

Post Office Limited

POST OFFICE LIMITED
(Company Number 2154540)**Meeting of the SPARROW SUB-COMMITTEE**
to be held from 16.00 – 17.30 on 30 April 2014 in the Boardroom, 148 Old Street, London,
EC1V 9HQ

Members of the Sparrow Sub-Committee (the 'Committee') will be asked to declare any interest that could give rise to conflict in relation to any item on the agenda at the beginning of the item in question. All interests so disclosed will be recorded in the minutes of the Committee. If the Chairman of the meeting deems it appropriate, the member shall absent himself or herself from all or part of the Committee's discussion of the matter.

16.00	1	Public statements made about the Scheme	Mark Davies
16.05	2	Ex gratia and settlement payments under the Scheme	Chris Aujard
16.25	3	Dissemination of the Linklaters advice and Deloitte report – as discussed at the full Board	Chris Aujard
16.45	4	Recent Correspondence	Chris Aujard
16.55	5	The role of Second Sight	Chris Aujard
17.10	6	Closure/accelerated completion of the Scheme	Chris Aujard
17.30		CLOSE	

PRESENT: Alice Perkins (Chair)
Richard Callard
Alasdair Marnoch
Paula Vennells
Chris Aujard

SECRETARY: Alwen Lyons

IN ATTENDANCE: Belinda Crowe
Mark Davies (Item 1 only)

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Strictly Confidential and Legally Privileged**POST OFFICE LTD BOARD SUB COMMITTEE****Initial Complaints Review and Mediation Scheme
Ministerial Commitments****1. Purpose**

This paper has been prepared following the initial meeting of the Board Sub Committee on the Initial Complaints Review and Mediation Scheme (the Scheme) on 9 April. At that meeting the programme team were asked to produce a paper setting out the ministerial commitments with regard to the Scheme and timescales.

2. Background

This paper looks at the ministerial commitments that have been made including within:

- Ministerial statement in Parliament on the 9th July in response to the interim report produced by Second Sight
- Written response to parliamentary questions asked by Ian Murray MP on the 31st October
- Ministerial correspondence.

3. Summary of ministerial commitments

The Minister has said very little about the Scheme itself. The majority of her comments were made during the debate on the interim report which was before the Scheme was designed or announced. The following list sets out the key commitments she has made where they could be deemed relevant to the Scheme:

- Working Party will consider all 47 cases bought forward by JFSA and MPs
- Independent figure will chair a review
- Independence of process
- Second Sight and JFSA Working Party
- Further work on cases must be independent
- Working Party must be independent
- James Arbutnot and JFSA recipient of further cases
- Application open from 27th August – 18th November 2013
- Working Group is independent of Government and is responsible for meeting the recommendations set out in the interim report

4. Ministerial Commitments

Initial Complaints Review and Mediation Scheme
Ministerial Commitments

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Summary Commitment	Ministerial Commitments (Statement or PQ)	Correspondence
No Systemic Issues with Horizon system	Statement: It did not find evidence of systemic failures; that is not to say there has never been a bug in the system, but I defy anyone to find an IT system that has never had a bug. What is important is that when bugs are found, they are dealt with and the problems are rectified. What has not been found, however, is any systemic problem leading to the issues faced by sub-postmasters, although there have been issues with the support and training provided alongside Horizon.	'No remote access to the system or individual branch terminals' 07.12.2010
Working Party will consider all 47 cases brought forward by JFSA and MPS	Statement: First, it will set up a working party to complete the review of cases started by Second Sight, and will consider all 47 cases brought forward by the Justice for Subpostmasters Alliance—the JFSA—and MPs	
Independent figure will chair a review	Statement: Secondly, an independent figure will chair a review to determine how best to adjudicate disputed cases in future. The JFSA and other stakeholders will also be invited to take part in this process.	
Independence of process	Statement: It is important that any further work is not only independent, but seen to be independent	
Second Sight to be part of the Working Party	Statement: I shall happily give the hon. Gentleman that assurance [That Second Sight will be part of the working party].	
Further work on cases is independent	Statement: we need to ensure that the further work on cases where there are outstanding queries is independent	
Working Party must be independent	Statement: Yes, I am happy to give my hon. Friend an assurance that the working party will be independent.	
If other cases should come forward we would not want to deny them the opportunity for this to happen	Statement: On the hon. Gentleman's first point, I can certainly give an assurance that if there are other cases that need to come forward, we would not want to deny those people the	

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	opportunity for that to happen.	
JFSA represented in Working Group	Statement: The independent working group, which will include representation from the Justice for Subpostmasters Alliance, will help to ensure that that happens swiftly and without compromising the details that need to be gone into.	
James Arbuthnot and JFSA recipient of further cases	Statement: I should point out that one avenue for highlighting any further cases would be to bring them to the attention of the Justice for Subpostmasters Alliance, which will be part of the independent working group. I hesitate to suggest, although I am probably safe in doing so, that my right hon. Friend the Member for North East Hampshire (Mr Arbuthnot) would also be happy to continue in his role as a recipient for any such cases.	'Further case can be put forward to review by Second Sight' 11.07.2013
Application open from 27 th August – 18 th November 2013	31 st October Jo Swinson Written Answer to Ian Murray: 'Subpostmasters who wish to have their case considered by the Initial Mediation Scheme have until 18 th November 2013 to submit their applications. The scheme opened on 27 th August 2013.'	
Working Group is independent of Government and is responsible for meeting the recommendations set out in the interim report	31 st October Jo Swinson Written Answer to Ian Murray: 'The Working group is independent of Government, and is responsible for meeting the recommendations set out in the interim report'.	

Mark Davies**30 April 2014**

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Strictly Confidential and Legally Privileged**POST OFFICE LTD BOARD SUB COMMITTEE****Initial Complaints Review and Mediation Scheme
Ex gratia and Settlement payments****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 providing advice on token (or "ex gratia") Scheme payments. This paper also provides briefing on settlement payments and Conditional Fee Agreements (CFAs).

