

MINUTE

Working Group for the Initial Complaint Review and Case Mediation Scheme

14 January 2015

MATRIX CHAMBERS

Attendees

Sir Anthony Hooper (Chair)
Alan Bates (JFSA)
Ron Warmington (Second Sight)
Chris Holyoak (Second Sight)
Ian Henderson (Second Sight)
Angela Van Den Bogerd (Post Office)
Chris Aujard (Post Office)
Patrick Bourke (Post Office)
Belinda Crowe (Post Office)
Tom Wechsler (Post Office)

Agenda

1. Minutes of 8th December meeting
2. Message from Alan Bates
3. Scheduling of proposed face to face meetings in 2015
4. Structured Discussion
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 where the Working Group has made mediation recommendation
 - 5.7 Queries from applicants/advisors
 - 5.8 AOB
6. Cases for decision:
 - a) Second Sight do not recommend mediation:
M017, M116
 - b) Second Sight recommend mediation and POL does not agree:
M001, M041, M046, M090, M120,
 - c) Second Sight recommend deferred mediation:
N/A
 - d) Second Sight recommend mediation and POL agree:
M008, M025, M032, M036, M067, M121, M132, M135

- e) Second Sight recommend mediation, POL agrees, but Second Sight recommend mediation is deferred pending Part Two report:

M024, M034, M051, M059, M133

Apologies

Apologies had been received from Kay Linnell and Andy Parsons.

Chris Aujard introduced Patrick Bourke to the Working Group. Patrick was attending the meeting to assist continuity in the absence of Andy Parsons.

1. Minutes of 8th December meeting

Kay Linnell had suggested an amendment to the minutes of the last meeting about the time JFSA needed to consider cases where Second Sight did not recommend mediation. Chris Holyoak suggested a small number of amendments relating to the scheduling of cases. All amendments were agreed.

Action: Secretariat to amend the minutes of December's minutes in line with Kay and Chris's suggestions.

2. Message from Alan Bates

Alan Bates had sent an email to the Secretariat on 8 January suggesting that the Working Group meeting should be cancelled pending a response from the Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs to the recent Adjournment Debate in Westminster Hall and JFSA's subsequent letter to her. Alan explained that he hoped for significant changes on following the Minister's response and consequently he did not wish to be involved in making decisions within the Working Group. His principal concern was the 2 cases scheduled for discussion where Second Sight had not recommended mediation (agenda item 6a).

Chris Aujard said that Post Office had been keen for the meeting to take place in order that progress could be made on other agenda items as well as individual cases.

The Chair welcomed Alan's clarification of his email and said that given Post Office had expressed a wish for the meeting to go ahead and as a result he had decided that it should. He asked for further clarification that Alan was content for the Working Group to discuss cases where Second Sight had recommended cases for mediation but Post Office had voted against (agenda item 6b). Alan said that, notwithstanding his ongoing view that this was not the role of the Working Group, he accepted that the discussion could take place although he would not take part in it.

3. Scheduling of proposed face to face meetings in 2015

The Secretariat had circulated a list of potential dates for Working Group meetings in the first half of the year. All members of the Working Group were available on the proposed dates for February, April and May. However, some members of the Working Group were not available for the proposed dates for March and June.

Action: Secretariat to schedule Working Group meetings for 13 February, 16 April and 14 May; and to circulate alternative dates for meetings in March and June.

4. Structured Discussion

Following the discussion at the last Working Group, the Secretariat had circulated a paper setting out a proposal for how applicants could be offered a "structured discussion" in some cases where, for example, Second Sight had described their application as weak and the Working Group did not consider them suitable for mediation. The Chair said that, if agreed, this would offer 3 possible outcomes for the Working Group to consider as opposed to the current choice between mediation or not, specifically Working Group members could vote:

- in favour of mediation;
- against mediation but in favour of a structured discussion; or
- against mediation and a structured discussion.

The following points were made in discussion:

- this option was already available within the Scheme and Second Sight had used a similar formulation in a number of CRRs;
- it was helpful to have greater definition of how a discussion might be structured;
- it was also helpful to have an alternative means of resolution in cases where, for example, applicants had made significant mistakes; and
- there should be a means for applicants to have their case looked at again if significant new information comes to light through a structured discussion.

The Working Group agreed to the proposed approach to a structured discussion subject to one additional element. The Chair asked Post Office to consider allowing applicants, via their advisors, to refer their case back to the Working Group in the circumstances where significant new facts or information came to light through a structured discussion. In these circumstances the Chair would use his casting vote to determine whether the case should proceed to mediation. Post Office agreed.

