

AUR625

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Initial Complaint and Mediation Scheme

CC: Chris Aujard  
Scheme Programme Board

21/01/2014

To: Chairman and Chief Executive,  
Post Office Limited

## BRIEFING FOR MEETING WITH RT HON JAMES ARBUTHNOT MP

### Issue

You are due to meet James Arbuthnot on 28 January to discuss progress with the Initial Complaint and Mediation Scheme (the Scheme) and brief him on the Business Improvement Programme. This note recaps previous history of the scheme as well as current performance.

### Agenda

Historically the Post Office has been on the back foot you may want to use this meeting to change that dynamic. A proposed agenda is set out below:

1. **Business Improvement Programme** – this is the suggested first agenda item to allow you to explain to James the positive work already underway and the extent of the plans and ambition for change. You could also use this item to mention the review of prosecutions that the Board has asked for and clarify with James the basis for Post Office's prosecutions.
2. **Scheme performance and the Role of the Working Group** – provides an opportunity to update James on how the Scheme is progressing and manage his expectations in terms of the timelines for completion. James has not yet been briefed by Post Office on the independent oversight that is in place and in particular the involvement of Sir Anthony Hooper as chair. This provides an opportunity to assure him that Post Office is acting in good faith and has opened itself up to independent scrutiny and challenge.
3. **Second Sight's work** – this is a delicate item that we need to resolve. Chris Aujard and I have already briefed you on Second Sight's belief that they are appointed and accountable to James or a wider group of MPs as well as Post Office. This provides an opportunity to explain to James our plans for working with Second Sight and also to confirm the scope of their work with him.
4. **Mediation** – as we get closer to the first cases going to mediation, this is also a useful opportunity to remind James of how we will be running the mediation process. You may also wish to discuss the expectation gap under this agenda item.
5. **Future complaint handling** – we understand that James may want to discuss the future arrangements for complaint handling.
6. **Next Steps** – depending on how the meeting has gone you may wish to agree a further meeting with James or suggest that Post Office provides a wider MPs briefing.

Detailed briefing on each of the items is set out below. The performance statistics will be updated before your meeting so that you have the latest Scheme data.

If you are content with this agenda I suggest we send it through to James Arbuthnot's office setting out the areas we wish to cover and to see if there is anything he would like to add. We have a pre-meet at 9.00am on Thursday, and I would suggest that as part of this we discuss how the two of you divide responsibility for leading these agenda items.

**Belinda Crowe**

**ANNOTATED AGENDA  
MEETING WITH JAMES ARBUTHNOT  
28 JANUARY 2014**

**1. Business Improvement Programme**

- *Quick Wins – changes to the handling of contract breach, suspensions and training and support to Subpostmasters*
- *Longer Term Changes – planning underway; detailed plans will be in place by end February*
- *Measuring Success- Subpostmaster engagement and cost reduction*
- *Branch User Forum – now met twice*
- *Prosecutions – basis for Post Office prosecutions and board review*

**2. Initial Complaint and Mediation Scheme Performance, timescales and the role of the Working Group**

- *A chance to discuss Scheme performance including our latest estimate of the Scheme's likely closure*
- *Discussion of the Working Group, how it is functioning and what the boundaries of its role are*

**3. Second Sight Work**

- *Update on Second Sight's role and the products they will be producing*

**4. Mediation**

- *How the process will run, who will have a role in it and the expectation gap*

**5. Replacement for the Mediation Scheme**

- *Work underway to design new procedure but at an early stage at the moment*

**6. Next Steps**

- *When do we next need to meet and what James thinks might be helpful for other MPs*

## 1. Business Improvement Programme

To ensure proper focus on both the Scheme and the Business Improvement programme the latter has been separated into a distinct programme under separate governance reporting to Kevin Gilliland.

### Purpose & scope

The purpose of the Business Improvement Programme (BIP) is to improve the effectiveness and efficiency of the support we provide to our subpostmasters in the running of their Post Offices from an operational and engagement perspective by:

- Reviewing the life cycle of the subpostmaster and all touch points with the business.
- Taking input from owners, users and recipients of Post Office policies and processes.
- Designing policies and processes that deliver improved ways of working with our subpostmaster network in a cost effective and engaging way.
- Reviewing all our interactions with Subpostmasters and making recommendations on structure design for the network and admin support function touch points.
- Developing an implementation plan to move from existing to future state.