2. Background

- 2.1. From the establishment of the Scheme it was always envisaged that some form of payment might be made to some applicants to help resolve their disputes. However, it was also envisaged (based on legal principles) that any such payment would be small (ie the order of a few thousand pounds at most).
- 2.2. Now that the Scheme is up and running and a substantial proportion (45%) of applicants have submitted detailed claims it is clear that applicants have different expectations. Post Office has now fully investigated over 20 cases and is in the process of writing up investigations on a further 21 cases. This provides an appropriate point to examine again approaches to settlement with the assistance of Linklaters advice on liability and both ex gratia and settlement payments.
- 2.3. We have also heard via JFSA that a "majority" of our applicants have put Conditional Fee Agreements in place. This paper therefore examines CFAs.

3. Ex Gratia Payments

- 3.1. It appears possible to make ex gratia payments from public money (though formal confirmation of the restrictions that might be applied to such payments has yet to be received but will be available for the meeting), for example if an organisation's standards fall short of reasonable behaviour. However, payments made under such circumstances should provide value for money and be in the public interest.
- 3.2. An ex gratia payment is a small payment (circa £50 - £250) to another party to please or give comfort to that party after suffering some actual or perceived wrong allegedly caused by the paying party. Such payments are not necessarily paid or calculated by reference to the legal or moral merits, or any monetary amounts claimed, of the relevant situation or, indeed, any legal or other principles at all.
- 3.3. Ex gratia payments would usually not be paid in the context of any actual or threatened legal proceedings. They are paid unilaterally in the sense that the aggrieved party need not agree to the payment or that it should be tied to any particular consequences, albeit payment is usually made with the aim and hope that the aggrieved party does not pursue further their grievance.
- 3.4. The key advantages of making an ex gratia payment are the likely low financial burden on the Post Office, with the potential in some cases of bringing disputes with applicants to the Scheme swiftly to an end.

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3.5. These advantages are however offset by the following:

- making payments without any reference to the merits or principles applicable in each particular case creates a significant risk that applicants will not be satisfied by the payments, particularly in cases where the ex gratia payment is a very small proportion of the amount claimed. This will not only waste the costs of administering (fruitless) payments, but also leave the Post Office in no better position for dealing with potentially many of the complaints in the Scheme;
- ex gratia payments could be perceived as derisory in some cases, especially where more substantial amounts are claimed, and potentially inflaming an already bad situation; and
- SPMRs who did not apply to the Scheme may complain that they should be entitled to an ex gratia payment, because had they known that the Post Office would take this approach before applications to the Scheme closed they would have applied to the Scheme to ensure they received payment (irrespective of their Horizon experience). Given the many thousands of SPMRs who have not applied to the Scheme, such additional complaints could worsen the current situation.

3.6. For these reasons, on balance, it is recommended that ex gratia payments are not offered in the Scheme.

4. Settlement Payments

- 4.1. Ordinarily, settlement payments are made in the context of threatened or ongoing legal proceedings. They are made by one party to another as an inducement to the other to agree to compromise the claim. Payment is usually made in exchange for the the other party giving up the right, for a period or in perpetuity, to continue or re-commence the claim in the future and/or to bring other claims on the facts.
- 4.2. Settlement payments are thus only meaningfully made once opposing positions are known with at least some degree of certainty i.e. once the "battle lines have been drawn" between the parties. They are usually made by reference to the known (or suspected) facts in issue in the claim and the merits of the respective parties' positions. In that sense, they differ from ex gratia payments which, by contrast, are usually paid to a class of recipients according to some generally applicable policy (if there is one), without much or any consideration of or reference to the circumstances or merits of a particular case.
- 4.3. The key drivers of any settlement are 1) the merits of the case, 2) what is at stake in the case (financially and otherwise) and 3) the quantum of the settlement involved, balanced against the potential cost to the paying party of continuing the claim ultimately being unsuccessful.
- 4.4. The key point is that in any case, in the context of a specific case, settlements need only be deployed if they are determined by the Post Office to be necessary. If they are paid as part of some generally applicable policy and according to a pre-ordained calculation or payment structure without reference to the merits of the cases, not only will they increasingly resemble ex gratia payments, they may also more likely

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be ineffective to achieve the Post Office's desired outcomes or finally resolving complaints.

- 4.5. Post Office could assess the merits of each case on the basis of its preliminary investigations. Having done so, it could then categorise cases by reference to the risks of 1) each complaint continuing further, including potentially to threatened or actual litigation, and 2) the potential financial (and other) impacts on the Post Office, if no settlement or alternative dispute resolution process were offered at this stage. Decisions as to whether settlement payments should be offered and if so how much could then be taken according to how cases are categorised.
- 4.6. A broader approach could be taken by categorising cases by reference to more general substantive and/or procedural attributes which may be, but are not necessarily, linked to legal merit, such as cases in which a) the Post Office summarily dismissed an applicant or b) when the Post Office considers that it acted capriciously. Obviously the more settlements can be tailored to the facts and merits of particular cases, the more likely they are to be effective.
- 4.7. The calculation of any settlement payment necessarily varies from case to case and depends very much on the scope of the "drivers", it is impossible to posit with any precision what quantum they could be in the context of the Scheme in any particular case. However, the following principles may provide some guidance:
 - A settlement payment must satisfy the recipient to cause him to give up his rights and cease his complaint. It is often therefore calculated as a proportion to or by some rational relation to the amount claimed. Offering a very small or a token amount to seek to settle a claim is unlikely to be sufficient.
 - On the other hand, by its nature, a settlement payment must discount the amount claimed in order to provide incentive to the other paying party, rather than choose to bear the risk of continuing to defend the claim.
 - Given Linklaters' advice that the legal merits of cases in the Scheme are likely to be, at best, limited, it is possible that applicants may be satisfied by small proportions of the amounts claimed. That will in some part depend on the quality of legal and other advice to which the SPMR has access and the strength of the SPMR's conviction. It may be so even in cases where a very substantial amount has been claimed, because the quantum of a claim bears no relation to its legal merits (e.g. someone who claims £5 million may have much lower prospects of successfully claiming any of it than someone who more realistically claims £50,000).
 - However, we appreciate that the quantum of any settlement payments will also be constrained by the Post Office's budgetary imperatives, the strength of its desire to bring an end to the Scheme sooner rather than later, and the strength of conviction of applicants to "stay the course" and maintain their complaints, perhaps by threatening or pursuing litigation if they remain unsatisfied.

