



## INITIAL COMPLAINT AND MEDIATION SCHEME: THE WAY FORWARD

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Summary of options and  
issues as presented by legal  
advisers.

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**Summary of options and issues identified within Linklater's paper:  
Preliminary note on the future of the Mediation Scheme – dated 31 March 2014**

**Key issues arising:**

- The extent to which the Horizon system is fit for purpose
  - Fundamental to establishing extent of legal liability and in shaping overall response.
- The extent to which the mediation scheme in its current form is fit for purpose:
  - Structured process and framework based on key principles
  - Role and remit of Working Group
  - Role and remit of Second Vision

**The nature and extent of the risks arising from and associated with the Scheme in its current form**

Four key risks have been identified, and these are summarised in the table below

Risks identified	Issues arising	Mitigation / approach to quantification
Financial liability arising from claim settlement	<ul style="list-style-type: none"><li>• If legal liability exists a financial claim in settlement may be agreed during mediation</li><li>• Frequency and value of successful claims considered to be low.</li><li>• Ex-gratia payments could be offered to expedite resolution of claims regardless of legal position.</li></ul>	<ul style="list-style-type: none"><li>• Review claims against framework and identify those with potential liability</li><li>• Apply average value to determine estimated liability</li><li>• Use mediation process to resolve claims where no liability through ex-gratia payments</li><li>• Value of ex-gratia payment to be agreed and payment considered in context of PR and reputational risks of prolonged process</li></ul>

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Risks identified	Issues arising	Mitigation / approach to quantification
Cost of administering the scheme	<ul style="list-style-type: none"> <li>Under scheme rules, POL have agreed to meet costs incurred by PSMRs: <ul style="list-style-type: none"> <li>up to £1,500 plus VAT for claim investigation</li> <li>up to £750 plus VAT for a half day mediation</li> <li>up to £1,250 plus VAT for a full day mediation</li> <li>Liability estimated at £415k</li> </ul> </li> <li>Costs incurred by Second Sight in region of £500k to date <ul style="list-style-type: none"> <li>No agreed contract or terms of reference</li> <li>No pattern of instruction or direction for their work</li> <li>Risk of increased costs without achievement of desired outcomes</li> <li>Risk of dispute where quality of work under question</li> <li>Lack of clarity in respect of role and remit resulting in a lack of impartiality</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Agree rules to establish eligibility for contribution towards costs</li> <li>Agree terms of reference</li> <li>Clarify role and responsibilities</li> <li>Agree QA and approval process in terms of contract to support payment of fees</li> </ul>
PR and reputational risk associated with non-settlement	<ul style="list-style-type: none"> <li>Establishment of scheme sets expectations of a settlement</li> <li>Views expressed publicly by Second Sight and other stakeholders, often with little evidence to support position, raises expectations of applicants.</li> <li>Low risk of litigation if PSMR not satisfied with outcome of mediation - scale of claim will drive decision making in this regard</li> <li>Low risk of class action</li> </ul>	<ul style="list-style-type: none"> <li>Clarity around process</li> <li>Transparency in relation to decision making</li> <li>Consistency of approach</li> </ul>
PR and reputational risk associated with settlement	<ul style="list-style-type: none"> <li>the reaction of stakeholders to the payment of compensation to SPMRs where there is no legal liability to do so</li> <li>the effects of such payments on the criminal convictions secured to date and sought in the future..</li> <li>These risks are potentially more significant than non-settlement</li> </ul>	<ul style="list-style-type: none"> <li>Clarity around process</li> <li>Transparency in relation to decision making</li> <li>Consistency of approach</li> </ul>

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**The Way Forward:**

The paper has identified a number of issues which when brought together form a long list of options for the future operation of the scheme.

The following suggestions are made with reference to restructuring the current scheme as constituted:

- Clarifying eligibility under the scheme for claimants subject to criminal convictions or civil judgements
- Establishing independent view of Horizon system and whether it is fit for purpose
- Establishing criteria for payment of "standard" compensation irrespective of the legal merit of their claims;
- Revising role and responsibilities and governance of Working Group.

It is recommended that the Board consider which of the above options to take forward as part of a restructured scheme.

**The role of Second Sight**

The paper has identified a number of issues in relation to the appointment of Second Sight, and the effectiveness of their involvement in the scheme to date. Two options are considered:

- Terminate appointment
- Formalising and revising the terms of their appointment

It is proposed that Second Sight's role in supporting a restructured scheme be considered as part of the options appraisal.

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**Clarification of Desired Objectives**

The paper also sets out a requirement for clarity in respect of desired objectives for the Scheme, in particular:

- Is there a desire to limit the costs incurred in running the scheme?
- Which would take priority: public reputation, relations with HMG and MPs or its ongoing relationships with all SPMRs?
- Does the Post Office wish to take a more or less conciliatory approach in dealing with applicants?
- In providing redress to Applicants, does the Post Office wish:
  - to compensate all applicants in accordance with their claim regardless of the nature of their complaint, simply to "make the problem go away"
  - to compensate all applicants on a more limited basis by reference to objective criteria?
  - not to provide monetary compensation at all and seek to address SPMRs' concerns in other ways, such as by way of apology, additional training, upgraded hardware etc?
  - to take a harder line and not provide redress of any kind?
- Does the Post Office wish to get to the bottom of the alleged "problems" with Horizon or only to the extent necessary to satisfactorily resolve the complaints in the Scheme?
- Is there a view that there will always be a proportion of SPMRs dissatisfied with Horizon, and any replacement for it, and therefore little point in taking a holistic approach to resolving issues with Horizon or seeking fully to satisfy all applicants in this case?

The options appraisal will seek to ensure that any recommended option provides best fit against desired objectives. The Board's position in respect of the above should be sought as a matter of priority.



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### Potential Options for Appraisal

Based on the foregoing, the following options should be presented to be Board for consideration:

1. Maintain current position (base case for appraisal)
2. Close scheme
3. Restructure scheme – terminating Second Sight's involvement
4. Restructure scheme – formalising and revising the terms of Second Sight's appointment.

### Basis for Appraisal

IA report will be produced which will describe each option, outlining the pros and cons and risks of each.

A scoring matrix will be developed which will enable each option to be scored in relation to alignment with scheme objectives, estimated financial exposure and ease of implementation. A weighting will be agreed to reflect the relative importance of each criteria.

The outcome of the appraisal will form the basis of the recommended way forward for the Scheme to the board.

Option Description	Pros	Cons	Risks	Alignment with Scheme Objectives	Estimated Financial Exposure	Ease of Implementation
Maintain current position (base case for appraisal)						
Close scheme						
Restructure scheme – terminating Second Sight's involvement						
Restructure scheme – formalising and revising the terms of Second Sight's appointment						