

**POSTMASTER GROUP ACTION
CONFIDENTIAL AND LEGALLY PRIVILEGED**

Steering Group Meeting: 12 July 2017

DECISION: *Should Post Office allow Freeths access to Second Sight?*

1. SUMMARY:

Freeths want to discuss their clients' cases with Second Sight but Second Sight are contractually bound to Post Office to maintain confidentiality and privilege.

This matter was put before the PLSG in October 2016, with Bond Dickinson being instructed to try to agree a "Protocol" for allowing access to Second Sight but on terms that protected Post Office's privileged information. Bond Dickinson has been negotiating this Protocol with Freeths over several months. We believe that we have now reached an agreement as a result of Freeths making a number of recent concessions.

The key points of the Protocol are that:

- Freeths shall not request any documents from Second Sight, with any such requests to be addressed to Bond Dickinson.
- Freeths and Second Sight may only discuss matters within Second Sight's recollection of events.
- Freeths and Second Sight will not discuss information which is privileged (as Second Sight did historically have access to Post Office's privileged legal files).
- Freeths and Second Sight will not discuss anything that relates to criminal prosecutions or civil law proceedings (these being areas where there is a high risk of privileged information).
- Post Office will not pay Second Sight's costs.

2. ADVANTAGES OF ALLOWING ACCESS

- Post Office can claim it is acting reasonably and cooperatively, and is not seeking to conceal matters. Failure to grant access will appear deeply unreasonable to a judge, given that from an outsider's perspective Second Sight are an obvious source of valuable information.
- Allowing access avoids Freeths applying to the Court for an Order which grants them access (which would more than likely be a successful application and could be on wider terms than the Protocol).

3. DISADVANTAGES OF ALLOWING ACCESS

- Post Office cannot monitor or control completely the communications between Second Sight and Freeths or the information they exchange, with a risk that privileged or commercially sensitive information is exchanged. There are safeguards in the Protocol to protect against this but it is impossible to remove this risk entirely.
- Second Sight may provide Freeths with information which leads Freeths to raise matters of little or no relevance to these proceedings, causing wasted efforts to respond to Second Sight's allegations.

4. RECOMMENDATION

Post Office should allow Freeths access to Second Sight as governed by the terms of the Protocol.

In "off the record" discussions with Freeths, they have made clear that they do not see Second Sight as a key source of information for them. They are also "not naïve" as to the limitations of Second Sight. We have made clear to Freeths that they should rely on Second Sight with caution and believe that this point was accepted.