Strictly Confidential and Legally Privileged**5. Conditional Fee Agreements**

- 5.1. Conditional Fee Agreements ("CFAs") involve a party agreeing to pay their solicitor's fees only if "successful". If the party is successful, then they will usually have agreed also to pay an additional success fee which is statutorily limited to be up to 100% (or double) of the solicitor's base fees.
- 5.2. What constitutes "success" for the purpose of a CFA will depend on the terms of each particular CFA. This will be important, for there will be little incentive for a solicitor to encourage his client to agree any settlement unless and until he has achieved success and can thus be paid. Equally however, he may not wish to take the risk of continuing hopeless cases and "throwing good money after bad". Thus a CFA in and of itself may not be a barrier to settlement.
- 5.3. What is certain is that an applicant is unlikely to agree a settlement which does not satisfy his liability for his solicitors fees. This may provide incentive for the applicant to settle more readily with the Post Office (and therefore more so in the Post Office's favour) so that his liability for fees does not erode the value of any realistic settlement payment.
- 5.4. Post Office should be aware that if it agrees to pay an applicant's costs in any settlement, those costs might include an additional success fee. Post Office can of course negotiate as it sees fit any part of the applicant's legal costs.

6. Bond Dickinson work on a draft settlement

- 6.1. ExCo had previously commissioned, from Bond Dickinson, a piece of work to examine what a settlement strategy might look like. This was an important part of understanding how and in what manner Post Office might wish to finally settle individual cases. The work was necessarily done before Post Office was in receipt of full and investigated claims and thus before it knew the strength of the claims and quantum sought. The work has therefore been superseded by the investigation of the claims and the unrealistically inflated claims being submitted by applicants. Therefore Post Office will not be using that work going forward.

7. Conclusions

- 7.1. In conclusion ex gratia payments are not suitable for use in the Scheme given their small size against the level of claim being received, and the large population of SPMRs who have not submitted any claim. Settlement payments are more complicated and need to be examined on a case by case basis, but may be difficult to agree given the low level of liability compared to the high levels of claims being experienced.
- 7.2. The dynamic around settlement is likely to be further complicated by the prevalence of CFAs within the applicant population (which may substantially increase applicants' claims for their solicitors' fees) and therefore making a decision on communicating the Post Office position on liability and payments is critical for the Scheme going forward.

Chris Aujard

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Strictly Confidential and Legally Privileged**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.

WORKING DRAFT

[Post Office Limited Letterhead]

[Chairman of the Working Group]

[] 2014

Dear [Sir]

Initial Complaint Review and Mediation Scheme

As you know, Post Office Limited (the "Post Office") set up the Initial Complaint Review and Mediation Scheme ("the Scheme") to seek to provide a mechanism for resolving complaints which certain Sub-Postmasters ("SPMRs") had about the operation of the Horizon transaction reporting system. Much work has now been done in the context of the Scheme and the Post Office has carefully considered the information so far available as to the operation of Horizon, the nature of the individual complaints brought and the Post Office's preliminary response to the issues raised in those complaints.

The result of the Post Office's own work in relation to the Scheme is that the Post Office now has certain views on issues which arise in many, if not all, complaints, and the Post Office believes that it would be appropriate to share those with the Working Group through this letter. I shall also be arranging for a copy of this letter to be posted on the [website] so that all those interested can read it. I should stress that each complaint is and will be addressed individually and on its own merits. Nothing in this letter should be taken as leading to a firm conclusion in relation to the merits of any individual complaint. Nevertheless, to the extent to which this letter sets out the Post Office's thinking in relation to a particular point, the likelihood is that there would need to be specific facts in an individual complaint to lead the Post Office to form a different conclusion on that issue.

The Post Office would be happy to explain its thinking on any of these issues further or to clarify any point where you, as Chairman of the Working Group, thought that that would be of assistance.

The Post Office recognises that certain SPMRs have been frustrated and upset about their dealings with the Horizon system (though I note that it is only a very small minority of SPMRs who describe their experience with Horizon in these terms). The Post Office is and remains concerned about any and all such reactions and wishes to work with SPMRs both to understand their complaints and also to ensure, so far as possible, that individual SPMRs are able to work with Horizon to ensure a problem-free relationship in the future. Where a SPMR has translated his or her reactions to Horizon into a complaint it is inevitable that the analysis will turn on the legal framework between the SPMRs and the Post Office and the question of whether such a complaint is made out will be one answered by reference to legal principles. The Post Office is bound to consider complaints in this way, not least because it has a number of stakeholders to whom it is answerable and has also to bear in mind the interests of other users of Horizon from whom the Post Office may have claimed losses but who have not complained. The Post Office believes that the right course is for it only to consider paying compensation to SPMRs where that is the correct conclusion as a matter of the law.

[We should try to say something about the entrance requirements into the Scheme. The SPMRs will ask why they are in the Scheme if they don't have claims.]

WORKING DRAFT

For the reasons set out more fully in this letter, the Post Office considers that many, if not most, of the complaints in the Scheme lack or are likely to lack a reasonable legal basis. The Post Office is keen to moderate the expectations of SPMRs who have brought complaints and hopes that this letter may assist in that process.