Action: Secretariat to amend the proposal in line with the Working Group's decision and draw up a document for applicants setting out the terms of a structured discussion.

The Chair asked the Post Office to consider whether a structured discussion might be offered to the applicants in the two cases where the Post Office had declined mediation following a Working Group decision. Post Office agreed to consider the issue.

Action: Post Office to consider offering a structured discussion to the applicants in cases M015 and M030.

Additional Agenda Item: Update on Part Two Report

The Chair asked Second Sight to provide an update on progress in completing their Part Two report. Ian Henderson reported that:

- Second Sight had issued 97 questions to Post Office on 9 December 2014;
- Post Office had replied on 7 January;
- Post Office's response had:
 - answered 64 questions, providing new information;
 - suggested 22 questions were disproportionately wide;
 - suggested 7 questions were out of scope; and
 - sought clarification on 4 questions.
- Second Sight and Post Office had met on 9 January to discuss Post Office's response and made further progress; and
- in his assessment, they remained on course to complete the report by the end of March.

The Chair asked if Post Office was able to answer the question on suspense accounts that had been posed for several months. Ian reported that the information had not yet been provided. The Chair asked that this be addressed as a matter of urgency and suggested that Post Office arrange a meeting between Second Sight and Post Office finance staff to do so. This was agreed.

Action: Post Office to arrange a meeting with Second Sight to discuss suspense accounts.

Ian reported that there were also issues with a number of other questions including:

- the provision of emails covering a year (2008) from all staff based in Bracknell;

- issues around branch closure; and
- the provision of evidence of any criticism of Post Office in any prosecutions.

Ian said that Post Office had suggested that the first two questions were too wide and that they were not aware of any issues relating to the third but were unable to prove this was the case.

Chris Aujard said that Post Office were prepared to answer any question that related to a case in the Scheme in order that the Part Two Report should allow CRRs to be completed and assist with mediation.

The Chair said that the Part Two report was intended to address whether there is an issue with Horizon so that it might assist applicants in understanding how a loss may be incurred. It was essential that this was completed by the end of March. Looking at the specific questions posed in the discussion, he agreed that the first two questions were too wide and asked Second Sight to narrow their questions. Where Post Office were unable or unwilling to answer a question Second Sight should say so. This was agreed.

Action: Second Sight to narrow the scope of their question on access to emails from staff based in Bracknell, and branch closure.

Action: Second Sight to complete their Part Two Report by end March 2015.

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	POIR finalised 04 December 2014. Due date for Draft CRR 16 January 2015
M119	POIR finalised 18 November 2014. Due date for delivery of Draft CRR 09 January 2015.

Belinda Crowe reported that Second Sight had uploaded the draft CRR on case M119 on 13 January.

5.2 Bankruptcy cases

Case No.	Status
M001	SS Final report received 18 September. Second Sight reviewed in light of Working Group discussion of 17 October. See agenda item 6.b
M029	SS Final report received 18 September. Second Sight to resubmit Final CRR
M032	SS Final report received 15 November. See agenda item 6.d

Case No.	Status
M036	Final CRR received 03 December. See agenda item 6.d
M069	PO investigation received 11 November. Draft CRR due 30 January
M081	PO investigation received 22 December. Draft CRR due 03 April
M089	PO investigation received 18 November. Draft CRR due 06 February
M100	Draft CRR received 31 December. Final due 23 January
M118	PO investigation received 16 October. POL considering additional information
M122	Draft CRR received 14 December
M128	PO investigation on-going, report due by 14 January
M150	PO investigation received 22 December. Draft CRR due 24 April

Angela Van Den Bogerd said that new evidence had been presented by the applicant in case M118 and that consequently Post Office wished to review the POIR to check whether any changes were required. **A 6 week extension was agreed.**

5.3 Post Office Investigation Progress

i) Overdue cases

M128, M141, M148, M149

Belinda Crowe reported that the POIR in case M141 had been uploaded on 13 January. The remaining reports were expected by the end of the 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
M044	12 December 2014	13 March 2015
M047	18 December 2014	20 March 2015
M061	23 December 2014	05 April 2015
M070	24 December 2014	10 April 2015
M080	15 December 2014	20 March 2015
M081	22 December 2014	03 April 2015
M082	22 December 2014	10 April 2015
M084	15 December 2014	20 March 2015
M086	04 December 2014	16 January 2015
M088	12 December 2014	13 March 2015
M094	12 December 2014	13 March 2015
M096	04 December 2014	03 March 2015