### Quick Wins

In the process of mapping the "As is" and "To be" processes. Quick wins have already been implemented with more planned for implementation in Q4. The key areas of change are the training offered for new Subpostmasters and our approach to Subpostmaster contract breaches.

- **Precautionary Suspension** approach – we have reviewed our approach in how we respond to material contract breaches by Subpostmasters and made the following improvements:
  - Our default position is to keep the Subpostmaster in post and the branch operational, unless in the usually low number of cases where not to precautionary suspend the Subpostmaster would carry a high risk of damage to POL's reputation and / or a high risk to POL's assets, or where a customer has been directly involved in a potential fraud by the Subpostmaster.
  - We are introducing in Q4 a new category of action in dealing with material breaches of contract i.e. Suspended termination. This is where the Subpostmaster has materially breached the contract and would have previously had their contract terminated. The new Suspended Termination category is where mitigating circumstances are such that the decision is to award a suspended termination is made; the Subpostmaster remains in post on the condition that if a further breach of contract occurs in an agreed period (set by the nature of the first breach and typically a year) then the contract termination is triggered.
  - Where a potential breach of contract has occurred our approach is to work with the Subpostmaster to establish the facts and then to take the appropriate action. Any investigation is carried out in a totally objective way treating the Subpostmaster at all times with dignity and respect regardless of whether there is evidence to suggest any wrong doing.
- **Training** - we have improved the training approach by:
  - introducing an introductory call to the new Subpostmaster two weeks before they take up post.
  - having earlier contact with the Subpostmaster following their initial training and replacing the month 1 telephone call with a branch visit.
  - reviewing the effectiveness of the balancing work-aid to help Subpostmasters identify and hopefully resolve balancing problems earlier.



## Longer Term Changes

The Business Improvement Programme has 9 work streams that capture all the touch points the Subpostmaster has with Post Office in running their branch. These are: pre-appointment process; operational support; physical support; performance management; training; communication; IT; early warning/intervention approach; leavers process.

The milestone plan for each of the workstreams is currently being scoped and will be completed by the end of February 2014. Some of the workstreams will have longer timelines than others due in part to the interdependency on other workstreams to complete or other business considerations – the IT workstream is a good example of where delivery will depend on the requirements of the other programme workstreams.

## Review Mechanism

The proposed ways of working for each workstream will include an ongoing review mechanism that ensures that continuous improvement is embedded into business as usual.

## Measuring Success

The Programme has two main key performance indicators (KPIs) – Agent Engagement and Operational Cost Reduction.

- **Agent Engagement** - the formal measure is the Subpostmaster annual engagement and in particular the support category of the survey. This will be supplemented with Pulse surveys undertaken by Comms at quarterly intervals throughout the year. Reviewing the life cycle of the subpostmaster and all touch points with the business
- **Operational Cost Reduction** - the cost of support to the network will be baselined as part of this Programme. Headline numbers suggest that 40% of the current support to the network is spent on recovery support ie correcting things that haven't been done right first time

Each of the nine workstreams will have performance measurements that feed into the two main KPIs.

## Branch User Forum

The purpose of the Branch User Forum is to provide a way for Subpostmasters and others to raise issues and insights around business processes, training and support directly feeding into the organisation's thinking at the highest level. The forum is a forward looking mechanism to ensure the business processes and approaches are fit for purpose for users and are in keeping with Post Office behaviours and values. The Forum consists of 6 Subpostmasters, 2 Crown members and 4 PO Senior Managers. The second meeting took place on 16 January and covered the communication approach that the forum would take and a review of the initial inputs to the forum.

## Prosecutions

This agenda item also offers the opportunity for you to clarify with James the basis under which Post Office prosecutes and also reassure James that the Board is now taking a keen interest in the Post Office prosecution policy. Given James' past views on this matter it will probably be worth stressing that the Board has not taken a decision yet, but is mindful of the need to balance deterrent and punishment with the wider impact on the business.

## How Post Office Limited has authority to bring prosecutions

As a company all prosecutions Post Office Limited brings are private prosecutions. We have the right to bring them by virtue of section 6(1) Prosecution of Offences Act 1985 – just as any other company or adult in England & Wales has the same right. These are prosecutions that are started by persons who are not acting on behalf of the police or CPS (although the CPS has the right to take over such prosecutions or even discontinue them).

