

**MINUTE**

**Working Group for the Initial Complaint Review and Case Mediation Scheme**

**10<sup>th</sup> July 2014**

**MATRIX CHAMBERS**

**Attendees**

Sir Anthony Hooper (Chair)

Alan Bates (JFSA)

Kay Linnell (JFSA)

Ron Warmington (Second Sight)

Ian Henderson (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**

Chris Holyoak (Second Sight)

## **Agenda**

1. Standing case agenda (Items 2 – 14)
15. Communicating with Applicants
16. Part Two report
  - a) ATM extract
  - b) Howe & Co email dated 4 July
17. Whether cases should be passed to Second Sight if Post Office investigation not completed by deadline
18. Working Group role in recommending cases for mediation
19. M076 – Working Group discussion and decision on whether to mediate
20. M028 – Working Group discussion and decision on whether to mediate
21. Communicating the Working Group decision not to recommend M054 for mediation
22. Howe & Co extensions and email dated 17th June
23. AOB – matters that Working Group members have asked to be put on the agenda
  - a) Kay Linnells's email of 4 July (Kay)
  - b) Oliver Heald MP case (Post Office)
  - c) M057 (Second Sight)

**1. Status of accepted applications awaiting a funding application**

1.1 Last application received 9 July 2014. This stage is now closed.

**2. Status of accepted applications awaiting a Case Questionnaire Response**

Advisor	Number of cases with Advisor	Number of CQRs overdue	Status
Aver	16	0	Letter from chair sent 20 June to set final deadlines – letter acknowledged by Bill Cleghorn.
Howe & Co	9	2	M004 due 4 July – SS to confirm if received M114 due 9 July - SS to confirm if received
James Cowper	1	0	CQR deadline 5 August, however applicant needs extension – see agenda item 10.

2.1 Second Sight have the CQR for M004 and still reviewing it

2.2 Second Sight have not yet received M114. If not received by tomorrow BC to chase. Working Group agreed that if M114 not received by Monday TH to send Howe and Co a final reminder letter.

*NB: Secretariat subsequently granted an extension for this case on the grounds of ill health of the applicant's mother following email from How and Co which arrived on the day of the WG meeting.*

**3. New Questionnaire Responses**

Case No.	WG Decision
M020	All accepted AVDB to circulate proposed timelines by email given the high volumes of cases submitted over the last two weeks.
M037	
M069	
M077	
M098	

M106	
M110	
M130	
M131	

#### 4. Priority cases

Case No.	Status	WG Comment
M006	SS draft report completed 30 June, comments from parties due 11 July.	Noted
M073	CQR accepted by WG 26 June. Investigation on-going. Post Office Investigation Report due 24 July.	Noted
M143	Second Sight report due 11 July.	SS commented that they are on track to deliver by 11 July

#### 5. Bankruptcy cases

5.1 The Working Group noted the update on Bankruptcy cases.

Case No.	Status
M001	Post Office report passed to SS 30 May. SS report due 11 July.
M015	Post Office report passed to SS 9 May. SS report due 8 August.
M019	Post Office report passed to SS 8 May. SS report due 18 July.
M029	Post Office report passed to SS 12 May. SS report due 25 July.
M030	Post Office report passed to SS 15 April. SS report due 18 July.
M032	Post Office investigation on-going, report due 10 July. – see item 7
M036	Post Office investigation on-going, report due 10 July. – see item 7

Case No.	Status
M069	CQR released to WG 10 July.
M081	CQR deadline 31 July. Applicant represented by Aver.
M089	Post Office investigation on-going, report due 21 August.
M100	Post Office investigation on-going, report due 23 July.
M118	Post Office investigation on-going, report due 10 July. – see item 7
M122	Post Office investigation on-going, report due 23 July.
M128	CQR deadline 31 July. Applicant represented by Aver.
M150	CQR deadline 31 July. Applicant represented by Aver.

