

DRAFT ADVICE

REPLY TO JAMES ARBUTHNOT

Issue

1. How to respond to the proposition, made during your meeting with MPs on 17 November and best articulated by Oliver Letwin, that POL pre-agree to mediate all cases in the Scheme, where this is Second Sight's recommendation.

Recommendation

2. That you reply, declining to accede to the proposal, for the reasons set out in the draft letter attached at Annex A.

Timing

3. Immediate. MPs are aware that the Board meets today and will naturally expect a substantive response to their proposal to issue soon afterwards. The Chairman of POL will be seeing James Arbuthnot in Turkey as early as tomorrow and it would be better, if at all possible, for her simply to be able to support a decision taken by her Executive and leave it at that. Lastly, it is difficult to imagine that we would take any other course, given where we have got to and the views of the Board – any delay in the response would simply entail a delay in our addressing this issue head on and potentially incur needless additional cost.

Background/Argument

4. We have discussed the wisdom or otherwise of accepting this proposal since the meeting took place and came to the conclusion then that POL could not accept it, not least since it would entail the mediation of criminal cases (on which we have advice in the strongest terms that to do so would subject POL to intolerable risk; advice which the Board has accepted).
5. It would also necessarily entail the mediation of cases in which POL is not, on any reasonable view, responsible for the losses or other complaints it is alleged to be the cause of. To do so would undermine the Working Group, depriving it of its central purpose (as it is acknowledged to be by Sir Anthony Hooper). Lastly, it would commit POL to a very significant rise in spending on this project and continue to divert scarce resource away from some of the most central challenges facing POL as an organisation, to the ultimate detriment of its customers and bringing into focus the possibility of future criticism of wastefulness by Government and/or Parliament.
6. We have rehearsed, at length, the reasons for which POL should believe and display the confidence it can and must have about how it has acquitted itself throughout the process. There is, quite simply, no reason for POL to be remotely defensive. Moreover, recent advice from Leading Counsel is clear that any risk of JR is very low, both in terms of anyone being given leave to mount a challenge and, even if leave were granted, in terms of the chances of any such challenge being successful.
7. The turbulence which we can expect following receipt of the letter by Mr Arbuthnot is both manageable and may, indeed, be welcome on the basis that these developments are nothing more than the natural and expected product of the strategy adopted by the Board in relation to POL's approach to this issue over the Summer.

8. We are in good shape:

- **we have spared no effort (and no resource) in addressing the concerns first expressed to POL in 2012 by James Arbuthnot;**
- we established a Scheme, largely designed by JFSA and Second Sight;
- we appointed their recommendation for the Independent Chair;
- we pay, not only for the administration of the Scheme as a whole but also for professional advisers to assist applicants bring their complaints to us as effectively as possible;
- **we have, at all times, acted in good faith and in lines with the Terms of Reference;**
- **we, alone, have fulfilled the legally binding obligations agreed by all Parties to the Scheme;**
- **we have strongly expressed legal advice from Leading Counsel that the risk of JR is low, since all decisions relating to and/or under the Scheme have a private rather than public law character and are therefore not susceptible to JR;**
- **we have our communications and handling plans in place;**
- we have nearly completed our re-investigation of all cases within the Scheme;
- **those which we have completed confirm that Horizon works as it should; and**
- **if any of the remaining cases buck this trend, we will obviously act accordingly, but it is reasonable to assume that they will not without being complacent.**

9. The Horizon issue is one which POL is absolutely willing to deal with under the Scheme for the simple reason that the allegations call into question the reliability of the system which is the spine of the work undertaken by staff in 11,800 branches up and down the country and which supports 6.5 million transactions we perform every day for our customers (who are all someone's constituents).

10. But there must be limits. The tiny minority of subpostmaster making allegations and a small if vocal group of MPs, while deserving of respect and due process, cannot be allowed to pollute our
3 | public service mission and divert scarce resources as we continue to prove a negative.

PB 26.11.14

Track Changes

1	Insert	<i>Mark Underwood, 26/11/2014 10:21 AM</i>
2	Insert	<i>Mark Underwood, 26/11/2014 10:22 AM</i>
3	Insert	<i>Mark Underwood, 26/11/2014 10:30 AM</i>