applicant about the need to repay the losses suffered in his branch via the offsetting of his "loss of office" compensation
- However, PO does not agree with or accept a number of Second Sight's key findings, including its primary conclusion. Its primary conclusion is that PO was aware that the Applicant was absent from his branch and engaging the previous subpostmistress to run the branch without proper controls and supervision in place. SS considers that that state of affairs was the likely cause of losses in the branch and places responsibility on PO for allowing that state of affairs to exist. PO disagrees:
 - Awareness - Post Office was not aware (before the audit in December 2011 by which time the losses had already occurred) that the Applicant had decided to have no involvement at all in the running of his branch
 - Duty – The spmr contract sets out each parties' respective duties and clearly places responsibility for managing activities within a branch on the spmr. Conversely, there is no duty on Post Office to manage a spmr 's branch or staff
 - Risk - In any event, if a spmr unilaterally wishes to take greater risks in the way he manages his branch (ie. by fully delegating the management of the branch to another person without any supervision), it does not follow that PO is then responsible for the greater consequential risk of losses caused by that decision

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AGENDA ITEM 3: BANKRUPTCY

Initial Complaint Review and Mediation Scheme

Bankrupt Applicants

Background

- The Scheme was designed to create a foundation for Applicants and Post Office to resolve their differences through mediation and, where appropriate, remedy any harm suffered by Applicants.
- Around 15 Applicants are bankrupt.
- Unless a Trustee in Bankruptcy/Official Receiver assigns the rights in a claim against Post Office to a bankrupt Applicant, any settlement that is reached with that Applicant will not be binding.
- In the absence of an assignment of the claim rights, the Trustee/OR could attend the mediation (as the party who has the right and authority to settle). However, a Trustee/OR will incur fees in doing so and may want its own legal advisor to be present.
- It is understood that the OR is resisting attending mediation / allowing the transfer of the claim rights to Applicants as it does not understand the value/merit of the claims being considered.
- It is proposed that Post Office seeks to agree a non-binding settlement with an Applicant at mediation which is then later ratified by a Trustee/Official Receiver by way of retrospective assignment of the claim rights.

Concerns

- The proposed way forward would encounter the following challenges:
 - If compensation is offered to an Applicant, it is likely that the Trustee/OR will want to take a large proportion, if not all, of the compensation as they have a legal duty to do their best to return value to creditors which may leave the Applicant with little / no value from the settlement.
 - Negotiating a settlement at mediation which could then be later refused by a Trustee / OR could be a significant waste of costs / resources for both sides.
 - An Applicant may incur costs in trying to have a Trustee / OR review and accept the settlement. If the settlement is then rejected, the Applicant could be left in a net worse position.

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- Post Office would essentially be negotiating against a party (the Applicant) that was not the ultimate decision maker (being the Trustee/OR). Similarly, the Applicant would have no feel for the value of a "good settlement" as the intentions of the Trustee / OR would be unknown. This would be very unusual for mediation where one of the core principles is that the parties at mediation must be fully authorised to reach a binding deal.
- Without the prior assignment of the claim rights or the attendance of the Trustee / OR at mediation, it is Post Office's view that it will be very difficult enter into any meaningful mediation as the Applicant's claim cannot be settled in a manner that is satisfactory to either party.

Approach

- As a result of the above, Post Office is considering take the following approach so to safeguard its and each bankrupt Applicant's position:
 - Unless a bankrupt Applicant can provide evidence that their claim has been assigned, the case should not be mediated so to avoid the risk of the Trustee / OR taking the lion's share of any settlement.
 - Where appropriate, Post Office may choose to make a settlement offer in writing to a bankrupt Applicant. The Applicant could then take that offer to the Trustee / OR. This allows an offer to be made without either side risking significant wasted time and cost.
 - Post Office may meet with a bankrupt Applicant to discuss their case outside of mediation but this would only be on the clear understanding that Post Office would not be in a position to offer any settlement at that meeting. This may assist in the Applicant in subsequent discussions with the OR / Trustee.

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AGENDA ITEM 6: AOB – M073

“CK have been liaising with Dickson's lawyers and are fully aware of the matters described in Dickson's email to Alan Bates yesterday.

In short:

- CK have encouraged Dickson's lawyers to apply to the Crown Court to have the confiscation order set aside. POL will not oppose that application so long as Dickson agrees to undertake to pay the outstanding debt direct to POL. In practice, even if Dickson won't agree to the undertaking, POL will not oppose the application to set aside.
- CK are also working with Dickson's lawyers to present a case to the Magistrates Court (who are currently managing the confiscation order) that Dickson has done all that is possible to make payment. This should help avoid him going to jail if the Crown Court application has not been heard before the next mags hearing.
- CK are confident they have done all that is possible to avoid Dickson going to jail.”