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## POST OFFICE LTD BOARD

### Initial Complaints Review and Mediation Scheme: Update Paper

#### 1. Purpose

1.1. This paper:

- Confirms the oral legal advice provided to the Board on 10 June 2014 and provides the further advice requested on Judicial Review (JR)
- Updates the Board on the face to face Working Group on 16 June 2014
- Sets out the plans to implement the Board's preferred option for the Scheme.

#### 2. Background and current position

- 2.1. There are 135 active cases at present. Second Sight have produced a further three draft Case Review Reports which are with Post Office and applicants for comment. Second Sight have a stock of 24 cases to review and Post Office have 54 cases under investigation, with 51 CQRs still to reach the Working Group.
- 2.2. Two cases<sup>1</sup> are now approved for mediation and were due to be passed to CEDR yesterday. This has not been possible as Second Sight have attempted to introduce, at a late stage, an addendum to their report which they wish to send to applicants with the case papers. This document has not been discussed by the Working Group and the Chair has asked for a conference call this week to discuss this as the proposed approach is not in line with the process agreed by the Working Group.

#### 3. Legal Advice

- 3.1. The Board has previously been advised on the risk of a successful Judicial Review (JR) if Post Office were to pursue "Option 3" (bringing the Scheme in-house) which has been confirmed by Beechcroft.
- 3.2. The Board then sought advice on the risk of a successful JR if the steps connected with "Option 2" (Continuing with the Scheme but seeking to refine its work within the existing Terms of Reference) were pursued. That risk is considered to be very low. The position with each of the Option 2 measures is as follows:
- **Second Sight Terms of Engagement.** The commercial terms of Second Sight's engagement should not be a public law issue.
  - **Case Deadlines.** The Court typically will not interfere with sensible administrative rules designed to make a scheme run smoothly. To further

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<sup>1</sup> One of which is the case which has previously been discussed with the Board.

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reduce the risk, we should give applicants fair notice of the deadline (e.g. four to six week), and that missing the deadline, even by minutes, is terminal. A reminder should also be sent, e.g. 14 days before.

- **Public statement of legal position (as informed by the Linklaters advice note).** Post Office's decision to follow and/or publicise its legal advice should not be a public law issue.
- **Old Cases.** Post Office can decide not to progress a case where it has no relevant records, and the Applicant (having been asked) cannot produce any. However, if records do exist, Post Office cannot stop a case from moving through the Scheme by simply deciding that the records do not support a valid claim.
- **Criminal Cases.** From a public law perspective it is reasonable to refuse to mediate while an appeal to the Criminal Courts remains possible. To further reduce the risk Post Office should communicate this approach in a way which makes it clear that:
  - it will still investigate criminal cases;
  - it will immediately share anything that might suggest a conviction was unsafe; but
  - the criminal position will need to be resolved in the Criminal Courts before Post Office can take things further.

#### 4. Face to face Working Group (16 June)

- 4.1. **Temperature of meeting.** This meeting was appreciably "hotter" than previous meetings. For example JFSA were left in no doubt that Post Office disagreed with their (previously stated) position that all cases should be mediated regardless of their merits. The Terms of Reference were regularly cited by Post Office in the meeting – particularly the value for money clause to drive the point home.
- 4.2. **Cases.** The Working Group reviewed two cases: M054 and M127. Post Office took a robust position on M054 where it did not agree to the Second Sight recommendation to mediate the case. As expected, JFSA supported mediation and as a consequence, in line with the pre-agreed procedure, the Chair will need to exercise his casting vote which he will do, with written reasons, early next week. Post Office also made it clear that it can decline to follow the Working Group's recommendation to mediate a case.
- 4.3. **Timelines.** Aver (one of two firms of advisors representing a large number of applicants) had requested a further set of extensions to the deadlines for submitting CQRs. Post Office used this opportunity to secure the Working Group's agreement that no further extensions would be granted to Aver meaning that all of Aver's 20 outstanding cases must be submitted by 31 August. The

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Working Group agreed that if the deadline is missed then Post Office will proceed with its investigation on the information available to it and any CQR submitted subsequently will be ignored.

- 4.4. **Bankruptcy cases.** JFSA have managed to have the rights assigned in one case and are hopeful of negotiating the rights for the other 14 cases. This aligns JFSA's approach with that preferred by Post Office.
- 4.5. **Alan Bates and media coverage.** In the margins of the meeting Alan Bates mentioned to Post Office that he has recently been approached by both *Panorama* and *Dispatches*. He suggested that he was not yet ready to take that route.

## 5. Implementation Planning

- 5.1. Following the Board meeting last week a short implementation planning meeting was held with the CEO. A brief summary of the next steps is set out below.
- **Second Sight Terms of Engagement.** Second Sight have been invited to a meeting next week with a view to restructuring the commercial terms of their engagement (e.g. moving them to a piece rate and building in regular quality and delivery reviews).
  - **Case Deadlines.** The Working Group Chair has written to Aver setting final deadlines for their outstanding CQRs. At the next conference call Post Office will raise with the Working Group the need to impose similar deadlines on Howe & Co, the other firm of advisors representing a large number of applicants. In any event the Chair is (with encouragement from Post Office) becoming increasingly concerned about delays.
  - **Public statement of legal position (as informed by Linklaters advice note).** Current thinking is to inform the Working Group and applicants of the Post Office position in time and linked to individual cases. It is anticipated there will be an opportunity in the near term to advise the Working Group of our position on consequential loss in relation to the case with the largest claim (M001).
  - **Old Cases.** Caseworkers will be instructed not to continue to search for data when it is reasonably clear that none exists.
  - **Criminal Cases.** Criminal case changes will be raised first at the face to face Working Group meeting (scheduled for 10 July), and if necessary followed up at the September meeting.

## 6. Conclusion

- 6.1. Post Office will continue to keep the Board updated of progress, though it is anticipated that the next significant developments will arise at or around the next face to face Working Group meeting (scheduled for 10 July).

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**Chris Aujard 18 June 2014**