M098	20 November 2014	13 February 2015
M102	23 December 2014	10 April 2015
M106	04 December 2014	06 March 2015
M110	05 December 2014	06 March 2015
M129	18 December 2014	27 March 2015
M134	24 December 2014	17 April 2015
M138	23 December 2014	17 April 2015
M144	22 December 2014	17 April 2015
M146	23 December 2014	03 April 2015
M150	22 December 2014	24 April 2015

ii) **Overdue cases**

Case No.	Date passed to SS	SS planned scheduled delivery date	SS revised scheduled delivery date
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

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	See agenda item 6.b
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.d
M011	25 September 2014	07 October 2014	<i>24 October 2014</i>	23 October 2014	Second Sight to review light of Working Group discussion of 14 November
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	See agenda item 6.a
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>	14 December 2014	See agenda item 6.e
M025	13 November 2014	26 November 2014	<i>02 December 2014</i>	03 December 2014	See agenda item 6.d
M027	28 November 2014	-	-	-	-
M029	27 August 2014	10 September 2014	<i>17 September 2014</i>	18 September 2014	Second Sight to review in light of Working Group discussion of 17 October
M032	16 October 2014	28 October 2014	<i>04 November 2014</i>	15 November 2014	See agenda item 6.d
M034	10 November 2014	9 December 2014	<i>16 December 2014</i>	15 December 2014	See agenda item 6.e
M035	11 August 2014	04 September 2014	<i>11 September 2014</i>	19 September 2014	Second Sight to resubmit Final CRR following receipt of legal documents from POL
M036	13 November 2014	27 November 2014	<i>05 December 2014</i>	03 December 2014	See agenda item 6.d
M039	27 August 2014	05 September 2014	<i>12 September 2014</i>	14 September 2014	Second Sight to review in light of Working Group discussion of 17 October
M041	13 November 2014	04 December 2014	<i>12 December 2014</i>	15 December 2014	See agenda item 6.d
M043	09 December 2014	30 December 2014	<i>14 December 2014</i>	-	-
M045	24 November 2014	09 December 2014	<i>19 December 2014</i>	06 January 2014	-
M046	7 November 2014	31 October 2014	<i>28 November 2014</i>	25 November 2014	See agenda item 6.d
M049	03 October 2014	23 October 2014	<i>30 October 2014</i>	29 October 2014	Second Sight to review in light of Working Group discussion of 14

					November
M051	27 October 2014	06 November 2014/Applicant 11 November 2014	<i>21 November 2014</i>	05 December 2014	See agenda item 6.e
M052	28 July 2014	04 September 2014	<i>18 September 2014</i>	18 September 2014	Second Sight to review - awaiting legal documentation from POL
M058	05 October 2014	14 October 2014	<i>21 October 2014</i>	28 October 2014	Second Sight to resubmit Final CRR discussion of 14 November
M059	31 October 2014	14 November 2014	<i>21 November 2014</i>	19 November 2014	Second Sight to review in light of Working Group discussion of 14 November
M062	20 June 2014	22 July 2014	<i>31 July 2014</i>	31 July 2014 Revised version uploaded 23 September	Second Sight to review in light of Working Group discussion of 17 October
M063	08 October 2014	17 October 2014 - Applicant 27 October 2014	<i>17 October 2014</i>	10 November 2014	Second Sight to review in light of Working Group discussion of 14 November
M064	11 January 2015	-	-	-	-
M065	23 September 2014	02 October 2014	<i>09 October 2014</i>	08 October 2014	Second Sight to review in light of Working Group discussion of 17 October
M067	19 October 2014	28 October 2014	<i>04 November 2014</i>	15 November 2014	See agenda item 6.d
M068	24 November 2014	17 December 2014	<i>09 January 2015</i>	22 December 2014	-
M071	7 November 2014	09 December 2014	<i>19 December 2014</i>	14 December 2014	-
M072	08 October 2014	17 October 2014	<i>24 October 2014</i>	-	Second Sight awaiting legal documentation from POL
M073	24 September	03 October 2014	<i>24 October 2014</i>	21 October	Second Sight to

