

Confidential – Subject to Legal Privilege

POST OFFICE EXECUTIVE COMMITTEE

Horizon - Initial Complaint Review and Mediation Scheme Settlement Policy

1. Purpose

The purpose of this paper is to:

- 1.1. request approval for a Settlement Policy which sets the framework within which decisions for financial settlements will be made; and
- 1.2. set out the strategy for managing the potential gap between Subpostmasters' expectations about the value of settlements and the amount that Post Office may be prepared to offer (the "Expectation Gap").

2. Background

- 2.1. Following the publication of the Second Sight Report in July 2013, Post Office announced a number of steps which it would take to address the issues raised in the Report.
- 2.2. One step was to create an Initial Complaint Review and Mediation Scheme to help resolve the concerns of Subpostmasters regarding the Horizon system and other associated issues. Although the Scheme is primarily aimed at applicants who are no longer Subpostmasters, it is also open to existing Subpostmasters provided they have previously raised their complaint with us, and our investigation processes have been exhausted.
- 2.3. At the time of writing, we have received 94 applications. This already exceeds our original planning assumptions of 75 cases in total. The Scheme closes on 18 November 2013.

3. The Scheme

- 3.1. The Scheme was designed, and is overseen by, a Working Group comprising members of Post Office, JFSA and Second Sight. Sir Anthony Hooper was appointed as the Independent Chair of the Working Group on 18 October 2013.
- 3.2. The objectives of the Scheme are to:
 - provide a mechanism to investigate a Subpostmaster's concerns proportionately and effectively;
 - try to achieve a mutual and final resolution of a Subpostmaster's legitimate concerns about Horizon and any associate issues, whether through mediation or direct discussions.

Confidential – Subject to Legal Privilege

- 3.3. The role of the Working Group is to:
- monitor the fairness and efficiency of the Scheme in achieving its objectives;
 - ensure the cases progress through the Scheme in a timely manner; and
 - review Subpostmasters' cases which may not be suitable for the Scheme and decide whether and how those cases may proceed.

4. Ensuring the success of the Scheme

- 4.1. It is vital for Post Office that, having invested time and money in the creation of the Scheme, and positioned it with the media, MPs and JFSA as the response to the Second Sight Report, that it achieves its objectives and is generally acknowledged as being successful in answering the concerns of Subpostmasters.
- 4.2. From the Post Office's perspective the Scheme will have been a success if, when it has completed:
- the JFSA, the media and politicians consider that the scheme addressed the concerns of Subpostmasters identified in the Second Sight report;
 - the cost to the Post Office in terms of financial settlements is not excessive, is proportionate, and is consistent with the proper use of public money; and
 - Subpostmasters retain their confidence in the Horizon system.
- 4.3. With no evidence to suggest any systemic problems with the Horizon system and from discussions as a Working Group, in designing the Scheme Post Office was of the view that it was unlikely that complaint resolution would result in excessive compensation payments and, for example, an apology may be an appropriate remedy.
- 4.4. However, it is becoming apparent from some of the early cases coming into the Scheme, and comments made by JFSA (in the media and to Subpostmasters), that at least in some instances a "gap" is emerging between what applicants and JFSA may be expecting, and what Post Office might consider to be an appropriate financial settlement, i.e. the Expectations Gap.
- 4.5. For the Scheme to provide a successful closure to the Horizon episode we need to manage both the costs and the Expectations Gap.

5. Managing costs

- 5.1. Each case will turn on its own facts. Whether compensation is appropriate (and if so, how much) must therefore be assessed on a case-by-case basis.

Confidential – Subject to Legal Privilege

- 5.2. It will not be possible to accurately assess the costs to Post Office until all cases have been investigated and we have a clearer idea of the approach the Working Group will take on the suitability of cases for mediation. Some mediations are likely to take place before others have been fully investigated so we will keep the situation under review.
- 5.3. Nevertheless, we have always envisaged that some cases will result in a financial settlement. It is therefore important that any payments are justifiable, consistent and proportionate, and that we have an agreed policy in place before we begin considering financial settlements.
- 5.4. The draft Settlement Policy attached at Annex 1 sets out a framework, principles and process for considering cases where it is clear that the applicant is seeking a financial settlement. Applying this policy will allow us to:
 - manage and control costs;
 - approach financial settlements consistently; and
 - provide the Post Office mediation team with a clear mandate for settlement prior to entering mediation discussions (this is a pre-requisite to mediation).

