

Initial Complaint and Mediation Scheme: the way forward



Summary of issues and options
appraisal

2nd April 2014



Introduction

Purpose of this paper

This paper is intended as a briefing document for senior management which:

- Outlines risks and issues arising with the scheme as currently constituted
- Describes the objectives of the scheme;
- Outlines key principles on which the scheme should be founded;
- Presents and appraises a number of options for the future management of the scheme; and
- Makes recommendations for a way forward.

It is intended that once agreed, the issues explored in this paper will be developed further, and presented to the Board for decision at its meeting on [date].

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Background and Context

Outline of current position

The Initial Complaint Review and Mediation Scheme (the Scheme) was established in August 2013 to resolve complaints and issues about the Horizon financial system to the satisfaction of most or all stakeholders.

- The performance of the scheme has not met expectations. Out of an original 147 applications, 139 are still in the Scheme at various stages.
- There is an increasing expectation gap. Estimated claims are thought to be in the region of £100M. Applying the settlement policy, financial liability is estimated at £6M.
- The scheme is resource intensive. There are currently 22 Post Office staff supporting the process, supplemented by external legal and consultancy support.
- There are concerns in relation to the role of Second Sight and the quality of their work.
- Stakeholder management continues to be challenging and politically sensitive.

Key Challenges

- Confirming whether the Horizon system is fit for purpose is fundamental to establishing the extent of legal liability and in shaping the Scheme's overall response. The current assumption, and the basis on which decisions are being made, is that there are no systemic issues with the Horizon system
- With the clear intention to do the right thing, the Scheme was originally designed as a vehicle for engagement with PSMRs. In practice the Scheme has become a legalistic, adversarial alternative to the court process.
- The Scheme is a mediation scheme, and as presently constituted does not provide alternative dispute mechanisms where mediation is unlikely to resolve any dispute because of the amount being claimed and /or the complexity of the factual and legal issues involved.
- There is a recognised need to introduce a structured process and framework based on key principles, and to confirm the role and remit of both the Working Group and its members.

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Risks and Issues

Five key risks have been identified, and these are summarised in the table below:

Risks identified	Issues arising	Mitigation / approach to quantification
Financial liability arising from claims settlement	<ul style="list-style-type: none"> If legal liability exists a financial claim in settlement may be agreed during mediation Likely number and value of successful claims appear to be low. Ex-gratia payments could be offered to expedite resolution of claims regardless of legal position. 	<ul style="list-style-type: none"> Review claims against framework and identify the range of potential liability Apply average value to determine estimated liability
Cost of administering the scheme	<ul style="list-style-type: none"> Under scheme rules, POL have agreed to meet costs incurred by PSMRs: <ul style="list-style-type: none"> up to £1,500 plus VAT for claim investigation up to £750 plus VAT for a half day mediation up to £1,250 plus VAT for a full day mediation Liability estimated at £415k Costs incurred by Second Sight in region of £500k to date No agreed contract or terms of reference No pattern of instruction or direction for their work Risk of increased costs without achievement of desired outcomes Risk of dispute where quality of work under question Lack of clarity in respect of role and remit resulting in a lack of impartiality 	<ul style="list-style-type: none"> Agree rules to establish eligibility for contribution towards costs Agree terms of reference Clarify role and responsibilities Agree QA and approval process in terms of contract to support payment of fees

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Risks and Issues

Risks identified	Issues arising	Mitigation / approach to quantification
PR and reputational risk associated with non-settlement	<ul style="list-style-type: none"> Establishment of scheme has set expectations of a financial settlement Views expressed publicly by Second Sight and other stakeholders, often with little evidence to support position, raises expectations of applicants. Low risk of litigation if SPMR not satisfied with outcome of mediation - scale and merits of claim will drive decision making in this regard. Low risk of class action 	<ul style="list-style-type: none"> Clarity around process Transparency in relation to decision making Consistency of approach
PR and reputational risk associated with settlement	<ul style="list-style-type: none"> The reaction of stakeholders, including non-applicants and SPMRs to the payment of compensation to SPMRs where there is no legal liability to do so. The effects of such payments on the criminal convictions secured to date and sought in the future. These risks are potentially more significant than non-settlement 	<ul style="list-style-type: none"> Clarity around process Transparency in relation to decision making Consistency of approach
Settlement through mediation will not be achieved within appropriate and reasonable financial parameters due to professional advisers seeking to recoup their costs within the settlement mandate.	<ul style="list-style-type: none"> Adversarial approach being adopted by professional advisers driving up costs for what was intended to be a light touch mediation scheme. Upward pressure on settlement value will increase financial liability Time and cost to manage caseload likely to increase. 	<ul style="list-style-type: none"> Explore potential to cap level of costs which would be applicable in any settlement. Negotiate cost settlement outside mitigation process.

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Risks and Issues

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Scheme Objectives and Core Principles



Advice from legal advisers has identified a requirement for improved clarity in respect of the Scheme's overall objectives.

In response, the following core principles have been identified and it is proposed that any future changes to the operation of the scheme be consistent with these principles. The table below presents these principles, and outlines what adherence to these principles will mean in practice.

