



Initial Complaint and Mediation Scheme: the way forward

Discussion draft:

**Summary of general issues and
options**

3rd April 2014



Introduction

This paper is intended to stimulate discussion and debate in respect of:

- The working assumptions that may inform the future of the Scheme;
- The principle of “fairness” and what that means in relation to any changes proposed;
- The broad options to restructure the Scheme; and
- Any changes required to current arrangements.

There are five key questions on page 10 on which we are seeking ExCo input.

Outline of current position

The Initial Complaint Review and Mediation Scheme (the Scheme) was established in August 2013 as a device to resolve complaints and issues about the Horizon system to the satisfaction of most or all stakeholders.

- The initial timelines have proved to be over-optimistic. Out of an original 147 applications, 139 are still in the Scheme at various stages.
- There is an expectation gap. Estimated claims are thought to be in the region of £100M. This contrasts starkly with our legal exposure.
- The scheme is resource intensive. There are currently 29 staff/consultants working on the Scheme. In addition, there is considerable external legal, professional and consultancy support. Run rate is £5M per annum and rising. This includes backfill for investigators. Second Sight account for around 10% of this expenditure.
- There are concerns in relation to the role of Second Sight, their capacity and the quality of their work.
- Stakeholder management continues to be challenging.



Issues and Concerns

Six key concerns have been identified in relation to the existing Scheme. These are:

- The cost of administering the Scheme
- The PR and reputational risk associated with non-settlement
- The PR and reputational risk associated with settlement
- That settlement through mediation will not be achieved within appropriate and reasonable financial parameters;
- That unfounded assertions made by Second Sight in relation to Horizon are leaked or come into the public domain: and
- So-called settlement risk.

These concerns are discussed in more detail in Appendix A.



Working Assumptions

In looking out to the future of the Scheme we have made the following assumptions:

- The Board does not have the appetite to close the Scheme and to put in place an entirely different structure;
- Stakeholder expectations are such that any decision *not* to investigate the applications to the Scheme would be met with significant public censure;
- There is a desire to modify the Scheme in order to give Post Office greater control of it whilst maintaining the “spirit” of the dialogue with SPMRs;
- There is a desire to limit Second Sight’s role in the Scheme;
- Excluding Second Sight entirely from the Scheme / Working Group could give rise to adverse consequences;
- The Post Office wishes to be seen to be “doing the right thing” and accordingly will be guided by principles of “fairness”;
- There is no desire to take a decision to amend the Scheme in such a manner which will increase the Post Office’s susceptibility to Judicial Review; and
- The Horizon system is working as it should. NB an independent assurance exercise is currently being undertaken with respect of the Horizon system.
- We do not wish to do anything precipitous which may be inconsistent with the Chair of the Working Group.



Implications

It would appear to us that the following are necessary implications of the above working assumptions:

- On current run rates, it is likely to be early Autumn before the Post Office investigation phase is complete;
- Mediation will not be completed until the end of 2014/15.
- Second Sight, to the extent that they continue to be involved, will be a bottleneck in the process;
- The overall cost of managing the Scheme will not decrease significantly; and
- Any change to the existing Scheme will require us to manage stakeholders more assertively than we have done - including MPs - and manage the consequences of that.

Scheme Objectives and Core Principles

The following principles have been developed as a framework to assess “fairness” and therefore provide a basis for deciding how best to reconfigure the Scheme.

Core Principle	What that means in practice:
Equality	<ul style="list-style-type: none">• Not treating SPMRs who have applied to the Scheme differently to others therefore giving rise to claims of unfairness from non-applicants and existing SPMRs
Transparency	<ul style="list-style-type: none">• Ensuring we are transparent in our dealings with applicants and other SPMRs. Where we have not been transparent we might consider the applicant has a claim to some form of redress.• Clarifying eligibility under the scheme for claimants subject to criminal convictions or civil judgements• Establishing an independent view of Horizon system and whether it is fit for purpose• Open about process and timescales• Audit trail to support decision making• Full disclosure of legal decisions
Consistency with Post Office and SPMR business model	<ul style="list-style-type: none">• Post Office does not have an overarching legal duty of care to SPMRs. It has a contractual relationship. The standard terms and conditions of contract, and associated risk allocation apply to all applicants• The Scheme and any settlements should be consistent with those terms and also any business model operated by SPMRs.
Doing the Right Thing	<ul style="list-style-type: none">• Commit to seeking the right answer in each and every case• Ensuring that no SPMR is out of pocket by being part of the scheme• Protect our public reputation as a fair and just organisation.• Admit to mistakes and highlight the changes being put in place

There will also be a requirement to manage the Scheme effectively and to demonstrate value for money. In adopting these principles the Scheme will go beyond generally accepted legal principles.

