

## **MINUTE**

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

**8<sup>th</sup> DECEMBER 2014**

**MATRIX CHAMBERS**

#### **Attendees**

Sir Anthony Hooper (Chair)  
Kay Linnell (JFSA)  
Ron Warmington (Second Sight)  
Ian Henderson (Second Sight)  
Chris Holyoak (Second Sight)  
Chris Aujard (Post Office)  
Belinda Crowe (Post Office)  
Angela Van Den Bogerd (Post Office)  
Tom Wechsler (Post Office)  
Andy Parsons (Bond Dickinson)

#### **Agenda**

1. Minutes of 14 November meeting
2. Update on Part 2 progress
3. Post Office provision of legal documents
4. Scheduling of proposed face to face meetings in 2015 and confirmation of call frequency.
5. Standing case agenda:
  - 5.1 Priority Cases
  - 5.2 Bankruptcy cases
  - 5.3 Post Office investigation progress
  - 5.4 Cases with Second Sight to review PO investigation reports
  - 5.5 Cases Second Sight have reported on
  - 5.6 Cases that have been passed to CEDR
  - 5.7 Queries from applicants/advisors
  - 5.8 AOB
6. Cases for decision:
  - a) Second Sight do not recommend mediation  
M116
  - b) Second Sight recommend mediation:  
M008, M032, M046, M059, M067, M090, M132, M135
  - c) Second Sight recommend mediation:  
M042

Kay Linnell informed the Working Group that Alan Bates had sent her a message that morning to say that he was unable to attend the meeting.

### **1. Minutes of 14 November meeting**

The minutes of the meeting of 14 November were agreed.

### **2. Update on Part 2 progress**

Further to the discussion at November's Working Group meeting, Ian Henderson reported progress on the completion of Second Sight's Part Two Report. Key points included:

- Second Sight were on track to submit their outstanding questions to Post Office by 9 December, in line with the agreed schedule;
- there were a 110 questions but these were intended to be comprehensive;
- it was a likely that there would be supplementary questions following Post Office's response;
- Post Office were due to respond to Second Sight's questions by 6 January and meeting had been set for 9 January to go through the detail of their responses; and
- in the meantime, Second Sight would begin to update their draft report using Post Office's response and other material received from Post Office, along with cross-referencing the questions to the relevant source material.

Chris Aujard asked if he may report Second Sight's update within the Post Office. This was agreed.

The Chair said that he still wished Second Sight to address the question of who the most likely beneficiary from losses in branch was. If, for example, the customers were the most likely beneficiary from counter errors generating a loss then he would like to see that reflected in Second Sight's reports. Post Office agreed that, where possible, they would also set this out in the remaining POIRs and CRR responses. Ron Warmington suggested it if it was not theft in branch, the beneficiary was likely to be the customer.

The Chair said that reading through a number of cases had left him with the impression that a number of people appointed as Subpostmasters were unable to cope with the role.

### **3. Post Office provision of legal documents**

Belinda Crowe reported progress on the provision of legal documents to Second Sight from Post Office. Key points included:

- an update was sent to Second Sight on 4 December on progress with their requests;
- the Secretariat were now tracking progress against Second Sight's requests;
- In a significant number of cases there were no further documents to be shared. However, Post Office were checking thoroughly in each case;
- where documents did exist it took some time for the files to be retrieved, papers copied and information redacted (where for example it contains personal data such as bank account numbers); and
- a list of priority cases had been agreed based on where progress in completing CRRs or resubmitting them was dependent on the provision of legal documents (should they exist).

#### 4. Scheduling of proposed face to face meetings in 2015 and confirmation of call frequency

It was agreed that Working Group meetings should be scheduled up to the end of June 2015, starting with a meeting on 14 January. It was also agreed that a Working Group call would be scheduled on a fortnightly basis on the Thursday between each Working Group meeting.

**Action: Secretariat to circulate potential dates for future meetings and schedule when agreed.**

#### 5. Standing Agenda

##### 5.1 Priority cases

Case No.	Status
M052	Final report originally received 18 September, revised version received 23 September. Second Sight awaiting further information from POL.
M073	Final CRR received 21 October. Second Sight to resubmit Final CRR
M086	Investigation has been prioritised – POIR finalised 2 December. Due for circulation.
M119	POIR finalised. Due date for delivery of Draft CRR 06 February 2014.

Belinda Crowe reported that:

- M086 – The POIR had been uploaded on 4 December with a date for the draft CRR set for 16 January.
- M119 – Second Sight had agreed to bring forward delivery of the draft CRR to 3 January.