## 6. Post Office Investigation Progress

### 6.1 Reports to be uploaded:

Case No.	Status	WG decision/comment
M005	Investigation complete finalising report. Report due to be uploaded in next few days.	Noted
M013	Investigation complete finalising report. Report due to be uploaded in next few days.	Noted

### 6.2 Reports due:

Case No.	Status	WG decision/comment
M008	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M024	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M025	Investigation complete. Finalising report. Extension (1 <sup>st</sup> ) to 7 August required.	Granted
M031	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted

<b>Case No.</b>	<b>Status</b>	<b>WG decision/comment</b>
M032	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M034	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M036	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M038	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M040	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M041	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M042	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M046	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M051	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M058	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M064	Investigation on-going. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M065	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M067	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M074	Investigation on-going. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M090	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M093	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M095	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M116	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M118	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M120	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted

Case No.	Status	WG decision/comment
M121	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted
M132	Investigation complete. Finalising report. Extension (not 1 <sup>st</sup> ) to 7 August required.	Granted

6.3 The Working Group discussed the length of extensions being requested and where the bottlenecks were occurring. It was noted that the investigations were of a high quality but they were taking much longer than anticipated. Delays had occurred at all stages – submitting initial applications, submitting funding agreements, submitting CQRs, hardening of CQRs, retrieving relevant Post Office records, investigating CQRs and reviewing the investigation report. JFSA raised M001 and M035 raised as examples of older cases and it was noted that these had been with Second Sight since 30 May and 14 May respectively.

6.4 JFSA said that concerns had been raised with them that Post Office could be determining the order of the movement of the cases. JFSA accepted this was not the case and it was noted that the flow of cases was dependent on a number of factors, including submission of CQRs by advisors and Second Sight releasing the CQRs for Post Office investigation.

*ACTION: AVDB and Second Sight to prioritise the oldest cases*

## 7. Cases with Second Sight to review PO investigation reports

7.1 New case for scheduling:

Case No.	Passed to SS	SS planned scheduled delivery date	WG
M003	08 July 2014	22 August 2014	noted

## 8. Cases that Second Sight have reported on

Case No.	SS Draft Report completed	Deadline for comments	SS Final Report completed/ <i>due</i>	WG Decision	Sent to CEDR
M022	16 May	11 June	v.1) 13 June v.2) 19 June	Mediate	19 June
M127	27 May	4 June	v.1) 13 June v.2) 19	Mediate	19 June

			June		
M054	29 May	6 June	11 June	Not mediate	N/A
M048	6 June	17 June	20 June	PO to update	
M076	6 June	17 June	20 June	To be discussed 10 July	
M028	13 June	24 June	1 July	To be discussed 10 July	
M062	20 June	22 July	29 July		
M006	30 June	11 July	18 July		
M057	4 July	15 July	22 July		

- 8.1 M048 – The Working Group noted the update that Post Office have agreement in principle to settle the case and that the paperwork is being finalised.
- 8.2 Second Sight explained their scheduling approach – they schedule cases for delivery according to their capacity rather than adhere to the four week timescale for each case. They would only ask for extensions if they were unable to adhere to their scheduled delivery date. They confirmed that they will deliver three draft CRRs per week and, provided comments were received from the parties in a timely manner, three final CRRs per week. The Working Group noted that this was a different approach to that being applied to Post Office.
- 8.3 It was agreed that both Post Office and Second Sight will make sure that they work on a First in First out basis.

## 9. Any other queries raised by Applicants / Advisors

- 9.1 M142 has appointed Robert Holland from James Cowper. Robert is away on holiday and his first meeting with the applicant is on 22 August so the applicant has asked for an extension to 19 September (4 weeks from first meeting) to be agreed by WG.

*ACTION: Chair to write to Robert Holland along the following lines:*

- *Extension granted until 31 August.*
- *Final deadline and the matter will proceed,*

- *Acknowledging that the interview with the applicant may have to be dealt with by another person in the firm.*

9.2 Howe and Co expense request for M062 (responding to Second Sight draft CRR)  
– The Working Group decided not to recommend that expenses are paid in this case

*ACTION – Secretariat to inform Howe and Co of the Working Group's recommendation.*

## **10. Issues with resourcing / timings**

10.1 N/A

## **11. Communicating with Applicants**

11.1 In response to a request from JFSA the Working Group discussed whether and how the Working Group should provide a further update for applicants on progress of the Scheme. At a previous meeting AB had agreed to be the point of contact for applicants and a letter from the Chair had been sent to all applicants to that effect. AB commented that:

- the current approach was working reasonably well – he issues a monthly email to applicants and also responded to specific queries.
- he considered that another general letter from the Working Group would be a good idea but it should not include dates for particular stages unless the Working Group could be certain those dates would be met.