Against that background, the issues addressed in this letter are as follows:

- (a) The proper functioning of the Horizon system;
- (b) The contractual relationship between the Post Office and SPMRs;
- (c) The legal framework for the recovery of losses by the Post Office;
- (d) The Post Office's obligations in relation to training and support;
- (e) The right of the Post Office to terminate a contract with a SPMR;
- (f) The legal right of SPMRs to compensation; and
- (g) The application of the Limitation Act 1980.

The proper functioning of the Horizon system

The complaints in the Scheme, necessarily, are about or are associated with Horizon. They are not about other aspects of the Post Office/ SPMR relationship. The Post Office's liability to any particular applicant, therefore, depends in large measure on there being, generally or in any particular case, a flaw in Horizon.

The Post Office notes Second Sight's preliminary conclusion, that they "found no evidence of system wide (systemic) problems with the Horizon software." [The Post Office has, of course, read what Second Sight has produced and taken it into account. However, it is concerned that the work of Second Sight does not address the operation of Horizon in comprehensive terms. The Post Office is also concerned about the level of detail in Second Sight's work and the lack of evident substantiation for Second Sight's views.]

By way of supplement to Second Sight's work, therefore, the Post Office has commissioned a report from Deloitte (the "**Deloitte Report**"). The Deloitte Report [confirms what the Post Office [believes/has been confident] has always been the case: Horizon is fit for purpose and functions in accordance with its design specifications; it is not fundamentally flawed; it does not suffer from any systemic issues. In particular, the Deloitte report:

[Set out key findings of the Deloitte Report]

[A copy of the Deloitte Report is enclosed./ The Post Office has distributed /will be distributing [in due course] copies of the Deloitte Report to you and to other relevant interested parties.]

The Post Office believes that the conclusions Deloitte have reached about Horizon removes any doubts over its functionality or its fitness for purpose.

The Post Office will, of course, consider carefully specific allegations made in a particular case. But in doing so the Post Office will be guided by what Deloitte's view is as to the likelihood of the particular issue impacting on the performance of Horizon. ***[This needs further thought as to how the Post Office wishes to position it. Moreover, what does the Post Office want to say about Second Sight?]***

The contractual relationship between the Post Office and SPMRs

The legal relationship between SPMRs and the Post Office is governed by the 1994 standard form contract (the "Contract"). It is important to recognise that the Contract (together with the general law) provides the framework for the allocation of risk between the Post Office and SPMRs. That framework must guide the determination of any liability owed, in either direction, between applicants to the Scheme and the Post Office.

The legal framework for the recovery of losses by the Post Office

Clause 1 of the Contract makes it clear that the relationship is one of principal and agent and that the SPMRs are not employees of the Post Office. The Contract, and agency relationship, have several key consequences. First, they give rise to certain, clear duties owed by SPMRs to the Post Office (which I mention further below). Secondly, SPMRs do not enjoy the legal protections and benefits that they otherwise might if they had the status of employees (see, for example, *Commissioners of Inland Revenue v Post Office Limited* [2003] ICR 546 and *Moeze Lalji v Post Office Limited* [2007] EWHC 5 (QB)). Thirdly, such duties as the Post Office might owe SPMRs are established and circumscribed by the terms of the Contract i.e. there can be no broader duty of care which would extend the contractual duties owed by the Post Office in any respect relevant to the subject matter of complaints in the Scheme.

There are two main issues in the recovery of losses: 1) the way in which losses are calculated and 2) the Post Office's legal entitlement to seek those losses from a SPMR. It is accepted by all that Horizon produces and maintains the accounts on which all parties rely. The Post Office's position is that, as a matter of principle, Horizon accurately reflects the account between the Post Office (i.e. it accurately calculates losses) and that the Post Office is entitled to recover such losses from SPMRs, including the applicants to the Scheme.

The SPMR is, day to day, responsible for inputting transactions to the Horizon system. Horizon provides a record not only of what the SPMR has received from the Post Office by way of stock but also what he has sold, and the cash he has received. Horizon is the only system used to record transactions; the Post Office holds no other relevant records. During the period covered by the complaints to the Scheme, at least once a month and potentially as often as at the end of every week, a SPMR was obliged to prepare and sign a document entitled "Cash Account (Final)" and send it to the Post Office or complete an equivalent process by declaring via an electronic system the amount of cash that he holds. The SPMR also conducted a manual hand count of cash and stock in the branch and compared them to the levels recorded in Horizon.

Section 12, paragraph 4 of the Contract provides:

"The Subpostmaster must ensure that accounts of all stock and cash entrusted to him by Post Office Ltd are kept in the form prescribed by Post Office Ltd. He must immediately produce these accounts, and the whole of his Post Office branch cash and stock for inspection whenever so requested by a person duly authorised by Post Office Ltd."

Therefore, there is a clear contractual basis on which SPMRs are required to account to the Post Office whenever requested to do so. In any event, the duty to keep an account also arises under the general law by virtue of the principal/agent relationship. An agent is required to keep an accurate account of all transactions entered into within the scope of his agency and he has to be ready to produce that account at any time to his principal. If he fails to keep and produce accounts then the principal is entitled to assume everything against him. SPMRs are asked to agree accounts regularly. They signify their agreement by an appropriate entry on Horizon. If a SPMR disputes the state of his account, he is free not to agree that account on Horizon.

An agent is bound by his own accounts unless he can show that he made a mistake. Once an account is agreed, the principal can sue on it. In other words, once a SPMR signifies his agreement to an account on Horizon which shows a balance due to the Post Office, the Post Office is entitled to sue on this as an account stated (see, for example, *Post Office Limited v Lee Castleton* [2007] EWHC 5 (QB)). Generally, settled accounts will not be re-opened, unless (as mentioned) drawn up under a mistake or if the agent is guilty of fraud.

Thus, as I mention above, it is the reliability of the Horizon system as a matter of principle which is important because its reliability places the burden on the SPMR to show why, on the basis of the limited exceptions above, the amounts said to be owing are not in fact owed. But, there can now be no real doubt as to its reliability. The circumstances, therefore, in which any applicant to the Scheme could realistically "re-open an account" and object to a particular loss recovery will be limited indeed.