##### 5.2 Bankruptcy cases

Case No.	Status
M001	SS Final report received 18 September. Second Sight to review in light of Working Group discussion of 17 October.
M029	SS Final report received 18 September. Second Sight to resubmit Final CRR.
M032	SS Final report received 15 November. See agenda item 6.b
M036	Draft CRR received 13 November. Final due 05 December.
M069	PO investigation received 11 November 2014. Draft CR due 30 January

Case No.	Status
M081	PO investigation on-going, report due by 8 December.
M089	PO investigation received 18 November 2014. Draft CRR due 06 February
M100	PO investigation received 17 October. Draft CRR due 12 December.
M118	PO investigation received 16 October. Draft CRR due 28 November.
M122	PO investigation received 01 October. Draft CRR due 05 December.
M128	PO investigation on-going, report due by 22 December
M150	PO investigation on-going, report due by 8 December.

Belinda Crowe reported that:

- M036 – the Final CRR was received on 3 December
- M118 – Second Sight had requested an extension until 15 January. **This was agreed.**

Kay Linnell asked that the Working Group to note that the arrangements agreed between Moore Stephens and Post Office could add a 4-8 week delay to a case proceeding to mediation but that this was probably unavoidable.

### 5.3 Post Office Investigation Progress

#### i) New scheduling to note

No new scheduling to note

#### ii) Overdue cases

Belinda Crowe reported that:

- M096, M106, M110, M086 had been uploaded to Huddle.
- M094 was to be uploaded that day and all remaining overdue cases would be uploaded that week.

### 5.4 Cases with Second Sight to review Post Office Investigation Reports

#### i) New scheduling to note

Case No.	Date passed to SS	SS planned scheduled delivery date
M004	24 November 2014	20 February 2015
M010	24 November 2014	20 February 2015
M020	17 November 2014	30 January 2015

M037	13 November 2014	30 January 2015
M069	11 November 2014	30 January 2015
M085	26 November 2014	20 February 2014
M089	18 November 2014	06 February 2015
M098	20 November 2014	13 February 2015
M103	10 November 2014	23 January 2015
M113	18 November 2014	06 February 2015
M114	28 November 2014	27 February 2015
M119	18 November 2014	06 February 2015
M130	27 November 2014	27 February 2015
M131	27 November 2014	27 February 2015
M139	24 November 2014	13 February 2015
M142	20 November 2014	13 February 2015

ii) **Overdue cases**

Case No.	Date passed to SS	SS planned scheduled delivery date	SS revised scheduled delivery date
M038	12 October 2014	28 November 2014	TBC
M040	12 September 2014	31 October 2014	Drafts being held pending receipt of legal files
M077	12 September 2014	07 November 2014	Drafts being held pending receipt of legal files
M118	16 October 2014	28 November 2014	TBC

**M038** - Belinda Crowe reported that Second Sight had requested an extension until 19 December. **This was agreed.**

**5.5 Cases that Second Sight have reported on**

Case No.	SS draft report issued	Deadline for comments	SS final report due	SS Final Report completed	WG decision
M001	17 July 2014	04 September 2014	<i>Second Sight rewriting their CRR following WG meeting of 17/10</i>	18 September 2014	Second Sight to review in light of Working Group discussion of 17 October
M003	11 September 2014	19 September 2014	<i>Second Sight rewriting their CRR following WG meeting of 17/10</i>	Second Sight have resubmitted 07 November 2014	Second Sight to review light of Working Group discussion of 14 November
M008	21 October 2014	30 October 2014	<i>6 November 2014</i>	28 November 2014	See agenda item 6.b
M011	25 September 2014	07 October 2014	<i>24 October 2014</i>	23 October 2014	Second Sight to resubmit Final CRR

M013	26 September 2014	07 October 2014	<i>24 October 2014</i>	23 October 2014	Second Sight to review in light of Working Group discussion of 14 November
M017	15 September 2014	25 September 2014	<i>02 October 2014</i>	05 October 2014	Applicant provided comments on final CRR. SS to refer.
M018	15 September 2014	10 October 2014	<i>17 October 2014</i>	24 October 2014	Second Sight to review in light of Working Group discussion of 14 November
M024	07 November 2014	04 December 2014	<i>12 December 2014</i>	-	-
M027	28 November 2014	-	-	-	-
M029	27 August 2014	10 September 2014	<i>17 September 2014</i>	18 September 2014	Second Sight to resubmit Final CRR
M031	27 October 2014	06 November 2014	<i>13 November 2014</i>	28 November 2014	See agenda item 6.b
M032	16 October 2014	28 October 2014	<i>04 November 2014</i>	15 November 2014	See agenda item 6.b
M034	10 November 2014	9 December 2014	<i>19 December 2014</i>	-	-
M035	11 August 2014	04 September 2014	<i>11 September 2014</i>	19 September 2014	Second Sight to resubmit Final CRR
M039	27 August 2014	05 September 2014	<i>12 September 2014</i>	14 September 2014	Second Sight to resubmit Final CRR
M041	13 November 2014	04 December 2014	<i>12 December 2014</i>	-	-
M042	14 October 2014	28 October 2014	<i>04 November 2014</i>	19 November 2014	See agenda item 6.c
M045	24 November 2014	09 December 2014	<i>19 December 2014</i>	-	-



