

**From:** Rodric Williams <[REDACTED]>  
**To:** Melanie Corfield <[REDACTED]>, Belinda Crowe <[REDACTED]>, Angela Van-Den-Bogerd <[REDACTED]>, "Parsons, Andrew" <[REDACTED]>, Patrick Bourke <[REDACTED]>, Tom Wechsler <[REDACTED]>  
**Cc:** Chris Aujard <[REDACTED]>  
**Subject:** RE: M030

**Date:** Wed, 15 Oct 2014 16:26:05 +0000

**Importance:** Normal

**Inline-Images:** image011.png; image012.png; image013.png; image014.png; image015.gif; image016.gif; image017.png; image018.jpg; image002.jpg

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My comments:

1. Tony is right that there is nothing unlawful in having a discussion. The question is whether it is reasonable, on the facts of the case (i.e. not on "purely legalistic principles"), to have that discussion when:
  - a. the only outcome acceptable to an applicant is that they find support for an appeal;
  - b. no such support will be forthcoming from POL - if it existed, it would have been provided in accordance with POL's prosecutorial duties;
  - c. compromise on the issue of whether there are grounds for an appeal is therefore extremely unlikely.
2. Tony misses the fundamental point that mediation was the second part of a two stage process, the first being the investigation and report into each and every applicant's complaint (on reflection, the extract from my para. 7 cited by Tony could have better been expressed "For the Applicant, that unfairness could manifest itself in offering false hope that ~~the Scheme~~ mediation can serve a purpose for which it was not designed nor able to deliver.").
3. It is not right to say that we shouldn't have allowed criminal cases into the Scheme, given that the Scheme provided an opportunity:
  - a. to applicants to articulate their Horizon complaint (through a paid-for PA);
  - b. to POL to investigate and report (at substantial cost) on that complaint;
  - c. which would not otherwise have been available, except through the courts (which might not have permitted the investigation);
4. Providing this opportunity doesn't mean there was anything wrong, or even amenable to mediation - that pre-supposes the outcome of the investigation. Equally, we wouldn't know if there was something wrong/ grounds for an appeal unless and until we had completed the investigation.
5. I am not aware of us having made any promises beyond that we would investigate the complaints. I cannot see therefore that POL has "given the false hope that the scheme could result in some satisfactory outcome" (whatever "satisfactory" might mean).
6. By refusing to mediate, we are addressing Tony's point on perceived unfairness - having investigated the case, we are not allowing it to progress any further (i.e. to mediation).
7. However, if Tony missed these points, then it's likely others did too. However, Alan Bates seems to have grasped them (thanks Mel!).

Rod

Rodric Williams | Litigation Lawyer

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**From:** Melanie Corfield  
**Sent:** 15 October 2014 15:03  
**To:** Belinda Crowe; Angela Van-Den-Bogerd; Parsons, Andrew **GRO** Rodric Williams; Patrick Bourke; Tom Wechsler  
**Cc:** Chris Aujard  
**Subject:** RE: M030

Here's the current media lines on criminal cases. I don't think the recent correspondence needs to change our public stance around not ruling out potential mediation for any case but there is the possibility of course that some of it could be taken out of context to attempt to undermine that position.

It might also be worth remembering that the JFSA seemed clear at the start about the limitations of the Scheme re criminal cases because they gave the following advice when the Scheme was established (albeit to presumably encourage participation in their intended class action at the time): **"Did you have a court finding against you? If yes, and although this Scheme will consider that to some degree (read the pack), we, JFSA also recommend that you should enter a parallel scheme with a firm of criminal lawyers who will look into your case with a view to consider using the appeals court to overturn the findings against you. A form to register your case for consideration can be found....."**

Mel

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**From:** Belinda Crowe  
**Sent:** 15 October 2014 13:36  
**To:** Angela Van-Den-Bogerd; Parsons, Andrew **GRO**; Rodric Williams; Patrick Bourke; Tom Wechsler; Melanie Corfield  
**Cc:** Chris Aujard; Belinda Crowe  
**Subject:** M030

In respect of Tony's response to Rod below, and given the possibility that JFSA may raise this at the meeting (that is, the central issue of whether criminal cases should have been admitted to the Scheme in the first place), we will need to have robust lines on this for the briefing pack for Friday.