The complaints to the Scheme do not appear to take issue with the Post Office's right, as a matter of principle, to recover losses from SPMRs. However, there can be no doubt that such a right exists. First, section 12, paragraph 12 of the Contract is headed Losses. It provides:

"The Subpostmaster is responsible for all losses caused through his own negligence, carelessness or error, and also for losses of all kinds caused by his Assistants. Deficiencies due to such losses must be made good without delay."

Paragraph 13 makes it clear that this obligation does not cease on the SPMR relinquishing his appointment and extends to losses which come to light after he leaves. Further, the fact that the SPMR must be in "error" is a low threshold and implies the Post Office need not establish any "mental element" on the part of the SPMR: he can simply be mistaken without being careless and without there being any question of dishonesty on his part.

Absent the right contained in section 12, paragraph 12, the Post Office would in any event be entitled under the general law to seek loss recovery pursuant to the duty of an agent who holds money for his principal to pay over or account for that money at the request of his principal. Thus there is a sound contractual basis for the recovery of losses, which is supported and supplemented by the general law governing an agent's duties to his principal.

The Post Office's obligations in relation to training and support

The Post Office is obliged to provide training under section 15, paragraph 7 of the Contract. In particular, the Post Office agrees to provide the Subpostmaster with relevant training materials and processes to carry out the required training of his Assistants on the Post Office Products and Services, inform the SPMR as soon as possible where new or revised training will be necessary as a result of changes in either the law or Post Office Services and (as necessary) update such training and materials.

However, it is the SPMR's responsibility to ensure the proper deployment within his Post Office branch of any material and processes provided by the Post Office and to ensure that his Assistants receive all the training which is necessary in order to be able properly to provide the Post Office Products and Services.

In other words, the Post Office must provide training and keep it up to date but the SPMR is still responsible for the day to day operation of the Subpostoffice and accepts the consequences of any lack of training provided to his Assistants or their failure to put the training into effect.

In any event, in order to show that a claimed failure to provide proper training or support gave rise to a complaint, the SPMR would have to show how any alleged inadequate training or support has caused the loss he claims. The Post Office believes that this will be difficult to do in most if not all cases.

The right of the Post Office to terminate a contract with a SPMR

Some complaints concern the alleged wrongful termination of Contracts. The Post Office is entitled to give three months' notice to terminate the Contract with the SPMR (under section 1, paragraph 10) for any reason. If in a particular case the SPMR's Contract has been terminated on three months' notice, he can have no remedy arising out of that termination. The Post Office is able, contractually, to terminate the Contract for any reason or, indeed, for no reason.

Section 1, paragraph 10 also entitles the Post Office to terminate a Contract with a SPMR summarily for breach of a condition or non-performance of an obligation by the SPMR. Such cases must be treated on their facts. The Post Office believes that it is likely that in most or all cases, any such loss flowing from the wrongful summary termination of a Contract would be limited to the loss of the SPMR's entitlements during the three months following the termination, because the Post Office would have otherwise been entitled to terminate the Contract (for any reason) on giving such notice. The same comments above as to causation of loss also apply.

The legal right of SPMRs to claim compensation

As a matter of principle, if in each particular case, the Post Office has a right to recover losses, then there can be no question of the relevant applicant being entitled to "compensation"; in short, there is nothing for which compensation is due. Even if the Post Office was not in a particular case entitled to claim losses (and as I say above, such cases, if any, are likely to be very limited), then it may be that the applicant has a right to recover only *the specific amount of losses* that he paid to the Post Office. This is a restitutionary, not a compensatory, claim. It does not entitle the applicant to supposed related or consequential other amounts, such as for lost earnings, distress, hurt feelings etc.

In particular, in cases where the courts have determined criminal or civil liability against an applicant in respect of loss recovery that forms the subject of the complaint, there can be no doubt whatsoever that the Post Office was entitled to the losses. There can also, for that reason, be no doubt that the Post Office is not liable to pay restitution to such applicants for any alleged wrongful loss recovery.

Cases which a court has not been asked to decide (the majority) seem to fall roughly into general allegations as to the unreliability of Horizon and specific allegations as to factors which may have affected Horizon in the particular case. Particularly in light of the Deloitte Report, general, largely unsubstantiated allegations about Horizon would not establish that a particular loss recovery exercise was wrongful and therefore that restitution to the applicant is due.

More specific allegations about the functionality of Horizon need to be looked at on a case by case basis. [The Post Office accepts that in some, albeit limited, cases there may be specific reasons why loss recovery should not have occurred. These will need to be fully investigated and dealt with.]

However, a couple of important points should be recognised here. First, the Post Office can only be liable to pay restitution for wrongful loss recovery for which it is legally responsible i.e. for things which it has caused. For example, some complaints refer to such things as power cuts, incompatible use of other technologies with Horizon, intermittent internet connectivity etc. as being the basis for the complaint. Others claim compensation where there is a real question over whether Horizon or any of the matters of which complaint is being made caused the "loss" at all. It would be very difficult in such cases to establish liability on the part of the Post Office to pay restitution (or compensation).

Secondly, as I say, the basis for any claim for wrongful loss recovery is restitutionary - i.e. the recoupment of the specific amounts originally paid by the applicant. Even to the extent an applicant could show that the loss recovery was, somehow, a breach of the Contract by the Post Office - thus entitling him to

compensation - this would only entitle the applicant to damages for losses that were reasonably in the contemplation of the parties. This would not include such consequential "losses" as loss of reputation, hurt feelings, mental distress or ill health etc. (even if such matters could be shown to have been caused by the wrongful loss recovery, itself a difficult prospect), as several complaints seem to claim.

I trust that this letter clearly conveys the Post Office's overall position in respect of the issues raised by complaints made to the Scheme. I would welcome any comments or questions you may have in response to it.