Broad options for the future of the Scheme

The spectrum of potential options for the Scheme can be described broadly as follows:

1. Maintain current Scheme
2. Close the Scheme
3. Restructure the Scheme whilst maintaining the “spirit” of the existing Scheme; and
4. Devising a new alternative dispute resolution structure (e.g. Arbitration).

It would appear to us that no option other than Option 3 is consistent with our working assumptions (see Appendix B for details).

Work to date has identified two variants to Option 3:

- A “rough and ready” approach which applies a settlement recommendation based on the Post Office’s assessment of the value of the claim, post investigation; and
- A more nuanced approach (along the lines of those discussed with the Financial Ombudsmen Service) which could consider:
 - Whether there was evidence of heavy-handed treatment;
 - Length of service and how far from retirement he/she was when terminated/suspended;
 - Whether there had been any admission of guilt; and
 - Whether there had been any loss of value in the SPMRs non-post office business.
 - Whether the Post Office was in possession of information which, if disclosed, would have been helpful to the SPMR.

Changes required to current arrangements

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In any event, the following aspects of Scheme operations need to change:

- **Governance arrangements** – revising the current balance of power between the Post Office and other stakeholders to enable effective and fair decision making;
- **Applicants subject to criminal convictions** - continue to investigate but make no decision until the end of the process;
- **Settlement** – to be based on a clearly defined, structured process and decision framework based on core principles;
- **Second Sight** – decide whether, and if so, to what extent they should continue to be involved in the Scheme; and
- **Periodic Review** – institute monthly checkpoint reviews of the Scheme as a clear view of the caseload develops, to ensure the Scheme continues to operate in the best interests of all parties.

Deliberative Discussions

The views of the ExCo sub-committee are sought in response to the following questions:

- Do you agree with the working assumptions and their implications?
- Do you agree that “fairness” is a core principle for the Scheme?
- If so, has the principle of “fairness” been properly defined?
- Do you agree that Option 3 – Scheme restructuring is the way forward?
- Do you agree with the need to change the Governance, the handling of Criminal Cases and Second Sight’s involvement?
- What are the next steps?



Appendix A

Risk Matrix

Issues and Concerns

Six key concerns have been identified, and these are summarised in the table below:

Risks identified	Issues arising	Mitigation / approach to quantification
Cost of administering the scheme	<ul style="list-style-type: none"> Under scheme rules POL have agreed to meet costs incurred by SPMRs: <ul style="list-style-type: none"> up to £1,500 plus VAT for claim investigation up to £750 plus VAT for a half day mediation plus travel up to £1,250 plus VAT for a full day mediation plus travel Liability estimated at £415k [TBC] Conducting investigations and reviewing the outcome is accounting for the majority of the spend to date. Negative publicity may follow should the cost of this exercise become publically known, particularly if SPMRs are not satisfied with the outcome. Second Sight are resistant to direction by the Post Office, and have continually attempted to expand their scope (reference to so called Job 1 – MPs work) Costs incurred by Second Sight. Run rate in excess of £50k per month. Risk of dispute where quality of work under question Lack of clarity in respect of role and remit resulting in a perceived lack of impartiality. 	<ul style="list-style-type: none"> Agree rules to establish eligibility for contribution towards costs Agree terms of reference Clarify role and responsibilities Agree QA and approval process in terms of contract to support payment of fees

Issues and Concerns

Risks identified	Issues arising	Mitigation / approach to quantification
PR and reputational risk associated with non-settlement	<ul style="list-style-type: none"> Establishment of scheme has set high expectations of a financial settlement Views expressed publicly by Second Sight and other stakeholders, often with little evidence to support position, raises expectations of applicants. Low risk of litigation if SPMR not satisfied with outcome of mediation - scale and merits of claim will drive decision making in this regard. Low risk of class action 	<ul style="list-style-type: none"> Clarity around process Transparency in relation to decision making Consistency of approach
PR and reputational risk associated with settlement	<ul style="list-style-type: none"> The reaction of stakeholders, including non-applicants and SPMRs to the payment of compensation to SPMRs where there is no legal liability to do so. The effects of such payments on the criminal convictions secured to date and sought in the future. These risks are potentially more significant than non-settlement 	<ul style="list-style-type: none"> Clarity around process Transparency in relation to decision making Consistency of approach
Settlement through mediation will not be achieved within appropriate and reasonable financial parameters due to professional advisers seeking to recoup their costs within the settlement mandate.	<ul style="list-style-type: none"> Adversarial approach being adopted by professional advisers driving up costs for what was intended to be a light touch mediation scheme. Upward pressure on settlement value will increase financial liability Time and cost to manage caseload likely to increase. 	<ul style="list-style-type: none"> Explore potential to cap level of costs which would be applicable in any settlement. Negotiate cost settlement outside mitigation process.