Prior to the Prosecution of Offences Act 1985 Post Office Limited had certain rights to bring prosecutions under the Post Office Act 1953 and, before that, under the Post Office Act 1908. The decision was taken to bring together these Post Office specific mandates with similar mandates of other companies and replace them with a simple right to bring private prosecutions (now embodied in section 6(1) of the Prosecution of Offences Act 1985).

## 2. Scheme Performance

Overall the scheme is progressing well and Post Office have committed substantial resources to ensuring that it is delivered successfully.

### Case Progress – as of 17 January

- Applications Received: 147
- Applications accepted for funding: 82
- Applications Rejected: 4 (not eligible)
- Case Questionnaires Received: 33
- Investigators in post: 22
- Cases under active investigations by Post Office Limited: 29
- Cases under active Second Sight Review: 4
- Cases withdrawn: 8 (worth highlighting that for all withdrawals the applicant was happy to withdraw post discussion with Post Office)
- Cases suspended pending criminal investigation: 5

### Scheme timescales

As previously highlighted the larger than anticipated volume of applications has impacted on our originally anticipated timescales. The initial cases are also taking longer as we agree the detailed business processes and quality standards with the Working Group.

Cases are taking longer to progress through the Scheme than we anticipated. Post Office are clear though that the investigation needs to be both timely and thorough and that is why we have 22 investigators trained and working on cases at the moment.

We expect the first case to reach mediation by early March and to have completed almost all Post Office investigations by the end of quarter two in 2014/15.

Sir Anthony Hooper has been clear that we should balance the need to progress cases through the scheme with pace with the need to be thorough and navigate the first cases through the scheme carefully. Getting it right is important.

### Working Group

The Working Group is the independently chaired oversight body overseeing the administration of the Scheme. It is Chaired by Sir Anthony Hooper a retired Appeal Court judge, and has both Second Sight and Justice for Subpostmasters Alliance (JFSA) as full members along with Post Office.

The Working Group is overseeing the movement of cases through the Scheme through weekly case conferences and monthly face to face meetings. The Group is providing a strong level of oversight and challenge to Post Office and is working well to provide a channel for both Second Sight and JFSA to voice any concerns about how the Scheme is progressing.

### **3. Second Sight**

Chris and I briefed you on the discussions we have been having with Second Sight on the terms of their engagement with Post Office and that they were resisting strongly any limitations being placed on their work. Second Sight have asserted that Post Office had provided assurances that they could set their own scope and also that they were engaged not only by Post Office but also by James. This meeting provides an opportunity to clarify with James what work they will be doing going forward and also to ensure that he is clear that Second Sight are engaged by Post Office and the Working Group and not him.

#### **Boundaries of Second Sight's engagement**

It would be helpful to confirm with James his understanding of the terms of Second Sight's engagement and also make clear that for Post Office their work on the Scheme is their only current area of engagement. This agreement and clarity of purpose will be crucial in ensuring that all work stays focussed on the successful delivery of the scheme and resolving the complaints of Subpostmasters as quickly as practicable.

Second Sight has two key formal roles within the Scheme:

- As Working Group members – charged with overseeing the successful administration of the Scheme.
- Providing reports on cases within the Scheme and making recommendations for areas where Post Office and the applicant should mediate.

#### **Second Sight's reports**

Second Sight's reports are a critical part of the process to provide an independent assessment of the applicants' claims and a challenge to Post Office. For that reason Post Office need Second Sight to focus on this work as the volume of cases they will have to review with only three members of staff is substantial.

We are expecting the first Second Sight report to be ready in late January and that this will enable the first mediation to be set up for early March. Second Sight's reports will be disclosed to the applicant as part of the paperwork to support the mediation meeting.

It is the internal Post Office team's understanding that the successful completion of the mediation scheme will obviate the need for a further Second Sight report.

### **4. Mediation**

We expect the first case to reach mediation in early March. The mediation process will be run as follows:

- Mediation is being arranged through CEDR an independent organisation who will arrange premises and appoint the independent mediator.
- Post Office will be represented by a senior manager and a lawyer from Bond Dickinson; the applicant will be present together with their professional advisor (who Post Office is funding).



- Each party to the mediation will be provided with a copy of the application, the completed case questionnaire response, the Post Office investigation and Second Sight's reports.
- It is envisaged that mediation will take between half a day and a day.
- Post Office will report at a high level on the outcome of the mediation to the Working Group, likely to be limited to numbers of cases mediated and whether a case has been resolved.

