

1 Meeting with David Oliver, Belinda Crowe, Chis Aujard and Rod (). 28 February 2014.

1.1 Belinda is the Programme Director, working with David, of Project Sparrow. Chris is the General Counsel and Rod a lawyer on the team.

1.2 The Scheme is designed to address a need which arose last year to mitigate the situation which had arisen with many Sub Post-Masters. There was very considerable political pressure to "do something."

1.3 The contractual arrangement between the Post Office and an individual Sub Post-Master is apparently a very old standard form contract which leaves much to be desired. However, it does provide that the Sub Post Master has to perform accounts and has to account to the Post Office for any shortfall between what it has received from the Post Office (in stamps and other valuable items) and what it has been paid by customers. A significant number of Sub Post-Offices have reported losses: these losses are under the Post Office/Sub Post Office contract and represent what the Sub Post Master has to pay to the Post Office. Reasons for losses can include:

1.3.1 Theft;

1.3.2 Bad book keeping;

1.3.3 Communications failure/computer problems/power problems half way through a transaction – said to be a more common problem for rural Sub Post Offices;

1.3.4 Pressing a button for a £100 payment and mistakenly paying out £1,000 etc.

1.4 If the losses are significant and the facts warrant it, the Post Office prosecutes the Sub Post Master – for theft and/or false accounting. It has secured many convictions, often on the basis of a guilty plea.

1.5 The fact that there were these losses was one reason – query whether it was the only one – for a number of Sub Post Offices closing. This resulted in a lot of bad publicity and no small amount of political pressure. The Post Office wanted to take the heat out of the situation and the suggested solution was the Mediation Scheme under CEDR.

1.6 The aims of the Scheme are not entirely clear – or indeed achievable. But in principle, the idea is that those who have suffered losses and believe that they have a complaint. The Post Office board also seems to believe that mediation would enable the Post Office to determine as a matter of fact what happened in particular cases. Mediation is, of course, badly suited to such an exercise.

2 Applications to date

2.1 To date, 149 Sub Post-Masters have complained under the Mediation Scheme. Other users seem satisfied with Horizon. The Post Office is very taken aback at the scale of the complaints – many are now over £1million and one is for £5million. It is also worried about the costs of conducting the mediation scheme. The total costs of compensation were all claims to be met in full is now around £100 million.

2.2 We were told that the Scheme is now closed to new entrants, though the Post Office may be under significant political pressure to start a new Scheme following this one.

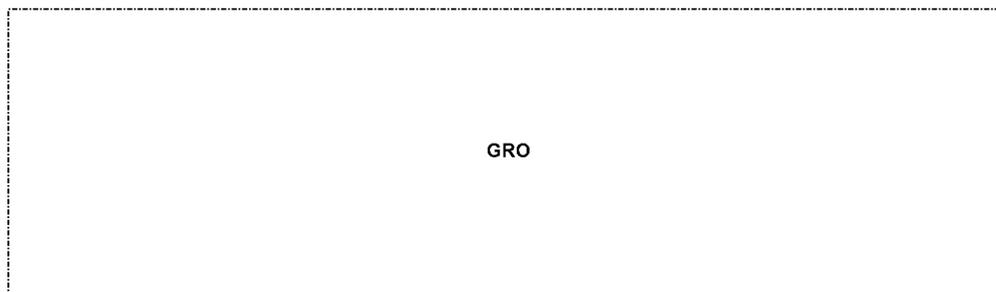
- 2.3 We need to look at when and how the contractual relationships arise under the Scheme. We were told that there is no contract at the application stage but one does arise when the decision is taken to mediate.
- 2.4 The Post Office pays a fixed amount in relation to applicants' costs.
- 2.5 Only 4 or 5 applications have been rejected. Mostly because the people were not in fact Sub Post Masters.
- 2.6 The Post Office believes that some people will never be satisfied. Whether they have the resources and inclination to sue is a different question.

