

Justice For Subpostmasters Alliance

Sir Anthony Hooper
Chairman
Initial Case Review & Mediation Scheme
148 Old Street
LONDON
EC1V 9HQ

10th November 2014

Initial Case Review & Mediation Scheme

Dear Sir Anthony

I am writing to you to convey JFSA's concerns over the current position and direction of the Initial Case Review & Mediation Scheme.

JFSA is now of the opinion that the Scheme has strayed so far from the original purpose for which it was intended, that the few Applicants who have actually reached a mediation meeting through CEDR have expressed such disappointment with the Scheme, that at least one Applicant has withdrawn.

JFSA requests it noted that:-

1.

As has been stated on many occasions, it is JFSA's view that it is not the role of the Working Group to approve which cases go to mediation for the following reasons which are contained within the main document that each of the Applicants to the Scheme received. Within it they were promised:-

- *"Post Office now wishes to offer a Scheme to Subpostmasters so that individual Subpostmasters have an opportunity to raise their concerns directly with Post Office.*
- *"The purpose of mediation is to give each side the opportunity to explain their position."*
- *"The Scheme is being supervised by a Working Group comprising of representatives from Post Office, Second Sight and the JFSA. The Working Group's role is to ensure the Scheme is run in a fair and efficient manner. It will also be involved in making decisions on how particular cases* should be managed through the Scheme. To ensure its impartiality, the Working Group is seeking to appoint an Independent Chairperson."*

- * The "**particular cases*" are identified in the main document as those that *"If the information provided by the Subpostmaster is insufficiently detailed or not clear, or information is not provided promptly, it may mean that a case is not investigated or mediated."* Or, *"If there is insufficient information for Second Sight to investigate a case, the case may not be investigated or may not proceed to mediation."* – It is these cases, and only these cases, that JFSA is prepared to discuss at the Working Group.
- *"As a result of this investigation, Second Sight will produce a Case Review summarising its findings and a recommendation on whether the case is suitable for mediation."*
- *"The Case Review should bring clarity to many cases."*
- ***"What is Second Sight's role?"*** - *Second Sight was appointed by the Rt. Hon James Arbuthnot MP and Post Office to independently review and report on the Horizon system and any associated issues. As a part of the Mediation Scheme, Second Sight will work with you to investigate your case. It will then liaise with Post Office to obtain further information before giving an assessment of your case."*
- ***"Will my case definitely be referred to mediation?"*** - *If your case is suitable and you provide accurate, detailed information to Second Sight, then this is likely in most circumstances."*

2.

That in light of a decision JFSA understands was taken at the October Working Group meeting in London, after JFSA had left, and which JFSA was informed of during the telephone meeting on 30th October 2014, with regard to a number of cases now being held back until a revised Part Two report has been prepared by Second Sight. Due to the concern that the content of the revised report may affect all cases, JFSA is of the opinion that no further cases should be released in draft form until that revised report has been produced and those cases measured against it.

That, dependent upon the content of the yet to be revised Part Two report, it should be recognized that it may be necessary to re-examine earlier cases where Second Sight has already arrived at a decision as to whether or not a case was suitable for mediation.

3.

A letter dated 14th October 2014 from Chris Aujard, Post Office's General Council, to Kay Linnell, one of JFSA's advisors, in which Post Office states that it has a statutory

duty in criminal cases to assess any material which might undermine a prosecution or assist a defendant, and asked Kay Linnell to check her records to see whether or not she held such information.

Having made such request of this JFSA advisor, JFSA is presuming that Post Office has itself undertaken its statutory duty and made similar requests to all its employees and its subsidiaries/contractors who have been involved in any way with a case leading to a prosecution of any Scheme Applicant.

In light of this request, JFSA is also presuming that Post Office has provided the independent investigations firm, Second Sight, with all documents held by Post Office and its subsidiaries/contractors relating to the cases Second Sight are investigating, and when prosecution files are requested by Second Sight, these too have been provided in order to verify all documentation was in order (An example being M030, where such information would bring clarification to point 6 of the exercise undertaken by SAH.).

4.

That, the current approach of concentrating purely on where the money went, should not be the sole deciding factor used by Second Sight in considering whether a case is suitable for mediation. The agreement given to Applicants stated that:-

- *"First, your case must relate to a financial loss **or** unfair treatment that you believe you have suffered as a result of the Horizon system **or** any associated issues."*
- *"The Scheme is open to any Subpostmaster who believes they have suffered a loss **or** been treated unfairly as a result of the Horizon system **or** any associated issues."*
- *"Second Sight will seek to determine whether there was a problem with Horizon (**or** any associated issue) that had an impact on you. If so, Second Sight will also try to determine the scale and scope of that impact on your case."*

Effectively, all the systemic failures/thematic issues that affect a case should be used in weighing the suitability of a case for mediation. The issue of where the money went has seemingly become the sole deciding issue as to whether or not a case is suitable for mediation, to the exclusion of the systemic failures/thematic issues.

Yet in many cases it is the systemic failures/thematic issues which have led to a monetary issue and whilst, either due to the passage of time or the lack of documentation, it is not always possible to establish what has happened to the money, it is far easier to prove how the systemic failures/thematic issues of a case played such an important role.

Then what is going to happen about all the cases where there was only unfair treatment due to associated issues with Horizon but there was no monetary issue?

Somehow the whole spirit of the Scheme that JFSA agreed to at the outset and planning stage has totally disappeared. The further the Scheme progresses, the more entrenched and defensive Post Office has become, and the original concept of actually seeking the truth has long since been abandoned, replaced by denial and a culture of blaming the Applicant time after time. The underlying fact that it was the failure of Post Office to correct the shortcomings of their Horizon system and its associated issues is ignored by Post Office again and again.

It is unfortunate that it has become necessary to voice these points, but continuing without raising these issues would be disingenuous to all those victims of Post Office who believed Post Office were sincere about addressing their cases.

The question now has to be asked, is there any point in continuing with the Scheme which is just being turned into a sham by the actions of Post Office?

Alan Bates
Chairman
JFSA