6. Managing the Expectations Gap

- 6.1. The fact that cases have been progressed through the Scheme should lend credibility to their outcomes. Specifically:
 - the Scheme was developed collaboratively with JFSA and Second Sight, who are also on the Working Group overseeing the progress of cases through the Scheme;
 - the Working Group has an independent Chair with considerable experience in overseeing complex cases;
 - Applicants are allowed up to £2,750 (plus VAT) towards the fees of a professional advisor to help prepare their case and attend mediation;
 - By its very nature, mediation is designed to support parties find common ground and therefore is, in itself, a mechanism for managing expectations within the confidentiality of a mediation discussion.
- 6.2. Although confidentiality will be a feature of any settlement agreement, we should expect some detail will find its way into the public domain. Although the Post Office could, rightly, be criticised if the total settlement figure were seen to be high, public and political opinion is generally on the side of the Subpostmasters. To minimise the risk of Subpostmasters being dissatisfied having come through the Scheme, we need to begin to manage expectations. As well as wishing to avoid adverse publicity, we have a responsibility to help ensure that Subpostmasters are not disappointed when they already feel they have been let down by Post Office.

Confidential – Subject to Legal Privilege

6.3. In considering how to manage the Expectations Gap it is important to maintain the integrity of the Scheme. In particular we have to consider:

- Legal Privilege – the Settlement Policy is, and must remain, confidential and privileged. Disclosing all or part of the Policy is likely to cause privilege to be lost. There are therefore strict limits of what information can be disclosed, and to whom;
- The ‘no-limit’ nature of the Scheme – having established a Scheme with no financial limits, and allowed people to apply on that basis, we could be criticised for changing the goal-posts if we start publicly suggesting limits at this stage;
- Public impact on applicants, stakeholders and the media – a perception that Post Office is trying to limit an Applicant's freedom to raise whatever complaints they see fit could lead to criticism;
- Impact on the Working Group - the Chair in particular may object to the Post Office seeking to manage expectations if this creates tensions in the Working Group and/or impacts upon the collaborative nature of the Group.
- Evidence based decisions – making public statements about Post Office's expected outcomes for the Scheme may appear to be pre-supposing or undermining the process:

6.4. The Chair, with his judicial background, should understand the nature of reasonable settlements based on properly evidenced facts. It is also in his interest to have presided over a successful Scheme. We propose to:

- open discussions with the Chair to take his views on how we might approach the task of managing expectations
- use opportunities presented in meetings with MPs and others, should the subject arise, to restate our original position in relation to resolutions not necessarily being financial.

7. Examples

7.1. As set out in para 5.1 above, we do not have sufficient information at this stage to assess the potential overall cost of financial settlements to Post Office.

7.2. However we have worked through two live examples to illustrate how the Settlement Policy might work in practice and how the Post Office approach to settlement might compare with the expectations of individual Subpostmasters (see Annex 2).

7.3. We cannot tell at this stage how typical these examples are, we have provided them to help bring the policy and proposals in this paper to life.

8. Communications

Confidential – Subject to Legal Privilege

- 8.1. At present our media position is reactive, and we are avoiding giving regular public updates on the Scheme and the number of applications.
- 8.2. We are developing a communications strategy to coincide with the first mediation decisions. We will agree our approach with the Chair of the Working Group, and possibly the Group itself. There is every indication that the Chair does not favour media attention and already has plans to try to restrict individual parties to the Working Group making comments about the scheme to the media.

9. Conclusion

- 9.1. The Settlement Policy and an approach to managing expectations, agreed with the Chair of the Working Group, will promote the success of the Scheme.

10. Recommendations

The Executive Committee is asked to:

- 10.1. approve the Settlement Policy
- 10.2. note the arrangements for managing the expectations gap.

Chris Aujard
13 November 2013