### **Expectation Gap**

As discussed previously at Board meetings last year, the expectation gap is the difference between the amount claimed by applicants and Bond Dickinson's (our legal advisors) high level assessment of the realistic value of the claims. Although you will not want to discuss the actual amounts claimed and the size of the gap it would be useful to start to make James aware that we have been seeing some very large claims and that we do not currently think that some of the amounts claimed are valid. For example in some cases professional advisors may have adopted the tactic of claiming high to be negotiated down. We suggest that you remind James that this is a zero sum game and that as a publicly funded company any money spent on compensation is money that cannot be reinvested in the business with a consequent impact on sub-postmasters and the service to the general public. That said it will be important to stress that Post Office will, if appropriate, provide recompense to any sub-postmaster who has been wronged.

### **NOT FOR DISCLOSURE - BACKGROUND INFORMATION ON CLAIM LEVELS**

- So far Bond Dickinson have analysed 25 so called case questionnaires (the detail of an applicant's claim).
- Those claimants have sought £14.1M (with one individual seeking £5M)
- Excluding consequential loss (eg loss of house through failure to keep up mortgage payments) and assuming that any investigations undertaken by Post Office produce evidence that is not inconsistent with the Subpostmasters allegations then the approximate value of each case (applying our draft settlement policy) would be (as calculated by Bond Dickinson) be of the order of £40,000.
- Current expectation gap is circa £13M (in relation to the 25 claims so far evaluated).
- Out of 25 detailed claims we have 5 claims over £1M and a further 7 over £100K.
- If this level of expectation gap is continued for the rest of the applications we would expect to see an expectation gap of approximately £47M (excluding the one case of £5M as an outlier).

The main reason for the discrepancy between what is claimed and the current valuation of the claims is due to applicants claiming for high value consequential losses such as bankruptcy, losing their homes and future loss of wages (in some cases up to retirement) which, in accordance with the settlement policy, a nil value has been ascribed (with the exception of income where we have allowed 3 month recovery only in line with the settlement policy)

### **This calculation of the expectation gap is rather rough and ready because....**

- Some of the applicants have not properly quantified their losses (or have not quantified losses at all) and in such cases we have ascribed a cash value to their claim using the settlement policy.
- Where pain and suffering is claimed we have ascribed a value of £6,000 (being the maximum amount available in the lowest band in the settlement policy). Some applications may warrant a higher payment if for example it can be shown that a criminal prosecution is unsafe. Equally some applicants may warrant a lower payment.
- We have not second guessed the applications so, for example, if pain & suffering is not claimed we have not considered this when valuing the claim.
- We have not taken any account of interest (if claimed we have subscribed a nil value when calculating the value). Post Office will need to decide on the approach it will take to the payment of interest. Depending on the approach taken to interest, the value of the claims may substantially increase.

## 5. Handling of Future Complaints

We understand that James may wish to discuss this with you. The work to design the future complaint handling model has just started and we envisage taking a set of options for the new model to ExCo and the Board in April. It is too early at this point to provide James with any detail on our thinking but you may wish to offer to update him further as our thinking develops. It is important that we learn from the existing scheme and our business improvement changes before deciding what should come next.

### BACKGROUND BRIEFING NOT FOR DISCLOSURE

#### Post Office publicly committed to:

*"2. A review chaired by an independent figure to determine how an independent safety net might be introduced to adjudicate in disputed cases in the future. Again the JFSA and other stakeholders will be invited to take part in this process." (Post Office press release 8 July 2013)*

*"Secondly, an independent figure will chair a review to determine how best to adjudicate disputed cases in future. The JFSA and other stakeholders will also be invited to take part in this process." (Jo Swinson MP, Oral Statement, Hansard 9 July 2013)*

Work has only just commenced on this and the current approach is to gather evidence and examine the current landscape and options before deciding when and how to bring in an independent figure. We have previously discussed whether this would be a role for Tony Hooper but we need to consider the timings and whether it is appropriate for him to advise on a new scheme while overseeing the current one. This approach is being taken to the Programme Board on 4 February and then to ExCo for sign off.

## 6. Next Steps

Post Office needs to regain the initiative in its dealings with stakeholders to the Scheme. Currently we are too reliant on JFSA and Second Sight to communicate the views of MPs to the programme. To address this it would be helpful to consider offering James a further meeting and highlighting that we intend to update interested MPs on the progress of the Business Improvement programme in Spring.