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POST OFFICE LTD BOARD SUB COMMITTEE

**Initial Complaints Review and Mediation Scheme
Dissemination of Linklaters advice and Deloitte assurance report**

1. Purpose

1.1. This paper has been prepared following the initial meeting on 9 April 2014 of the Board Sub Committee on the Initial Complaints Review and Mediation Scheme (the Scheme). At that meeting the programme team was asked to produce a paper setting out approaches to disseminating the Horizon report from Deloitte and the essence of the legal position from Linklaters to advisors, applicants and MPs, including action planning, comms and stakeholder engagement.

2. Background

2.1. The Board discussed the Linklaters advice at their meeting on 26 March 2014 following its concern at the growing size of the so called "expectation gap". The Board was reassured by the advice on the legal liability and sought further assurance through commissioning a short piece of work on Horizon. Deloitte have been commissioned to deliver this work, the first stage of which is due to report in draft on 28 April. The Board will be provided with an update from the CIO at its full meeting on 30 April in advance of the Sub-Committee meeting.

2.2. To inform this paper, further advice was taken from Linklaters on the options for dissemination of Post Office's legal position and how best to ensure that Post Office avoided waiving legal privilege.

3. Dissemination Options

3.1. This paper examines a number of different options for dissemination:

a) Publication of the legal advice (not recommended)

3.2. Legal advice is private and confidential and usually withheld from open publication. Any publication of legal advice may be seen as waiving the privilege of keeping the advice confidential, potentially not just for the Scheme but also for other Post Office advice. Any waiver may lead to numerous requests for disclosure of legal advice under the Freedom of Information Act and although Post Office could resist these requests it is not guaranteed that they would be successful in all cases. For this reason this option was discounted as too risky.

b) Linklaters letter (not recommended)

3.3. Consideration was given to Linklaters providing a letter to go in their name to the Chair or to all applicants setting out publicly Post Office's legal position (as informed by Linklaters' advice). It was felt that this option risked being portrayed as Post Office bullying SPMRs and on that basis it was decided that this option should be discarded.

c) Post Office letter to the Chair of the Working Group (recommended)

3.4. Linklaters suggested that an open letter from the Post Office to the Chair of the Working Group setting out the legal position (without detailed analysis) could be the

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most effective way of disseminating Post Office's legal position and the Deloitte report. The letter to the Chair could then be disseminated to Scheme applicants, and other interested parties, and made available via the Post Office website. This is the preferred option as it positions Post Office in control and does not place privilege at risk. However it might lead to criticism from applicants, JFSA, MPs and Second Sight.

- 3.5. It should also be noted that the dissemination of the advice does risk causing some members of the Working Group to resign and consequent fracture of the current governance arrangements. The media reaction to any resignations and the dissemination of the position is likely to be severe (from those who have previously covered the issue) but we have been advised that it is very manageable.
- 3.6. A first working draft of such a letter, drafted by Linklaters, to go from Post Office is annexed to this paper. It is important that use of this letter is viewed within the context of the overall decision on the Scheme.

d) Tony Hooper Commissioning legal advice on liability (not recommended)

- 3.7. There was discussion at the Sub Committee as to whether fresh advice could be commissioned by Tony Hooper and then disseminated on behalf of the Working Group. Further consideration has been given to this option and it is not thought to be feasible for the following reasons:
- 3.8. If the Chair were to commission advice on the merits of claims, he may feel he is compromising his current role as an independent overseer of all claims made under the Scheme.
- 3.9. Post Office have been clear that it is not for Second Sight, JFSA or indeed the Chair to comment on the value (or indeed merit) of any given claim – therefore they are very likely to resist being asked to "manage down" the claim value at this point.
- 3.10. The advice needs to clearly represent the Post Office position to make clear to applicants that it is not worth them pursuing multi million pound claims so it is not felt that it would be as effective as option (c).

4. Action Planning including Communications and Stakeholder Engagement

- 4.1. The actions needed to deliver the preferred option are set out in appendix A.

5. Conclusions and Recommendation

- 5.1. Action is needed to manage the so called "expectation gap" and this needs to be done in a transparent manner to protect Post Office's integrity. To that end it is recommended that the legal position and the Deloitte report are disseminated via a letter to the Chair of the Working Group. This would provide a strong signal of Post Office's intent.
- 5.2. The letter to the Chair provides an appropriate and managed medium for the message and although the impact will need substantial management and may indeed lead to the fracture of the Working Group it will leave Post Office in a much stronger position and SPMRs more appropriately informed of the likely outcome of their claim.

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Annex A

Action planning including Communications and Stakeholder Engagement

- i. Board agree overall approach to the Scheme to ensure comms on the legal position are aligned to overall decision.
- ii. Agreement of BIS and the Minister secured.
- iii. Finalise the letter and draft a press statement to be used on a reactive basis including finalising the commentary on Second Sight which will be informed by the decision the Sub Committee takes under the Second Sight agenda item.
- iv. Statements to be prepared in case of JFSA or Second Sight resignation from the Working Group (this will be influenced by the overall decision on the future of the Scheme ie are Second Sight still engaged and is the Working Group still running).
- v. Comms to identify potential supportive voices who could be approached to provide a quote/voice in the SPMR community
- vi. Discussion with Tony Hooper to inform him of the intention to write and share a copy of the letter with him.
- vii. Subject to Tony's views embargoed briefing for NFSP with objective of securing their support for the proposed course of action.
- viii. Final revision of the letter in light of discussion with Tony.
- ix. Dispatch letter to Tony Hooper.
- x. Paula to call James Arbuthnot to inform him of the letter and brief him on its contents.
- xi. Upload letter to Post Office website with statement and simultaneously (and separately) brief Second Sight and JFSA on the contents of the letter.
- xii. Comms to call key interested MPs and flag the letter to them.
- xiii. Reactive briefing of key media contacts on the development.