Yours sincerely

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www.gov.uk/bis
Our ref: MCB2014/08461

28th
April 2014

Dear Paula,

I have recently received a letter from Alan Bates, Chair of the Justice for Subpostmasters Alliance ("JFSA") regarding the Initial Case Review and Mediation Scheme.

As you will be aware, the Government, as shareholder in Post Office Ltd, does not play a role in operational matters relating to Post Office Ltd, or the Working Group but is supportive of the aim to resolve concerns raised by subpostmasters and believes it is in the interests of all parties for that to happen in a timely manner, especially for those who have lodged applications with the Scheme.

In that spirit, I am forwarding to you correspondence from the JFSA that sets out their concerns about the operation of the Scheme and Post Office Ltd's engagement in the process. This is provided without prejudice, and I have informed Mr Bates that I would be sending his letter to you to respond. I have also sent a copy to Sir Anthony Hooper, independent Chair of the Working Group.

Yours,

GRO

JENNY WILLOTT MP

Justice For Subpostmasters Alliance

Jo Swinson MP
Minister for Postal Affairs
Department for Business, Innovation & Skills
1 Victoria Street
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SW1H 0ET

Alan Bates
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Tel:

Email:

16th April 2014

Your Ref: 2013/04327

Dear Minister

I have previously written to you with regard to the progress of the Initial Case Review & Mediation Scheme whenever matters have arisen that are of concern, and regrettably this is another letter to inform you that such is the current position with the Scheme.

You will probably be aware that the way the Scheme was meant to work was as follows:-

- Applications by ex and serving Subpostmasters (SPMRs) could be submitted during a 12 week window which ran from August 27th until 18th November 2013.
- Those Applicants suitable for the Scheme would then receive a detailed Case Review Questionnaire (CRQ), which had been tailored to that particular case by 2nd Sight, the independent forensic investigations firm appointed to the Scheme. The CRQ would be accompanied by a list of Professional Advisors (PAs) comprising of lawyers and forensic accountants, for which there would be £1,500 of funding available towards the cost of the Applicant's selected PA to assist with completing the form. A period of 4 weeks had been allowed for the CRQ to be completed and returned to 2nd Sight.
- Once 2nd Sight deemed the completed CRQ to contain adequate information for investigation, the CRQ would be accepted by the Working Group (WG) and a copy of the CRQ submitted to Post Office (POL), in order for POL to produce their own report of the case to submit to 2nd Sight at the end of the 4 week period that was allowed for this particular stage.
- 2nd Sight, upon receipt of POL's case report, would then have up to 8 weeks to complete their Case Review Report which would be based upon the Applicants CRQ, the POL report and the results of 2nd Sight's own investigation into the case.
- The completed 2nd Sight Case Review Report, together with their conclusion and recommendation about the case would then be returned to the WG for either approval of the case being sent to CEDR, the Case Resolution and Dispute Resolution organisation appointed to run the Mediation process, or for its outcome to be discussed further by the WG.

- Once a case was sent to CEDR, they would take it over and make all further arrangements, and it is at this point that the case leaves the control of the WG. However, it was expected that any mediation meeting between POL and the Applicant accompanied by their PA would take place about 4 weeks later. In order to assist the Mediator to understand the context of the issues, earlier this year it was decided that a Mediator's briefing pack was also to be prepared. The pack would consist of not just the 2nd Sight Case Review Report, but also an explanation of Horizon and the computer system and how it was meant to work, a glossary of the terms and abbreviations to be found in the documentation, a copy of the Applicant's PA's report, the POL report of the case and a 2nd Sight report into what they refer to as the Thematic Issues.

The above structure was agreed and published online at the Scheme launch in August 2013 and the full documentation is still available for downloading from jfsa.org.uk/Documents.aspx.

Unfortunately the reality of where the Scheme is actually at, is very different.

As of the date of writing, the position with the Scheme is:-

- During the time the Scheme was open for Applications, 150 cases were accepted, although it should be noted that since the Scheme has closed, there have been others who would have applied if they had been aware of its existence. JFSA's advice to these enquiries is to raise the matter through their MPs until such time as a permanent solution for dealing with on-going enquiries is established.
- Of the 150 cases, the earliest that POL became aware of the names of the individuals and the identity of the post offices that were to be involved in a case review, was:-
 - 20 cases during September 2013; a further
 - 40 cases during October 2013; and then
 - 60 cases during November 2013.
 - The majority of the 30 other cases that applied during the time the Scheme was open are still serving SMPRs. As POL became aware of serving SMPRs submitting application forms, POL requested these cases to be held back from fully entering the Scheme until such time as POL had had an opportunity to discuss those cases directly with the SMPRs. Some of these cases remain in that position.
- Once the criteria to enter the Scheme had been met, and the WG had approved the initial application, the personalized CQR was sent out to the relevant Applicant for completion with the assistance of their PA. So far the returned completed CQRs that have been accepted by 2nd Sight and the WG, number:-
 - 9 – during October 2013
 - 8 - December
 - 17 - January 2014
 - 3 – February
 - 12 – March
 - 4 – April, so far

Yet to date, POL has not finalized a single case report to the point where it is ready for the WG to consider its suitability for being sent to Mediation, and realistically that could still be a considerable time off.

What has emerged about the process and the timescale is the underestimation of how much work is involved with many of the cases. At the outset of the Scheme it was thought that the amount of work that would be required for a PA to prepare a case for an Applicant might be in the order of 15 hours, and based upon a Legal Assistance Fee rate, that equated to £2000, but this was cut to £1,500 which only allowed for 11 ½ hours of a PA's time. However the amount of work the PA has to undertake in many of the cases has proved to be significantly more. We have heard figures of 30 hours of work for a case or Applicants delivering 10 boxes of documentation as not being unusual; then at the other extreme, there are the Applicants having almost no documentation as POL retained it all at the time of the contact termination.

Regardless of how it has come about, the significant extra work and time required for each case has resulted in the majority of Applicants agreeing to a supplementary Conditional Fee Arrangement (CFA) with their PAs and their PAs requesting time extensions, which in many cases is an extra 2-4 weeks, just in order to complete all the work. But even then, this is still not managing to move the cases through the process.