Mel, we have a previously agreed comms line on this. Could you please send it across and will weave it into the briefing for the meeting.

Best wishes  
Belinda

**Belinda Crowe**

148 Old Street, LONDON, EC1V 9HQ

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**From:** Anthony Hooper **GRO**  
**Sent:** 15 October 2014 12:38

**To:** Rodric Williams  
**Cc:** Alan Bates; GRO; kay; GRO; Ron Warmington; GRO; Ian Henderson  
GRO; Belinda Crowe; Chris Aujard  
**Subject:** RE: M030

Dear Rodric,

Given that I have made my decision, it would be inappropriate for me to answer this in detail. Suffice it to say that I do not agree with the advice you have received. There is nothing unlawful in having a discussion with a person who has been convicted (whether following a private or state prosecution) whether there are possible grounds of appeal. Mediation requires a spirit of compromise and sits uneasily with a too legalistic approach.

In effect you are saying that none of the cases in which there has been a conviction or caution for theft should proceed to mediation on the central issue. If that is right, then the cases should never have been admitted to, or allowed to continue, in the scheme and the claimants should not have been given the false hope that the scheme could result in some satisfactory outcome. In paragraph 7 you write: "For the Applicant, that unfairness could manifest itself in offering false hope that the Scheme can serve a purpose for which it was not designed nor able to deliver." If the PO position is right (and in my view it is not), what would be a false hope was created when the applicant's case was admitted to, or allowed to continue, in the scheme notwithstanding the existence of a conviction/caution for theft.

Best wishes

Tony

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**From:** Rodric Williams; GRO  
**Sent:** 08 October 2014 19:21  
**To:** Anthony Hooper  
**Cc:** Belinda Crowe; Chris Aujard  
**Subject:** FW: M030

Dear Tony,

I write in connection with your written Decision in relation to case M030. Much of this email was prepared before Belinda made it clear to us that you were not, in your final paragraph, inviting comments on the Decision itself. Nevertheless, and after careful consideration, we feel it necessary to send you our comments on your Decision since it raises what we consider to be a number of important and sensitive issues, which may be of wider application within the Scheme. These are set out in the numbered paragraphs below.

1. In the Decision, you voted in favour of mediation for case M030. As we read it, you did so on the basis that you consider it reasonably likely that mediation will lead to an agreed resolution of the issue of whether Post Office would agree to support an application for permission to appeal that conviction (or, if appropriate, an application to the Criminal Cases Review Commission to investigate the matter). For the reasons set out below, we do not believe that such a resolution is possible.
2. We are advised that the established procedure for criminal appeals is designed to ensure that an appellant's grounds of appeal are fully developed, evidenced and articulated before the prosecutor (in this case Post Office) is required to form a view on that appeal. With respect, asking Post Office to consider at mediation whether to support an appeal in this case at this time seems to us to "put the cart before the horse" in that Post Office:
  - is not aware that the Applicant has decided to appeal her conviction; and
  - is not therefore aware of the grounds on which such an appeal, if one is to be forthcoming, is based.
3. We believe these two facts alone prevent Post Office from engaging in any meaningful discussion of the issue highlighted at paragraph 7 of the Decision, let alone reaching an agreed resolution of it.
4. Notwithstanding that, Post Office makes these further observations:
  - although the material prepared in connection with the Scheme has a necessarily narrow focus and was not prepared for the purposes of any appeal against a criminal conviction, it is Post Office's view that no information capable of supporting such an appeal has been generated in the Scheme by the Applicant, Post Office, or Second Sight;
  - in any event, the material prepared for the purposes of the Scheme would not and did not consider the totality of the issues that a Court would have to consider on an application for permission to appeal, namely, the safety of the conviction looking at the totality of the evidence leading to it and the Applicant's decision to plead guilty; and
  - it is inappropriate and, with respect unnecessary, for any part of the criminal appeal process to take place in the context of the Scheme. If the Applicant believes she has grounds for appeal (whether supported by material prepared in connection with the Scheme or otherwise), then she can pursue those grounds through the established Court processes and procedures, which also enable Post Office to respond at the appropriate juncture.
5. Post Office must stress that the Scheme was established for the purposes of helping to resolve the concerns of Subpostmasters associated with the Horizon system. It has been explicitly clear from the outset that the Scheme should not, indeed cannot, be regarded by Applicants or by their professional advisers as an alternative platform from which to challenge criminal convictions.
6. Anything which creates, or is capable of creating, an expectation that the Scheme can or should act as a substitute for or adjunct to the established criminal Court processes and procedures is, in Post Office's view, unfair both to the Applicant and to Post Office.
7. For Post Office, that unfairness would manifest itself in asking it prematurely to form a view on a hypothetical, undeveloped appeal, which view, by its very nature, would be susceptible to change as the appeal develops. For the Applicant, that unfairness could manifest itself in offering false hope that the Scheme can serve a purpose for which it was not designed nor able to deliver.
8. Post Office is extremely conscious of its duties in respect of criminal matters and takes great care in the exercise of its responsibilities in this area. It follows that, should an Applicant decide to appeal their conviction, Post Office will, of course, consider its ability to express support or otherwise for that appeal very carefully and in accordance with the Court's established processes and procedures.
9. In summary, it is Post Office's position that:
  - the Scheme is not a platform from which to challenge criminal convictions;
  - Post Office cannot form a view on an application for permission to appeal unless and until it is properly made and articulated; and
  - the established Court processes and procedures are the appropriate forum in which to develop and pursue an appeal against a conviction.