11.2 The Working Group agreed that:

- The Chair writes to all applicants with a general update (including statistics on the Scheme's progress to date) and restate that applicants can contact AB for an update on progress of their case.
- The letter should inform the applicant that they will be notified when the PO report was sent to Second Sight for investigation and an indication from Second Sight (according to their Schedule, when the draft CRR could be expected).
- The 24 applicants whose cases are with Second Sight for investigation should be provided with an indicative timescale for delivery of the CRR.

*ACTION Secretariat to draft letter for the Chair, to be circulated to the Working Group in advance*

11.3 The Working group discussed whether the Post Office investigation report should be disclosed to the applicant at the time it was passed to Second Sight. PO agreed to consider this and report back at the next Working Group call. There was

a similar discussion about issuing the Part One report to all applicants and advisors.

*ACTION: Post Office to consider disclosing the Post Office Investigation report to the applicant when passed to Second Sight.*

*ACTION: Working Group to consider sending the Part One report to all advisors and applicants*

*ACTION: Secretariat to put both issues on agenda for next Working Group call.*

## **12. Cover letter from Chair to the parties covering the draft Second Sight report**

12.1 The Working Group discussed the wording of the current stock cover letter sent to parties with the draft CRR. It was agreed that the wording should be modified to reflect that this was a voluntary stage in the process introduced to assist the applicant, no additional funding was available for it and the Working Group did not envisage significant extra work being undertaken at this stage (see also below re Howe and Co correspondence).

12.2 The Working Group agreed that it was for Second Sight to identify and set out in the draft CRR the documents relevant for the case (e.g Part 1). Given this change the Working Group agreed that Second Sight and BC should review whether the letters already issued to applicants were adequate or whether further clarification was required.

*ACTION: Secretariat to provide revised draft for Chair*

*ACTION: BC and Second Sight to review the issued correspondence to ensure it was adequate.*

## **13. Howe and Co letter of 9 July 2014**

13.1 The Working Group considered the various letters and emails from Howe & Co. In discussion the Working Group agreed the following:

- the draft report stage is a voluntary stage and advisors are not being asked to undertake significant extra work.
- advisors have been invited merely to make comments and there is no extra funding.
- That the contribution towards funding is a fixed contribution not a grant.
- That the stage had been added to increase applicants understanding of the Scheme

- That there is a further opportunity to make comments through the mediation statement.

13.2 In light of this the Working Group agreed to allow an extension until 25 July to comment on M006 and that they would copy their letter to the applicant.

*ACTION: Secretariat draft a consolidated response for the Chair to the Howe&Co correspondence*

#### **14. Second Sight Part Two report**

##### **a) ATM extract**

14.1 The Chair opened the discussion and recapped the recent history of the Part Two report and in particular the ATM extract. In discussion the Working Group agreed that:

- The Part Two report was a Second Sight report and they retained editorial control.
- The draft should have been shared with Post Office in advance to comment on the accuracy
- The Working Group should have been given the opportunity to discuss the report before it was sent to applicants.
- The report would have benefit from clarification in a number of areas including the references to retract fraud, Second Sight's use of the term "out of sync", the location of the ATM machines.
- Second sight and Post Office should meet to discuss the content of the report.

*ACTION: Second Sight and Post Office, with AB should he wish, to review the ATM report.*

*ACTION: Second Sight to write to AVDB with any outstanding questions.*

14.2 The Working group considered whether all cases should be put on hold pending completion of the part 2 Report and agreed that they should not, unless the cases required Part 2. Second Sight aim to have completed Part 2 by 25 July .

#### **15. Whether cases should be passed to Second Sight if Post Office investigation not completed by deadline**

15.1 The Working Group considered whether cases should be passed to Second Sight without a Post Office investigation report. It was agreed that Post Office needs to be allowed to complete their investigation: passing a case to Second Sight in the absence of a full investigation would not benefit the applicant and the case would still sit with Second Sight until they were able to consider it. The Working Group

agreed that it should continue to keep the progress of cases at every stage under review.

## **16. Working Group role in recommending cases for mediation**

16.1 The Working Group discussed JFSA's proposal to change agreed process for the Working Group to decide whether a case should be referred for mediation. AB made the following points:

- it was never envisaged that the Working Group would consider all cases and decide whether to recommend them for mediation
- it was always envisaged that the majority of cases would proceed to mediation.