To me, and trying to be objective, the main hold up is with POL. At the time of writing, not one case report by them has been completed and submitted to 2nd Sight in a way that 2nd Sight can complete its own Case Review Report. As I mentioned earlier, POL first became aware of the details of the Applicants to be involved with the Scheme from September 2013, but POL are constantly seeking extension after extension to further investigate the cases, which in some instances has been going on for months.

At the meeting held in Portcullis House on 24th March 2014 to provide an update of the Scheme to the MPs who have constituents taking part, Paula Vennells, CEO Post Office, informed MPs that POL had 22 trained investigators working on these cases. But still nothing is appearing.

The point about the 22 trained investigators is highly relevant in light of one of the major systemic failures of POL that is being exposed during the course of the Scheme. At a recent WG meeting chaired by Sir Anthony Hooper, 2 case reports that POL were preparing for submission to 2nd Sight, were analysed in order to examine whether the format of the report met the requirements of the WG. During the in-depth discussion and analysis of the data and evidence, it was abundantly clear to me, and I think to many others at the table, that if any investigation had taken part at the actual time of the incidents then the outcome would have been very different in certainly one, if not both cases.

Despite POL having a contractual obligation to investigate where they believe crime has taken place, they did not do so in these cases, and on the surface, it seems that they did not do so in any of the 150 cases involved with this Scheme. POL in these two cases, as they have done with so many others, went straight to prosecution using a fall-back contractual clause that the SPMR is liable for all losses regardless of how they occurred, without ever bothering to investigate the

cause behind the incidents. Furthermore, the current investigations they are meant to be undertaking as part of the Scheme, seem to be little more than a listing of what is already known, and finding the truth is the last thing they are interested in.

I am sure that you are aware of the direct results of POL's actions upon many of the SMPRs who have applied to this Scheme. In many of the cases there have been instances of suicides, attempted suicides, numerous serious medical conditions brought about, imprisonments, bankruptcies, destroyed family lives and businesses. These are just a few of the outcomes that can be directly attributed to POL's failure to address Horizon associated issues since it was introduced.

Regardless of what it says publicly, POL in practice seems not only to be hardening its corporate defence, but now seems to be prepared to invoke the protection of the public purse as their last line of justification for not righting the wrongs they have inflicted on so many. It appears that whatever POL can block, it does; for some reason POL is the only one that doesn't seem to be able to recognize what everybody else can see so clearly.

Many observers to the process now believe that the only way we are really going to resolve this matter is through the media and the courts, as fortunately so much more has come to light during the course of this Scheme. But whilst JFSA will stay engaged and support the Scheme for the present we have had to begin considering other options for the future.

I have tried to address these concerns in not only a balanced manner but also as a realist who has been dealing with POL for many years. 2nd Sight are probably the only company presently able to offer an independent, professional and reasoned insight into what has been going wrong within POL and Horizon over the years. Otherwise I fear you are reliant upon POL for information that we believe is based upon reports and assurances given from the lower and medium ranks of POL who, for whatever reason, are telling the upper management what they want to hear rather than the truth. But one way or another, the truth will come out, far too many people have seen it now, the only one refusing to accept it, is POL.

I would like to believe I am wrong, but from what I can see, I doubt POL will ever change its stance on this issue until it has had to answer to a select committee or a full independent inquiry is held. However if there is anything you or your department can do to head off the impasse I believe we are now heading towards, there are many people who would be very grateful.

Yours sincerely

GRO

Alan Bates

Chairman, Justice For Subpostmasters Alliance

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POST OFFICE LTD BOARD SUB COMMITTEE

**Initial Complaint Review and Mediation Scheme
The role of Second Sight In supporting the Scheme**

1. Purpose

- 1.1. As requested by the Board Sub Committee on the Initial Complaints Review and Mediation Scheme (the Scheme) on 9th April 2014 this paper considers options to support Second Sight or reduce their role. Likely stakeholder views are reflected to inform the analysis.
- 1.2. This paper should be read in conjunction with the paper on options for closure/accelerated completion of the Scheme.

2. Background and current position

- 2.1. The background to this issue, and the concerns about Second Sight, has been set out a number of times in the past and is not, therefore, rehearsed again here.
- 2.2. Even were there no concerns about the manner in which Second Sight are performing their role, their resource is limited to three people and it is unlikely that they could process the c140 cases in the Scheme within a reasonable timeframe.
- 2.3. It is acknowledged that there is no right option and this paper represents the theoretical analysis carried out by the project team. It is intended to provide a basis for discussion as the Sub Committee consider the future of the Scheme more broadly.

3. Analysis and Options

- 3.1. Second Sight appear to enjoy the support of JFSA and a number of MPs, in particular the Rt Hon James Arbuthnot MP. Further, the Minister has committed to Second Sight's ongoing involvement, albeit before the actual Scheme was announced. That commitment should therefore be seen in the light of how the Scheme has operated and Second Sight's performance within it.
- 3.2. However, it appears increasingly evident that Second Sight's ongoing involvement in the Scheme (at least in terms of fulfilling their role as the providers of expert advice to assist the parties resolve their disputes) is unsatisfactory.
- 3.3. Three alternative options (with the high level pros and cons set out in more detail in Annex 1) have been considered:
 - i. Provide additional support to work alongside Second Sight to enable them to fulfil their role as it is presently defined.

Second Sight's role in supporting the Scheme

Chris Aujard

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- ii. Limit Second Sight's role to a place on the Working Group, removing their involvement in investigating cases.
- iii. Terminate Second Sight's engagement.

(i) Provide additional support

3.4. Discussions with a possible alternative and international professional services provider have highlighted that the commercial issues arising in respect of liability and professional indemnity make this an unworkable solution. In essence, no professional services provider would work alongside Second Sight in this way.