Issues and Concerns

Risks identified	Issues arising	Mitigation / approach to quantification
Unfounded assertions made by Second Sight in relation to Horizon are leaked or come into the public domain	<ul style="list-style-type: none">• Feeding the perception that there are problems with Horizon• Raising expectations of those within the Scheme• Potentially giving rise to additional claims from others not within the scheme.• Undermining Post Office's ability to properly investigate and prosecute existing SPMRs	
So-called Settlement Risk	<ul style="list-style-type: none">• "Inappropriately considered" settlement of claims may encourage others both inside and outside the Scheme, to claim similar amounts.• This has the potential to de-stabilise the network and impact on the current operation of the business.	



Appendix B

Initial Options Analysis

Subjective Analysis

1. Maintain Current Position

This option maintains the scheme as currently constituted

Pros	Cons	Risks
<ul style="list-style-type: none"> • Maintains current commitments to applicants • Diligent investigation process 	<ul style="list-style-type: none"> • Slow – expected case progression has moved from 3 months to 12 months. • Expensive to operate – and increasing due to case progression challenges • Lack of clarity in respect of roles and responsibility of working group • No formal defined process or decision framework 	<ul style="list-style-type: none"> • Reputational risks • Financial liabilities • Operating risk – inability to deliver the process as defined and secure a reasonable outcome for all parties

2. Restructure scheme – assess all applicants and settle based on value based judgements

A “rough and ready” approach which applies a settlement recommendation based on the Post Office’s assessment of the value of the claim, post investigation. Claim criteria and corresponding values to be defined. All applicants to be thoroughly assessed, Assessment reports referred to Working Group who will consider merits and recommend settlement based on report and application of criteria. Chair of Working Group would be able to veto. Decisions and influencing factors would be documented.

Pros	Cons	Risks
<ul style="list-style-type: none"> • Improved transparency and accountability • Consistency of approach • Easier to administer 	<ul style="list-style-type: none"> • Working Group as currently constituted is not appropriate for this role. Governance arrangements would need to be revised • Defined financial settlements may increase financial exposure, and result in inappropriate settlements 	<ul style="list-style-type: none"> • Risk that every SPMR not part of the scheme will apply for similar value of compensation • May trigger legal action • May change SPMR behaviour towards non-compliance

Subjective Analysis

3. Restructure scheme – assess all applicants and settle based on eligibility framework

A more nuanced approach (along the lines of those discussed with the Financial Ombudsmen Service) .Eligibility criteria and decision framework defined. All applicants to be thoroughly assessed against eligibility framework. Settlement value agreed on a case by case basis. Adopt Ombudsman policy of using an independent assessor, or a Review and Scrutiny Panel with the power to call in and review cases and provide oversight of process. Working Group to be disbanded.

Pros	Cons	Risks
<ul style="list-style-type: none"> Minimise operating costs Improve settlement time Minimise settlement costs by introducing the ability to negotiate Fairness and transparency maintained through scrutiny role 	<ul style="list-style-type: none"> Significant departure from current position which will require significant stakeholder management and communication to applicants Removing the opportunity for dialogue through mediator, which may be more adversarial, and result in additional legal costs for applicants 	<ul style="list-style-type: none"> PR and reputational risk – may be considered to be more aggressive and adversarial Financial liability will be difficult to quantify as they are determined on a case by case basis.

4. Close scheme making no settlement

Announce closure of the Scheme and invite applicants to pursue cases through legal routes.

Pros	Cons	Risks
<ul style="list-style-type: none"> Quick and simple Limits operating costs and financial liabilities in the short term Court system is a more appropriate forum for these cases to be discussed.. 	<ul style="list-style-type: none"> Not fair or transparent Does not fulfil current commitment to Minister Likely to significantly damage relationships with SPMR community PR nightmare Impacts negatively on strategy to be a trusted financial services provider Damaged relationship with Working Group chair. 	<ul style="list-style-type: none"> Risk of court proceedings On-going financial liability



Subjective Analysis

5 Close scheme making arbitrary settlement to all applicants

Announce closure of the Scheme and make full and final settlements with all applicants except those with criminal convictions.

Pros

- Quick and simple
- Limits operating costs and financial liabilities in the short term

Cons

- May be perceived that Post Office is admitting fault.
- Not transparent due to the limited investigation carried out.
- Difficult to rationalise decision to external parties
- Impacts negatively on strategy to be a trusted financial services provider
- Damaged relationship with Working Group chair.

Risks

- Risk of court proceedings

Options Appraisal

Appraisal Approach

A matrix will be developed to enable each option to be assessed in relation to alignment with scheme objectives, estimated financial exposure and ease of implementation. Consideration will also be given to the relative merits of each option arising from the subjective analysis. A weighting will be agreed to reflect the relative importance of each criteria. The outcome of the appraisal will then be presented as follows:

Option Description	Subjective Assessment	Alignment with Core Principles	Estimated Financial Exposure	Ease of Implementation
Option 1	R	A	A	R
Option 2	A G	A G	G G	A A
Option 3	R	R	R	G
Option 4	R	R	A	G
Option 5				