Core Principle	What that means in practice:
Transparency	<ul style="list-style-type: none"> Clarifying eligibility under the scheme for claimants subject to criminal convictions or civil judgements Establishing an independent view of Horizon system and whether it is fit for purpose Open about process and timescales Audit trail to support decision making Full disclosure of legal decisions
Consistency	<ul style="list-style-type: none"> The standard terms and conditions of contract, and associated risk allocation apply to all applicants Ensuring equality of treatment of PSMRs
Fairness	<ul style="list-style-type: none"> Doing the Right Thing Ensuring decisions made reflect the business model run by the PSMR Commit to seeking the right answer in each and every case Ensuring that no PSMR is out of pocket by being part of the scheme Protect our public reputation as a fair and just organisation. Admit to mistakes and highlight the changes being put in place
Efficiency	<ul style="list-style-type: none"> Finish the scheme within an objectively reasonable timescale (1 year). Close down the scheme as soon as possible Minimise time to deal with each claim Simplify process, minimising management effort Minimising the cost of running the scheme
Effectiveness	<ul style="list-style-type: none"> Minimising cost of compensation Minimising legal exposure

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Alternative options for the future of the Scheme

Options for consideration

The following options have been identified for the future of the Scheme, and are described in more detail within the subjective analysis below:

1. Maintain current position (base case for appraisal)
2. Restructure scheme – assess all applicants and settle based on value based judgements
3. Restructure scheme – assess all applicants and settle based on eligibility framework
4. Close scheme making no settlement
5. Close scheme making arbitrary settlement to all applicants
6. Replace Second Sight
7. Formalise Second Sight appointment and provide clarity in relation to scope and remit
8. Second Sight to retain role on Working Group only

Key attributes of any future Restructured Scheme

Two options have been identified which will involve restructuring the existing scheme. Regardless of format, any Restructured scheme should have the following attributes:

- A clearly defined, structured process and decision framework based on key principles
- Clarity in respect of the role and remit of the Working Group
- Clarity in respect of eligibility under the scheme for claimants subject to criminal convictions or civil judgements
- An independent view of Horizon system and whether it is fit for purpose;
- An agreed approach for the application of thematic issues identified by Second Sight;
- Established criteria for payment of "standard" compensation irrespective of the legal merit of claims where it can be demonstrated that applicants had not been investigated fairly.

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Subjective Analysis

A subjective analysis of each option, providing a detailed description of each proposal, and outlining pros, cons and any risks identified is presented below.

1. Maintain Current Position

This option maintains the scheme as currently constituted

Pros	Cons	Risks
<ul style="list-style-type: none"> Maintains current commitments to applicants Diligent investigation process 	<ul style="list-style-type: none"> Slow – expected case progression has moved from months to 12 months. Expensive to operate – and increasing due to case progression challenges Lack of clarity in respect of roles and responsibility of working group No formal defined process or decision framework 	<ul style="list-style-type: none"> Reputational risks Financial liabilities Operating risk – inability to deliver the process as defined and secure a reasonable outcome for all parties

2. Restructure scheme – assess all applicants and settle based on value based judgements

Claim criteria and corresponding values to be defined. All applicants to be thoroughly assessed, Assessment reports referred to Working Group who will consider merits and recommend settlement based on report and application of criteria. Chair of Working Group would be able to veto. Decisions and influencing factors would be documented.

Pros	Cons	Risks
<ul style="list-style-type: none"> Improved transparency and accountability Consistency of approach Easier to administer 	<ul style="list-style-type: none"> Working Group as currently constituted is not appropriate for this role. Governance arrangements would need to be revised Defined financial settlements may increase financial exposure, and result in inappropriate settlements 	<ul style="list-style-type: none"> Risk that every PSMR not part of the scheme will apply for similar value of compensation May trigger legal action May change PSMR behaviour towards non-compliance
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Subjective Analysis

3. Restructure scheme – assess all applicants and settle based on eligibility framework

Eligibility criteria and decision framework defined. All applicants to be thoroughly assessed, and applied to against eligibility framework. Settlement value agreed on a case by case basis. Adopt Ombudsman policy of using an independent assessor, or a Review and Scrutiny Panel with the power to call in and review cases and provide oversight of process. Working Group to be disbanded. Mediation approach to be discontinued.

Pros	Cons	Risks
<ul style="list-style-type: none"> Minimise operating costs Improve settlement time Minimise settlement costs by introducing the ability to negotiate Fairness and transparency maintained through scrutiny role 	<ul style="list-style-type: none"> Significant departure from current position which will require significant stakeholder management and communication to applicants Removing the opportunity for dialogue through mediator, which may be more adversarial, and result in addition legal costs for applicants 	<ul style="list-style-type: none"> PR and reputational risk – may be considered to be more aggressive and adversarial Financial liability will be difficult to quantify as they are determined on a case by case basis.

4. Close scheme making no settlement

Announce closure of the Scheme and invite applicants to pursue cases through legal routes.