16.2 Concluding the initial discussion the Chair noted that since October it has been clear to him that the Working Group would make the decision on whether to recommend a case for mediation in all cases and that position had been discussed and documented on a number of occasions. Further the Chair noted that one face to face meeting had been almost exclusively dedicated to discussing the exact process for making a decision therefore JFSA's proposal would constitute a change from previous agreements.

16.3 At the Chair's invitation AB set out his proposal for deciding whether a case should be referred to mediation as:

- a) If Second Sight recommend a case is suitable for mediation then it automatically goes to mediation
- b) If Second Sight recommend that a case is not suitable for mediation the Working Group should discuss that recommendation.
- c) If Second Sight does not make a recommendation on whether a case should be mediated the Working Group should make a decision

16.4 JFSA stressed that MPs had been promised, and were expecting, that all applicants had an opportunity for their case to be mediated and that JFSA's engagement with the Scheme had been dependent on that point. Post Office shared Chair's understanding that the decision on whether to recommend a case for mediation was one for the Working Group.

16.5 During the course of the discussion the following issues were discussed:

- The value of the use of mediation in cases where there is a dispute
- Whether mediation should always be appropriate where there is a dispute
- The value of the applicant having a 'day in court' to achieve a better understanding of the issues

- The extent to which mediating all cases provided value for money for the taxpayer (as per the Working Group ToRs) if Post Office is clear at the outset that the demands of the applicant cannot be met

16.6 The Chair invited AB to provide a paper for the Working Group setting out the reasons for a change to the agreed process with reference to 'historical' statements and commitments and explaining in what way the Scheme as now operating was inconsistent with that. Post Office would then have a right of response via a paper to the Chair.

*ACTION: JFSA to provide a paper for the Chair by 24 July*

*ACTION: Post Office to provide a response to the JFSA paper by 7 August*

#### **17. M076 – Working Group discussion and decision on whether to mediate**

17.1 The Post Office did not consider this case suitable for mediation and relied on the 'test' that the Chair had applied in M054. The Working Group discussed the 'Chair's test' and whether it was the right one. The Working Group acknowledged that this point was linked to the previous discussion on the role of the Working Group but invited Post Office and JFSA to consider, in advance of the Working Group call, whether the test was the right one. The Working Group deferred discussion of this case to the following week to allow further reflection on the 'Chair's test'.

*ACTION: Secretariat to add M076 and 'Chair's test' to agenda for next Working Group call*

#### **18. M028 – Working Group discussion and decision on whether to mediate**

18.1 The Working Group recommended the case for mediation.

*ACTION: Secretariat to issue final report to applicant and refer the case to CEDR to arrange mediation.*

#### **19. Communicating the Working Group decision not to recommend M054 for mediation**

19.1 The Working Group acknowledged that the decision of the Working Group has still not been communicated to the applicant. JFSA suggested a brief letter to the applicant with no reasons, but that reasons should be provided if the applicant requested more information. The Working Group agreed that there was no right of appeal against a decision not to recommend a case for mediation but agreed to defer notifying the applicant until a decision was made on the Chair's test.

#### **20. Howe & Co extensions and email dated 17th June**

20.1 Discussed under agenda item 13.

**21. AOB – matters that Working Group members have asked to be put on the agenda**

**a) Kay Linnells's email of 4 July (Kay)**

21.1 There was a brief discussion of the email of 4 July. The Working Group noted that, as per para 2.4 of the Working Group ToRs, Post Office may act in a manner which promotes its own interests and JFSA can act in a manner which promotes the interests of the applicants.

**b) Oliver Heald MP case (Post Office)**

21.2 Post Office has agreed to investigate the case as part of its business as usual processes. The Working group agreed that the Chair would write to Oliver Heald to that effect and Post Office would contact the applicant.

*ACTION: secretariat to provide letter for the Chair to send to Oliver Heald*

**c) M057 (Second Sight)**

21.3 Second Sight have recommended that this case is not suitable for mediation and sought guidance from the Working Group on the criteria they should apply when considering their recommendation. The Working Group agreed that it was for Second Sight to determine its own criteria. However, Second Sight advised that should the Working Group decide that the final decision on whether a case should be mediated should rest with them they would be likely to recommend all cases for mediation.