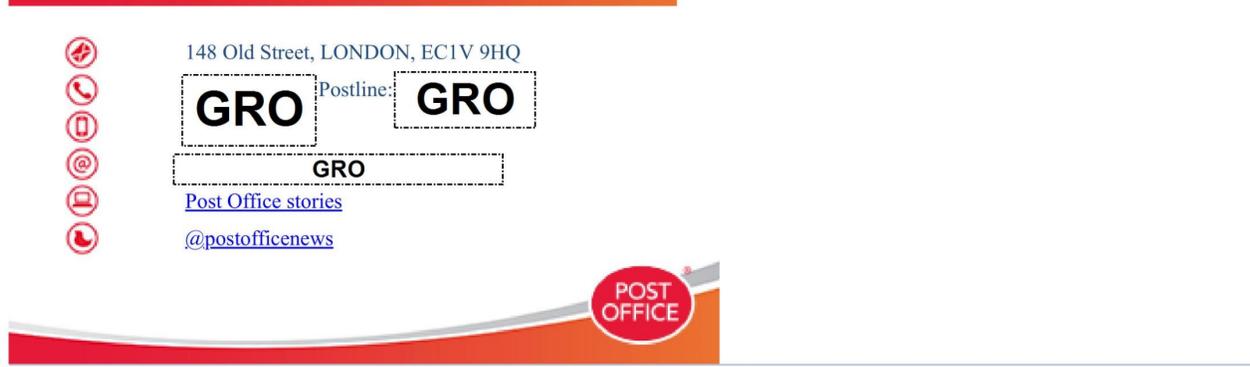
10. In these circumstances, Post Office does not believe it reasonably likely that mediation will lead to an agreed resolution of the issue highlighted at paragraph 7 of your Decision. Post Office's final decision as to whether or not it will agree to mediation in case M030 will be informed accordingly.

For the sake of completeness, and understanding now that your invitation for comment related only to the issue of how your Decision should be communicated to the Applicant, Post Office has no objection to you proceeding as you propose in paragraph 12.

We remain available to discuss this with you further as you may consider appropriate.

Yours sincerely, Rodric

Rodric Williams | Litigation Lawyer



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POST OFFICE

**From:** Belinda Crowe  
**Sent:** 02 October 2014 14:44  
**To:** 'Ian Henderson' **GRO**; 'Ron Warrington'; [c.whe](#) **GRO**; [alan.bates](#) **GRO**; [kay](#) **GRO**; Chris Aujard; [andrew.parsons](#) **GRO**; Angela Van-Den-Bogerd; Tom Wechsler; 'Anthony Hooper'  
**Cc:** Rodric Williams; Patrick Bourke; Lucy Overhill; Belinda Crowe; David Oliver1  
**Subject:** M030

Dear all,

Please find attached a copy of the Chair's decision in relation to M030.

Best wishes  
Belinda

**Belinda Crowe**  
 148 Old Street, LONDON, EC1V 9HQ

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**GRO**

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