M046	7 November 2014	31 October 2014	<i>28 November 2014</i>	25 November 2014	See agenda item 6.b
M049	03 October 2014	23 October 2014	<i>30 October 2014</i>	29 October 2014	Second Sight to resubmit final CRR
M051	27 October 2014	06 November 2014/Applicant 11 November 2014	<i>21 November 2014</i>	Overdue	-
M052	28 July 2014	04 September 2014	<i>18 September 2014</i>	18 September 2014	Second Sight to review - awaiting legal documentation from POL
M053	10 October 2014	21 October 2014	<i>28 October 2014</i>	13 November 2014	See agenda item 6.b
M058	05 October 2014	14 October 2014	<i>21 October 2014</i>	28 October 2014	Second Sight to resubmit Final CRR
M059	31 October 2014	14 November 2014	<i>21 November 2014</i>	19 November 2014	See agenda item 6.b
M062	20 June 2014	22 July 2014	<i>31 July 2014</i>	31 July 2014 Revised version uploaded 23 September	Second Sight to resubmit Final CRR
M063	08 October 2014	17 October 2014 - Applicant 27 October 2014	<i>17 October 2014</i>	10 November 2014	SS to resubmit final CRR
M065	23 September 2014	02 October 2014	<i>09 October 2014</i>	08 October 2014	Second Sight to resubmit Final CRR
M067	19 October 2014	28 October 2014	<i>04 November 2014</i>	15 November 2014	See agenda item 6.b
M068	24 November 2014	-	-	-	-
M071	7 November 2014	09 December 2014	<i>19 December 2014</i>	-	-
M072	08 October 2014	17 October 2014	<i>24 October 2014</i>	Second Sight awaiting legal documentation from POL	-
M073	24 September 2014	03 October 2014	<i>24 October 2014</i>	21 October 2014	Second Sight to resubmit Final CRR

M087	19 November 2014	-	-	-	-
M090	16 October 2014	28 October 2014	<i>04 November 2014</i>	28 November 2014	See agenda item 6.a
M091	31 October 2014	19 November 2014	<i>25 November 2014</i>	Applicant has requested extension. Deadline for comments has not been agreed.	-
M093	31 October 2014	14 November 2014	<i>21 November 2014</i>	25 November 2014	See agenda item 6.b
M095	7 November 2014	04 December 2014	<i>12 December 2014</i>	-	-
M097	10 October 2014	23 October 2014	<i>30 October 2014</i>	Second Sight awaiting legal documentation from POL	-
M116	12 October 2014	POL - 23 October 2014 Applicant requested extension - 19 <sup>th</sup> November 2014	<i>26 November 2014</i>	25 November 2014	See agenda item 6.a
M120	21 November 2014	-	-	-	-
M121	21 November 2014	-	-	-	-
M132	16 October 2014	28 October 2014	<i>04 November 2014</i>	13 November 2014	See agenda item 6.b
M133	21 November 2014	-	-	-	-
M135	29 October 2014	13 November 2014	<i>23 November 2014</i>	19 November 2014	See agenda item 6.b

Belinda Crowe said that M031, M053 and M093 were listed for discussion today. However, Post Office had agreed to mediation and the Secretariat had passed the cases to CEDR.

Tom Wechsler reported that the Secretariat had reported the Working Group's decision on granting an extension for comments to the applicant's advisor in case M091. The advisor had still not provided a date when comments could be expected despite having been reminded to do so.. Given the applicant's circumstances, **it was agreed that the Working Group would wait until after Christmas before pressing the matter further.**

## 5.6 Cases where the Working Group has made mediation recommendation

Belinda Crowe said that the spreadsheet incorrectly showed that M048 was with CEDR. It had in fact been settled prior to mediation.

Of the cases where the Working Group had concluded its consideration, 20 had been passed to CEDR for mediation. Of those 20, Post Office had declined to mediate 2 cases.

## 5.7 Any other queries raised by Applicants / Advisors



No queries raised

## **5.8 AOB**

None

## **6. Cases for decision**

### **a) Second Sight do not recommend mediation**

Kay Linnell said that Alan Bates had asked her to report to the Working Group that he required 4 weeks to consider any case where mediation was not recommended rather than 10 days as previously advised.

**Action: Secretariat to reschedule consideration of case M116 for January's Working Group meeting and draft a letter to inform the applicant of the delay in considering his case**

### **b) Second Sight recommend mediation**

The Chair asked Kay Linnell if she was able to stay for the remaining discussion in order to offer a view on behalf of JFSA. She replied that she was able to stay as an observer but not to take part in the discussion.

