

Strictly Confidential – Subject to Legal Privilege – DO NOT FORWARD

POST OFFICE LTD BOARD

Initial Complaint Review and Mediation Scheme (“the Scheme”)

1. Purpose

The purpose of this paper is to provide the Board with:

- 1.1. A copy of the advice received from Linklaters about Post Office’s legal and financial exposure in relation to the claims made by applicants to the Scheme; and
- 1.2. An update on planned next steps in relation to the Scheme and other related issues.

2. Background

- 2.1. At its February meeting the Board asked the Executive to take external advice to assess our legal and financial exposure in relation to the matters raised by applicants in their complaints made to the Scheme. This was, in part, in response to concerns flagged to the Board about:
 - the rising costs associated with administering the Scheme;
 - the quantum of some of the claims being submitted to the Scheme, especially when compared with our assessment of what we might reasonably consider paying by way of settlement (the so called expectations gap); and
 - the extent to which managing the Scheme, and associated issues, is diverting management attention.
- 2.2. Following that Board meeting Linklaters were engaged to provide us with the relevant advice. The scope of their engagement was agreed by the subcommittee of ExCo established to oversee this work, chaired by the Chief Executive, a draft of which was circulated to the Board for comment. As the Board will be aware, the questions Linklaters were asked to consider are relatively technical in nature and, for that reason, we asked them to include in their advice (see Annex 1) a brief executive summary, which tries to draw out the main legal points. In addition, we have arranged for Christa Band, the Linklaters partner engaged to undertake this work, to attend the Board meeting to present the advice and answer any questions the Board may have. That said, at a high level and by way of an indication of the direction of their advice, it may be helpful to note that one of Linklaters many conclusions, is that: *“There can be no question of a claim for consequential losses [by an SPMR] based simply on the recovery by the Post Office of losses [i.e. the amounts that POL believes were owing to it] if the losses were properly payable and the Post Office was entitled to the money”*.
- 2.3. It perhaps should also be noted that, following feedback from a number of Board members, the advice set at Annex 1 focuses mainly on the question of our legal and financial exposure, and not on the possible changes that could be made to the Scheme, or alternatives to it. It is currently proposed that a further paper will be delivered to the Board at its April meeting setting out the range of realistic options to take matters forward, with recommendations. This

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paper is being worked up by the Project Team, overseen by the ExCo subcommittee with input from Linklaters.

3. Next Steps

- 3.1. In preparing their advice Linklaters have, in effect, made the working assumption (which we believe to be correct) that there is nothing 'wrong' with the Horizon system. On that basis, the advice from Linklaters is that, in strict legal terms, many, if not all, of the claims submitted under the Scheme would be unsuccessful if they were considered by a Court. Linklaters do, however, acknowledge that there may well be policy considerations, above and beyond pure legal principles, that might sensibly guide any decisions relating to the payment of compensation and/or the future of the Scheme and/or any modifications that might be made to it.
- 3.2. Linklaters have further acknowledged that any decisions made with respect to the future of the Scheme will carry potential risks – these risks, which include reputational, public relations and political risks, will be reflected in the further report to be delivered to the Board in April. That report will also reflect the dialogue which has been commenced with the Financial Ombudsman Service, which has already provided useful insights into complaints handling.

4. Second Sight

- 4.1. In addition we were asked by the Board to consider the extent to which Second Sight's engagement could be regularised. Following a period of intense discussions with Second Sight we have reached broad agreement on the engagement letter (on a time and material basis) and, despite initial (and very heavy) resistance from Second Sight, they have now agreed to the inclusion of a 12 month (post completion) non-compete clause. In current circumstances, it is unlikely that Post Office will be able to agree materially better terms with Second Sight without imposing considerably more strain on the relationship with them. The Board's view on whether to push for a more aggressive agreement would be welcome.

5. Insurance

- 5.1. A paper on insurance cover maintained by Post Office Ltd. has been prepared by the Chief Financial Officer and has been submitted under separate cover.

6. Recommendation

The Board is invited to:

- 6.1. Note the advice from Linklaters and the steps being taken to develop options for the future of the Scheme and or alternatives to it.
- 6.2. Should the Board so agree, authorise the signing of the draft engagement letter with Second Sight which includes the 12 month non-compete clause.