

Private and confidential - M54.

Decision of Sir Anthony Hooper.

1. In accordance with the arrangements in place to resolve issues on which the two members of the Working Group ("WG") cannot agree, I have to decide whether M54 (TAM) should be submitted for mediation by CEDR. JFSA has voted in favour of mediation and PO against. SS has recommended mediation.
2. It was agreed at the meeting that I should apply the following test:

On the assumption that both parties will approach mediation in a genuine attempt to reconcile their differences, is it reasonably likely that mediation will lead to an agreed resolution of the issues.

3. I ignore the fact that PO may refuse to submit to mediation even if the WG were to vote, by a majority, in favour.
4. I have considered the following documents:

CQR marked as received 20th November 2013
Post Office Investigation Report 4 April 2014
Email from SS to Porter Dodson dated 28 April and response dated 29 April 2014
Letter from Porter Dodson to SS dated 6 June 2014 in response to SS draft report
POL letter dated 6 June re SS draft report
SS Case Review Report dated 11 June 2014

5. Paragraph 1.5 of the SS Case Review Report sets out the ten key issues raised by the applicant. In accordance with guidance from the Working Group, the Report concentrates on the £11,886.77 shortfall found by PO on 29 September 2011 and the £2000 transaction referred to in paragraph 1.6.
6. As to the £2000 transaction, SS concludes, in accordance with PO's view, that there is no evidence that the transaction contributed to any deficiency. In the light of this, the PO would, in my view, be acting reasonably in not agreeing to pay any part of this sum. It is not reasonably likely that mediation will lead to the PO agreeing to do so.
7. As to the £11,887.77 shortfall, SS concludes that the applicant was responsible for at least £9,500 and possibly the balance. SS also states that a full investigation was not carried out and if such an investigation has been carried out or if key documents had been preserved, it may have been possible to establish how and when it occurred.
8. There is no dispute that the applicant on 29 September gave PO a personal cheque in the sum of £9500 (which she states she had in her account) believing that this would cover the shortfall. She states that she knew that there was a shortfall although she did not know the precise amount. She states that she believed that it was less than £9500 (paragraph 2 a of letter dated 29 April 2014).
9. PO had received information in August that there was a shortfall of some £12000.

10. In the absence of any further information and given SS's finding that a full PO investigation at the time might have revealed how the loss occurred, mediation may well have been appropriate. However PO claims that that the applicant said to the auditors on 29 September that she had removed the cash the night before for "something personal". Whereas PO does not necessarily accept that the cash was taken the night before as opposed to some earlier time, PO say that this answer shows that the applicant took PO money for her personal use.
11. The applicant both in November 2011 and now denies any such assertion and claims that Horizon is the cause of the loss.
12. In the light of the PO position on the £11,887.77 shortfall, supported to an extent by SS, PO would, in my view, be acting reasonably in not agreeing to pay any part of this sum. It is not reasonably likely that mediation will lead to the PO agreeing to do so.
13. I make it clear that I am not deciding any disputed factual issue. In particular I am not deciding whether the applicant did or did not admit that she had taken money for personal use. Any such decision would probably require a decision maker to hear oral evidence in order to reach a sound decision (and the passage of time might make it very difficult to do so). I am deciding no more than that PO would be reasonably entitled to conclude that the applicant did take the money for personal use.
14. I have considered whether there are any other issues which might lead to some non-financial resolution of the case. In the light of my conclusions and having read the PO Investigation Report carefully, and the concessions made therein (albeit comparatively minor), it is not reasonably likely that mediation will lead to such a resolution.
15. In conclusion I cast my vote against submitting this case for mediation. It follows that the decision of the Working Group, by a majority, is that the case will not be submitted by the Working Group to mediation.

Sir Anthony Hooper

24 June 2014