3 The Horizon System

- 3.1 This was created and sold to the Post Office by Fujitsu. It is essentially a double entry book keeping system. The contract between the Post Office and the Sub Post Masters requires the Sub Post Masters to make up losses and the losses are evidenced by the Horizon system which is reconciled every day. The Post Office also does regular stock takes.
- 3.2 The problem arises out of the operation of the Horizon accounting system. This is a system used by all sub Post Offices – of which there are about 11,500 and about 60,000 terminals are in use every day. It is notable that only 149 Sub Post Masters have claimed out of the large number who are using the system daily.
- 3.3 The view expressed at the meeting was that there is nothing wrong with Horizon though the popular view amongst Sub Post Masters is that the system is the reason that they have suffered losses. Issues include:
 - 3.3.1 The “debit” and “credit” key being too close together and easily mistaken.
 - 3.3.2 Whether a telephone being plugged into the computer could affect its working (!)
- 3.4 Note that Horizon is still in use so any problems are ongoing ones.

4 Fujitsu

4.1



We also said that we did not know from a conflicts perspective whether Linklaters could assist in any claim against Fujitsu. In any event, none is currently contemplated.

5 The investigation and expert evidence

- 5.1 The Post Office has not conducted a full internal investigation of its own in a form which we would recognise.

5.2 It has engaged Second Sight – a two person practice of forensic accountants. There is an issue since they have refused to sign the engagement letter as they object to various terms. There seems a lack of clarity as to:

5.2.1 For whom they are acting;

5.2.2 From whom they take instructions;

5.2.3 Their capability and experience which makes them suited for the task;

5.2.4 Whether they have the expert experience necessary to express certain views which they seem nonetheless to be expressing;

5.2.5 What ability there is for the Post Office to challenge their views;

5.2.6 Whether they can now realistically be terminated.

5.3 Second Sight produced a first report, described as “colourful.” It criticised Horizon but also commented on the lack of support and training which it felt the Post Office had given.

5.4 Second Sight apparently “recommend” areas of mediation.

6 Advice to date

6.1 Bond Dickinson have helped the Post Office in relation to civil liability issues. We need to work out what they were asked to do and what advice has been given.

6.2 Cartwright King have helped in relation to the criminal law.

7 The merits of claims

7.1 It seems that many claims are extravagant in relation to the period for which losses are claimed, the nature of the losses and the basis on which it is said that the Post Office is liable. Clearly there is a question as to whether the contract between the Post Office and the Sub Post Masters entitled the Post Office to claim these amounts – and if it did, why and on what basis the Post Office is now contemplating repaying them. Moreover, that contract is, we understand, terminable on 3 months notice. So there is a question as to the correct period for claiming “losses.” We need to look at the question of consequential losses too. On what basis could they be claimed?

8 Criminal convictions

8.1 In about 49 of the cases in which compensation is sought, the Post Office had prosecuted the Sub Post Master and secured a conviction. We need to think about the consequences, legal and political, of the Post Office now “compensating” those people.

9 The Working Group

9.1 A Working Group has been set up and we need to look at its terms of reference. It is chaired, apparently, by Sir Anthony Hooper, a former Lord Justice of Appeal.

9.2 Terms of Reference are not yet signed. We do not know why.

9.3 We need to determine what this group does. It seems that it recommends particular cases for mediation. Can the Post Office decline? What are the consequences of doing so – including the PR consequences?

10 Issues

10.1 The question is: what can the Post Office now do? It seems to regret its decision to go down this path. It wants advice on its exposure both legal and financial and also some comments on the PR implications of the various courses which may be open to it. Questions include:

- 10.1.1** How are claims to be determined? By reference to what legal principles?
- 10.1.2** Would an alternative form of dispute resolution have advantages for the Post Office?
- 10.1.3** What alternatives would there be?
- 10.1.4** How would this translate into litigation?
- 10.1.5** Could we have any test cases? What would that achieve?
- 10.1.6** What options are there in relation to Second Sight?
- 10.1.7** Do we need IT expertise – which Second Sight can't provide?
- 10.1.8** Could we have a system whereby everyone gets a set sum depending on the characteristics of their claim?
- 10.1.9** Can we advise that no further scheme is needed – real concern about setting precedents?

10.2 We need to put together a work plan – what we would do and how. The Board wants a report in three weeks.