Pros	Cons	Risks
<ul style="list-style-type: none"> Quick and simple Limits operating costs and financial liabilities in the short term Court system is a more appropriate forum for these cases to be discussed.. 	<ul style="list-style-type: none"> No fair or transparent Does not fulfil current commitment to Minister Likely to significantly damage relationships with PSMR community PR nightmare Impacts negatively on strategy to be a trusted financial services provider Damaged relationship with Working Group chair. 	<ul style="list-style-type: none"> Risk of court proceedings On-going financial liability

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Subjective Analysis



5 Close scheme making arbitrary settlement to all applicants

Announce closure of the Scheme and make full and final settlements with all applicants except those with criminal convictions.

Pros	Cons	Risks
<ul style="list-style-type: none"> Quick and simple Limits operating costs and financial liabilities in the short term 	<ul style="list-style-type: none"> May be perceived that Post Office is admitting fault. Not transparent due to the limited investigation carried out. Difficult to rationalise decision to external parties Impacts negatively on strategy to be a trusted financial services provider Damaged relationship with Working Group chair. 	<ul style="list-style-type: none"> Risk of court proceedings

6 Replace Second Sight

Replace Second Sight as forensic accountant due to capability and capacity issues.

Pros	Cons	Risks
<ul style="list-style-type: none"> Able to re-scope work and focus attention on defined deliverables Ensure adequate resources to deliver within agreed timescales Ensure appropriate qualifications and experience Ability to restore impartiality to the role 	<ul style="list-style-type: none"> Loss of continuity Management time in scoping work and engaging new supplier 	<ul style="list-style-type: none"> Impacts on relationships stakeholders Second Sight may become hostile and support and coach applicants

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Subjective Analysis

7 Formalise Second Sight appointment and provide clarity in relation to scope and remit

Renegotiate the terms of Second Sight's contract, defining scope, of work terms of reference, quality standards and acceptance criteria. Payment to be based on the delivery of agreed outputs.

Pros	Cons	Risks
<ul style="list-style-type: none"> Clarity of role and remit More appropriate contractual relationship Ability to manage their input more effectively Ability to withhold payment should quality continue to be an issue. 	<ul style="list-style-type: none"> Re-negotiations will require significant management effort Relationships with PSMRs may worsen 	<ul style="list-style-type: none"> Change in role may be negatively viewed by stakeholders Second Sight may be unwilling to accept alternative terms of reference and contractual arrangements.

8 Second Sight to retain role on Working Group only

Second Sight's role will be limited to attending the Working Group, and providing advice on application of thematic criteria. They will have no remit to validate work carried out as part of the assessment process.

Pros	Cons	Risks
<ul style="list-style-type: none"> No involvement in casework process, addressing the concerns identified in relation to capacity and capability No requirement to produce reports or other deliverables, addressing concerns in relation to quality of work to date Maintaining involvement with scheme to ensure knowledge and experience to date is not lost. Honours Minister's commitment to the House to maintain their involvement. Providing a mechanism to ensure fairness in the application of thematic criteria. 	<ul style="list-style-type: none"> No ability to manage them in the working group environment May become a hostile expert witness in the future. 	<ul style="list-style-type: none"> May walk away and this may destabilise the working group May attempt to destabilise stakeholders around the scheme.

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Options Appraisal

Appraisal Approach

A matrix has been developed to enable each option to be assessed in relation to alignment with scheme objectives, estimated financial exposure and ease of implementation. Consideration is also given to the relative merits of each options arising from the subjective analysis. A weighting will be agreed to reflect the relative importance of each criteria. The outcome of the appraisal is presented in the table below.

Option Description	Subjective Assessment	Alignment with Core Principles	Estimated Financial Exposure	Ease of Implementation
Maintain current position (base case for appraisal)	R	A	A	R
Restructure scheme – assess all applicants and settle based on value based judgements	A	A	G	A
Restructure scheme – assess all applicants and settle based on eligibility framework	C	G	G	A
Close scheme making no settlement	R	R	R	G
Close scheme making arbitrary settlement to all applicants	R	R	A	G
Replace Second Sight	G	G	G	G
Formalise Second Sight appointment and provide clarity in relation to scope and remit	A	S	A	A
Second Sight to retain role on Working Group only	G	G	A	G

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The Way Forward

Conclusions

The Scheme is both politically sensitive and contentious and has been, and will continue to be subject to a high level of stakeholder interest. Any decision taken will have its challenges, and it must be recognised that significant stakeholder engagement is essential to ensure buy-in for the proposed approach.

The way forward proposed must be in the best interests of the business, first and foremost. However if the key principles of the scheme are followed, the ability to take difficult decisions and to engage effectively with stakeholders will be improved significantly, as fairness and doing the right thing are at the core of the process.

Recommendations

It is recommended that a report be presented to the Board for approval which will:

- Recommend Second Sight be replaced as forensic accountants to the Scheme.
- Confirm the objectives of the scheme and key principles on which the scheme is founded
- Recommend that the scheme is restructured based on a

Next Steps

- Commission independent review of Horizon system and share findings with all key stakeholders
- Commence engagement with key stakeholders
- Develop scheme operating framework and decision making processes