Chris Aujard said that the Post Office continued to be concerned that JFSA were not taking part in Working Group discussions on cases. There were a number of cases for discussion where the decisions were very balanced. He wished to place on record Post Office's continued encouragement to JFSA to play a full part in Working Group discussions so that the Working Group may benefit from their views and knowledge of the applicants.

The Chair said that JFSA's decision not to participate remained unsatisfactory and placed a significant burden on him when casting his determining vote and on Second Sight who were, in effect, called up to make the case for the applicant. He understood that Alan Bates did not agree with his ruling on the role of the Working Group in determining the suitability of cases for mediation. However, he had made his ruling was not prepared to change it. He asked Kay to ask Alan to reconsider his position.

The Chair said that when he had made his ruling he had not anticipated that Post Office would be inclined to vote against Second Sight's recommendation in as many cases as they appeared to be doing. His expectation was that cases would be subject to a Working Group discussion and his casting vote by exception. This had not turned out to be the case.

Post Office responded that they had not determined how they wished to vote prior to the Working Group meeting in a significant number of cases. The reason for asking for the cases to be discussed at Working Group meetings was to establish greater understanding of the rationale behind Second Sight's recommendations. Post Office is particularly concerned as Second Sight were recommending mediation in almost all cases. They were particularly concerned about raising the expectations of applicants that resolution may be achieved through mediation where cases had been described by Second Sight as "weak", where there was little information available or where Second Sight had also suggested that an applicant might benefit from a discussion with Post office so that the relevant issues could be explained.

The Chair suggested that these were issues that could be resolved prior to the Working Group between Post Office and Second Sight. He wanted to be clear prior to the meeting on exactly which cases he might be required to exercise his casting vote. .

He suggested that the meeting adjourn for a short period so that Post Office and Second Sight might consider how to proceed with the remaining cases for discussion. **This was agreed.**

The meeting reconvened.

Chris Aujard reported that following their discussion Post Office and Second Sight agreed that under the present arrangements Second Sight only had the choice to recommend, whether a case was suitable for mediation or not. However, there was a category of cases that whilst Second Sight believed them to be weak the applicant would benefit from an explanation of events that had led to their difficulties. Despite the other weaknesses of the case, they felt the benefit of an explanation tipped the balance of argument in favour of mediation rather than no discussion at all. For its part Post Office had indicated on a number of cases that they were content to meet with applicants and offer an explanation of events but they remained concerned in such cases that agreeing to mediation raised the expectations of applicants that alternative resolution may be achieved.

It was proposed that Post Office and Second Sight work up a third option for the Working Group to consider in these circumstances currently described as a “structured discussion”. This would not take the form of a formal mediation but instead offer a forum in which Post Office and the applicant could work through the events that had led to the applicant’s difficulties so that they may understand them better.

Following a discussion, the Working Group agreed that Post Office and Second Sight should work up a proposition for a “structured discussion” options for the Working Group to consider. That proposition should take account of the following points:

- whether a 3<sup>rd</sup> party might facilitate such a discussion;
- whether applicants might be accompanied by their legal advisors; and
- what would happen if new information emerged during the course of the discussion.

Post Office were asked whether, should this alternative proposition be agreed, they would agree to the majority of Second Sight’s recommendations. Post Office said that they could not commit to that but if Second Sight’s recommendations for cases suitable for mediation were based on evidence of some wrong-doing on the part of Post Office there was a far greater likelihood that they would consider it appropriate to do so.

The Chair asked Post Office to look again at its view on the suitability of cases for mediation where there had been a criminal conviction. Post Office agreed to do so.

**Action: Post Office and Second Sight to work up a proposition for an option of a “structured discussion” for the Working Group to consider at its meeting in January.**

It was agreed that no cases scheduled for discussion under item 6b would be discussed. The Chair invited Second Sight to consider how many of those cases might be more suited to a “structured discussion” rather than mediation in preparation for January’s Working Group meeting.

**Action: Second Sight to consider how many of those cases might be more suited to a “structured discussion” rather than mediation in preparation for January’s Working Group meeting.**

**Action: Secretariat to draft a letter to inform the applicants of the delay in considering their cases.**

#### **c) Second Sight recommend mediation**

Belinda Crowe explained that in case M042, Second Sight recommended mediation be deferred until the completion of their Part Two report. Post Office had indicated that they were content to mediate the case now. It was recommended that the precedent set at the

last Working Group meeting be followed and that the applicant be given the choice. This was agreed.

**Action: Secretariat to a draft letter to the applicant in case M042, informing them that the Working Group had decided that their case was suitable for mediation and offering them the choice of mediating now or when the Part Two Report had been finalised, in the knowledge that this was not likely to be before end March 2015.**

**Date of Next Meeting**

14<sup>th</sup> January, Noon