

Note of meeting with Sir Anthony Hooper (AH) on 24 September and next steps

Attendees: Paula Vennells (PV), Alasdair Marnoch (AM), Martin Edwards (as note taker)

Key points from the meeting:

1. PV and AM opened the meeting by explaining the background to the mediation scheme and working group, highlighting that:
 - a. the PO is fully committed to making a success of the process, both for the individuals concerned and for public confidence in the institution as a whole;
 - b. that the process will require difficult judgments to be made (e.g. distinguishing between theft and 'muddle headedness') and careful balances to be drawn between opposing viewpoints; and
 - c. the role of chair will therefore require both relevant expertise/experience and broader "social skills".
2. Through the course of the subsequent discussion AH clearly demonstrated his attributes for the role:
 - a. his experience as an appellate judge managing cases that had been referred by the Criminal Cases Review Commission demonstrated his ability to sift through the facts and deploy his skills of negotiation with two opposing sides to persuade them to take the most appropriate course of action (rather than launching straight into the appeal process);
 - b. linked to this, he had direct experience of dealing with people in highly emotional states who were "dug into their position" (he gave the example of dealing with life prisoners);
 - c. he clearly understood the emotional and psychological factors that might lead some sub-postmasters to get into trouble and a spiral of false accounting;
 - d. he explained his experience of chairing complex meetings involving multiple stakeholders with conflicting agendas (in particular his experience as deputy chair of a committee which reviewed sentencing guidelines);
 - e. he recognised that one of his first priorities upon taking the role would be to establish effective relationships with the other working group members;
 - f. he said he had no problem with the work potentially being extended beyond March;
 - g. he said he would be "very interested" in advising on our future mediation/ombudsman arrangements;
 - h. he was clearly enthused by the role, summing up by saying that "it sounds fascinating" and he "would love to take it forwards"; and
 - i. finally we also observed (after the meeting) that his unassuming manner and understated authority would likely to be valuable attributes in keeping all of the individuals involved in the working group brought into the process.
3. He raised the fact that he didn't directly meet two of our specified criteria for the role:
 - a. *"successful track record of achievement at Board level within large public or independent organisation"* – we explained that we were flexible in our interpretation of this requirement and that his experience was certainly equivalent to Board level responsibilities;
 - b. *"experience of schemes of this nature and ideally of mediation or of resolving any disputes and complaints between professionals"* – while AH hadn't performed a formal mediation role in the past, we were fully reassured that his time as an appeals judge and his broader career history provided him with ample experience of the techniques associated with mediation. He also noted that he had undergone training in mediation.

4. During the conversation AH also offered a number of observations on the scheme itself and the role of chair:
- a. Overall he said he was confident that our broad approach was “absolutely the right thing to do”.
 - b. He noted that chairing the working party itself would be a challenge given the potentially conflicting interests/views of the members (but indicated that he felt capable of meeting this challenge).
 - c. He suggested (quite firmly) that it might be more appropriate for cases that have been through the courts to be referred to the Criminal Cases Review Commission rather than go through the mediation scheme. (*ACTION: explain to AH our internal process for reviewing criminal cases and why we believe it is necessary to allow some prosecuted cases to go into the mediation process*).
 - d. He highlighted that it would be important to have a clear ‘constitution’ which clarified what functions he would be performing as chair of the working group versus in an independent advisory capacity. (*NB we will need to think carefully about extending his duties beyond those directly related to the role of chair, particularly during the early phases of the mediation process, to avoid undermining his credibility with the working group. A more flexible approach could be taken at a later stage of the process. On the specific discussion about reviewing our draft compensation policy, this might more appropriately be performed by Brian Altman QC. These issues can be tested informally during the initial consultation meeting with AH suggested under the next steps below*).
 - e. In the context of a discussion on the outcomes from the mediation process, he observed that “sorry was a good word!” – we should be prepared to apologise to sup-postmasters where appropriate.
 - f. He thought there might be an important role for preliminary oral hearings in many cases before launching into the mediation process, in order for both sides to come face to face with the issues and agree an appropriate course of action.
 - g. He highlighted the risks that we may have with some old cases where the evidence is now missing which: a) makes it difficult to reach a clear resolution; and b) leaves us vulnerable to prosecuted cases being overturned.

Next steps:

- i. Susan has already contacted Bond Dickinson to ask them to liaise with AH’s clerk to negotiate a fixed fee for the work up to the end of March.
- ii. Subject to a successful outcome of that discussion, we will then draw up a formal appointment letter to send to AH.
- iii. We will then schedule an initial consultation meeting with AH as soon as possible to follow up on the questions and discussion points noted above, clarifying the boundaries of the role and also inviting his views on the wider process to help shape the specific details. As part of this discussion it will be important to reach a clear understanding on the terms of reference for both the chair and the working group, to ensure it doesn’t go too wide or too long. (*NB given that Susan is on leave from Thursday this meeting may need to be handled by another member of the PO legal team and the relevant senior partners from Bond Dickinson who have been closely involved in drawing up the mediation scheme*).

25 September 2013