

Strictly confidential and privileged
Draft for comment 10 March 2014

The Post Office Limited

Initial Complaint Review and Mediation Scheme – outline of report

1 The aim of this report

- 1.1 The report has been commissioned by the Board of Post Office following concerns over the level of claims and costs and other potential legal and financial exposure for Post Office in connection with the Initial Complaint Review and Mediation Scheme (the “Scheme”).
- 1.2 In particular, we have been asked to report to the Board on:
 - 1.2.1 the legal and financial risks arising from and associated with the Scheme in its current form; and
 - 1.2.2 the issues on which we believe Post Office will need to form a view in order to address its current concerns about the Scheme; and
 - 1.2.3 proposals for how it might address those concerns, including any modifications or alternatives to the Scheme.
- 1.3 In developing proposals for addressing concerns with the Scheme, we will set out a range of options and their expected relative cost, complexity and viability.

2 The basis on which the report has been prepared

- 2.1 Limitations on the work we have done, including as to the scope of contact with relevant parties, timeframes involved and fact we have been specifically asked not to consider issues or claims arising in respect of Post Office's insurance.
- 2.2 The report considers the issues primarily from the perspective of the general law but we will highlight where we think associated public relations issues and/or political implications might arise where appropriate.

3 Horizon

- 3.1 A brief description of the Horizon System.
- 3.2 The Horizon system does seem to be working to the satisfaction of a very large proportion of those using it. Contextualise the problem.
- 3.3 Second Sight have concluded that they have found “no evidence of systemic problems with Horizon software.”

4 Second Sight

- 4.1 Second Sight's engagement (but only to the extent relevant to observations made about how to deal with Second Sight in the future).
- 4.2 Considering any issues raised by the procurement process used by Post Office for Second Sight.

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- 4.3 The approach taken by Second Sight – to examine and “investigate” individual cases rather than to start with an in-principle review of Horizon and an account of the way it is operated as between the Post Office and Subpostmasters.
- 4.4 The Scope of Services to be provided by Second Sight, including the Spot Review process; benefits and limitations of those services.
- 4.5 The Interim Report and the issues which it identifies. The relevance of those issues to claims by Subpostmasters. The ability and implications of Post Office to challenge conclusions reached by Second Sight.

5 Rights and obligations between Post Office and Subpostmasters

- 5.1 Contractual and general law obligations and/or rights of Post Office as to Horizon and Subpostmasters, in particular, the right to claim “losses” from Subpostmasters.
- 5.2 Scope of Post Office liability for direct claims made by Subpostmasters in respect of “loss recovery” by Post Office and assessment of potential value of claims.
- 5.3 Scope of Post Office liability for claims made by Subpostmasters involving compensation for termination of Subpostmasters’ contracts in connection with Horizon and assessment of potential value of claims.
- 5.4 A description of the obligations on Post Office and on Subpostmasters as to training and support, stress and other potential liability and loss indirectly associated with or caused by action taken by Post Office in respect of Horizon and assessment of potential value of claims.
- 5.5 Review of Bond Dickinson advice in respect of above.
- 5.6 Cases in which the applicant has been convicted of relevant offences – issues for Post Office in permitting applicants who have relevant convictions recorded; legal, financial and public relations implications.
- 5.7 The burden of proof in each case – should Post Office justify its claim to losses or should the Subpostmaster have to show that they are not due?
- 5.8 The issues if claims for compensation are not paid in accordance with legal principles. Fairness among Subpostmasters. Justifying and explaining payments to stakeholders. Achieving consistency of approach. The difficulty of compensating some Subpostmasters for issues which may be of general application e.g. poor training or communication.

6 The Mediation Scheme

- 6.1 Mediation as a dispute resolution technique. Its benefits and limitations.
- 6.2 Comment on the political backdrop.
- 6.3 Public announcements and comments by the Post Office in relation to the Scheme – what have people been led to expect. Note that the focus of much of the published material is on “resolving concerns” and not directly on payment of “compensation.”
- 6.4 The legal implications (if any) of Parliamentary statements about the Scheme and Horizon.

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- 6.5 The rules and dynamics of the Scheme. The nature of the legal relationships created (if any) by the Scheme.
- 6.6 The Working Group - the Terms of Reference and their status, role and ability to bind the Post Office.
- 6.7 The Settlement Policy of December 2013.

7 Key issues for Post Office

- 7.1 The Post Office will have, or will need to have, a view on a number of fundamental points which will guide the decisions as to future options:
 - 7.1.1 The aims of the Scheme – is it primarily to improve relations with some Subpostmasters or offer apologies and explanations, or to enable compensation to be paid/explain why none is due, or to establish what happened? Clarity around the aims of the Scheme is important.
 - 7.1.2 In any claim is Post Office's stance to be more conciliatory than adversarial? What are the limits of this approach?
 - 7.1.3 Does Post Office wish to confirm the “truth about the Horizon system” not just on a case by case basis but systemically?
 - 7.1.4 How important is it to Post Office to determine the facts of each individual claim? How easy might it be to achieve this?
 - 7.1.5 To what extent is Post Office comfortable defending the operation of the Horizon system but perhaps accepting that there could have been better training or communication about it?
 - 7.1.6 Does Post Office wish to consider paying compensation by reference to principles other than legal entitlement? If so, how will it articulate and apply those principles? What will it say to Subpostmasters and stakeholders?
 - 7.1.7 How and to what extent will Post Office wish to strike a balance between resolving past issues and putting the future operation of Horizon and the relationships with Subpostmasters on a sound footing?
 - 7.1.8 How and to what extent will Post Office wish to strike a balance between the matters above and achieving a satisfactory political outcome, including with regard to what has been said in Parliament about the Scheme and Horizon?

8 Options for the future

- 8.1 All of the future options depend on a view being taken on the issues identified in section 7. Our observations and proposals in this section will be given with a view to satisfying a range of assumed responses to those issues.
- 8.2 The future of the Scheme; whether there is a need for modifications to the Scheme or a different and/or further scheme, including the roles of the Working Group and Second Sight.
- 8.3 Other methods of dispute resolution – their benefits and disadvantages, including as to their likely relative cost, complexity and viability: e.g. litigation, adjudication, arbitration, ombudsman.