	2014			2014	resubmit Final CRR
M074	22 December 2014	-	-	-	-
M087	19 November 2014	-	-	-	-
M090	16 October 2014	28 October 2014	<i>04 November 2014</i>	28 November 2014	See agenda item 6.b
M091	31 October 2014	19 November 2014	<i>25 November 2014</i>	Applicant has requested extension. Deadline for comments has not been agreed.	Applicant has withdrawn owing to ill health – See agenda item 5.7(a)
M092	14 December 2014	30 December 2014	<i>09 January 2015</i>	-	-
M095	7 November 2014	04 December 2014	<i>12 December 2014</i>	05 December 2014	-
M097	10 October 2014	23 October 2014	<i>30 October 2014</i>	-	Second Sight awaiting legal documentation from POL
M101	11 January 2015	-	-	-	-
M105	03 January 2015	-	-	-	-
M108	31 December 2015	-	-	-	-
M109	11 January 2015	-	-	-	-
M116	12 October 2014	POL - 23 October 2014 Applicant requested extension - 19 th November 2014	<i>26 November 2014</i>	25 November 2014	See agenda item 6.a
M120	21 November 2014	17 December 2014	<i>26 December 2014</i>	31 December 2014	See agenda item 6.b
M121	21 November 2014	17 December 2014	<i>26 December 2014</i>	31 December 2014	See agenda item 6.d
M122	14 December 2014	-	-	-	-
M132	16 October 2014	28 October 2014	<i>04 November 2014</i>	13 November 2014	See agenda item 6.d

M133	21 November 2014	17 December 2014	<i>26 December 2014</i>	03 January 2014	See agenda item 6.e
M135	29 October 2014	13 November 2014	<i>23 November 2014</i>	19 November 2014	See agenda item 6.d

Belinda Crowe reported that:

- the applicant in case M091 has withdrawn from the Scheme owing to ill health;
- M055 – Post Office and the applicant has resolved the case outside the Scheme and it was now closed;
- M059 – the reference above was incorrect and the case was actually listed under agenda item 6.e. for this meeting; and
- the Secretariat had been unable to contact the applicant in case M027. They proposed treating this case in the same way as M115 ie inform their advisor that the case is considered closed unless contact can be restored within lifetime of the Scheme when the Working Group may consider the case again. This was agreed.

Action: The Secretariat to draft a letter to the applicant's advisor in case M027 following the precedent of case M115.

5.6 Cases where the Working Group has made mediation recommendation

Cases with CEDR awaiting mediation

M007, M014, M019, M031, M053, M093

Cases where applicant given choice of whether to mediate now or await Part 2:

M005, M021, M042, M078

Cases where either party have declined to mediate:

M015, M030 (both Post Office)

Cases where WG did not approve mediation:

M057, M076

Cases mediated:

M002, M006, M009, M022, M028, M054, M066, M079, M127, M143

Cases resolved prior to mediation:

M048, M126

5.7 Any other queries raised by Applicants / Advisors

- Letters from Mr De Nahlik regarding M064 and M074

The Working Group noted the content of Mr De Nahlik's emails but also that they contained some inaccuracies, notably on the treatment of cases with an associated criminal conviction.

Action: Secretariat to draft a letter to Mr De Nahlik acknowledging his messages and highlighting the inaccuracies.

5.8 AOB

Scheduling of cases

Chris Holyoak highlighted that:

- there were a number of cases where due dates for comments on draft CRRs were pending; and
- that Second Sight were awaiting an update on the provision of legal documents.

Belinda Crowe reported that many of the delays were caused by difficulties in making contact with applicants. An update on the provision of legal files would be provided shortly.

Confidentiality

Chris Aujard said that at the outset of the Scheme all members of the Working Group had committed to strict conditions of confidentiality. He asked if all members were still prepared to abide by those conditions. This was agreed.

Alan Bates left the meeting.

6 Cases for decision:

a) Second Sight do not recommend mediation:

M017, M116

b) Second Sight recommend mediation and POL does not agree:

M001, M041, M046, M090, M120,

c) Second Sight recommend deferred mediation:

N/A

d) Second Sight recommend mediation and POL agree:

M008, M025, M032, M036, M067, M121, M132, M135

e) Second Sight recommend mediation, POL agrees, but Second Sight recommend mediation is deferred pending Part Two report:

M024, M034, M051, M059, M133

The Chair said that, in accordance with Alan Bates's wish to await a response from the Minister to his letter before discussing cases, the cases listed under agenda item 6a would be carried over to February's meeting.

Action: Secretariat to schedule cases M017 and M116 for the Working Group meeting in February.

Under agenda item 6b, the Chair cast his vote in favour of deferred mediation in cases M001, M046, M090, M120.

Action: Secretariat to pass cases M001, M001, M046, M090, M120 to CEDR along with the cases listed under agenda items 6d and 6e.

The Chair said that he did not believe that case M041 was suitable for mediation but that a structured discussion would be more appropriate. However, he would not finalise his decision until February's meeting.

Action: Secretariat to note the Chair's indicative decision and schedule a further discussion of case M041 for February's meeting.