(ii) Limit Second Sight's role to a place on the Working Group

- 3.5. There are variations on this option depending on the extent to which it would be desirable to allow Second Sight to have a more active role:
- i. Second Sight continue to be members of the Working Group and provide a general challenge function to the findings of the investigation reports; and
 - ii. As above but also allowing Second Sight to compile a report, possibly their so-called 'thematic report', at the conclusion of the Scheme.
- 3.6. Neither of these options is likely to work effectively. Based on the evidence of their approach to date it is unlikely that Second Sight would engage objectively with the results of investigations undertaken by others. This could result in both JFSA and Second Sight continuing to ask further otiose questions thus limiting the benefits of removing them from the investigation process. Moreover, allowing Second Sight to produce a further report at the end of the Scheme allows them to look more at the wider issues beyond Horizon and risks reopening matters that the investigation of individual cases may have closed down.
- 3.7. In relation to this option, and option (iii) below, consideration would need to be given to how Second Sight's investigation role" is performed. The options include removing the Second Sight investigation stage from the process, and limiting the investigation stage to that undertaken by Post Office, or engaging an alternative professional services provider to fulfil the role. A very initial assessment of the cost of the latter option is that it would be of the order of £1m, depending on the exact scope of the task but further consideration of that option is dependent on a decision about the future shape of the Scheme.

(iii) Terminate Second Sight's engagement

3.8. Second Sight have been working for the Post Office on Horizon and associated issues since 2012, they have been working specifically on the Scheme since its launch in August 2013. Their track record thus far has not demonstrated that they will be able to deliver the Scheme's requirements in a timely manner.

Second Sight's role in supporting the Scheme

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3.9. Although it is acknowledged that a theoretical analysis of this situation would lead to the conclusion that Second Sight's engagement should be terminated, there are wider political and stakeholder considerations in play which may obstruct delivery of this solution.

4. Conclusion and recommendation

4.1. As stated in 3.1 above, Second Sight appear to enjoy the support of a number of key stakeholders, and any change to their role would require careful handling and is likely to be opposed. Moreover, it is almost certain that, particularly because of JFSA's support for Second Sight, any decision which affects Second Sight's involvement in the Scheme may result in the JFSA leaving the Working Group.

4.2. This paper deals solely with the role of Second Sight, but the decision about Second Sight's future engagement in the Scheme is a multifaceted one and should not be considered in isolation but in the broader context of the future of the Scheme. Accordingly, this paper should be considered as background to the paper on options for closure/accelerated completion of the Scheme.

Chris Aujard

28 April 2014

Strictly Confidential – NOT FOR ONWARD DISTRIBUTION**Annex 1****Option 1: Provide additional support for Second Sight to enable them to fulfil their role as it is presently**

Pros	Cons
<ul style="list-style-type: none"> • Would address capacity and capability issues, and potentially speed up the time taken to complete the Scheme • Continues Second Sight involvement therefore staying true to the Ministerial commitments • Subject to Second Sight's reaction, would satisfy stakeholders who consider only Second Sight have the knowledge and independence to investigate claims. 	<ul style="list-style-type: none"> • Commercial/liability issues for alternative providers makes it unlikely that another professional service provider would be willing to engage. • Would significantly increase the cost of delivering the Scheme – paying two investigation teams instead of one • Any change to current arrangements will be considered to be Post Office interference. • Second Sight are unlikely to be satisfied with results which do not accord with their own assessment.

1.1. Option 2: Limit Second Sight's role to a place on the Working Group

Pros	Cons
<ul style="list-style-type: none"> • Allows Post Office to take control of the "flow" of cases through the Scheme. • Continued involvement of Second Sight remains consistent with Ministerial commitments. • Limits Second Sight direct engagement (and therefore influence) with applicants and their advisors. • Creates opportunity (if desirable) to bring in a professional services provider. 	<ul style="list-style-type: none"> • Inconsistent with Post Office public commitments and agreements made with JFSA and Second Sight when designing the Scheme. • Could be viewed as Post Office interference/fettering Second Sight's independence. • Second Sight may adopt an adversarial role on the Working Group • There will still be cost for Second Sight's engagement and the management overhead in managing the relationship will remain (albeit to a lesser extent).

Second Sight's role in supporting the Scheme

Strictly Confidential – NOT FOR ONWARD DISTRIBUTION**Option 3: Terminate Second Sight's engagement**

Pros	Cons
<ul style="list-style-type: none">• Significantly streamlines the process to allow faster resolution• Enables Post Office to manage engagement with applicants and their professional advisers• Will enable completion of the Scheme to be accelerated, reducing operating costs and senior management overheads• Creates opportunity (if desirable) to bring in a professional services provider.	<ul style="list-style-type: none">• Inconsistent with Ministerial commitments about Second Sight's involvement.• Any change to current arrangements will be considered to be Post Office interference/whitewash.• Will attract adverse publicity.• Will lead to conflict with JFSA and Second Sight, may alienate the Working Group Chair (if not properly handled)• May result in parliamentary activity (e.g debate/PQs therefore involving the Minister).

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Strictly Confidential**POST OFFICE LTD BOARD SUB COMMITTEE****Initial Complaints Review and Mediation Scheme
Options for the closure/accelerated completion of the Scheme****1. Purpose**

- 1.1 This paper has been prepared following the initial meeting of the Board Sub Committee on the Initial Complaints Review and Mediation Scheme (the Scheme) on 9 April 2014 and considers both options for closure of the Scheme and for accelerating its completion. The paper summarises the options analysis that was tabled at the last Board Sub Committee.
- 1.2 This paper should be read in conjunction with the papers on the future role of Second Sight, Ex Gratia and Settlement payments and Dissemination of the Linklaters advice and Deloitte report as the implications of decisions made on those matters will have a bearing on the future of the Scheme.
- 1.3 The options in this paper are based on a theoretical analysis carried out by the programme team. The paper is intended to stimulate discussion and to provide a means for the Sub Committee's views to coalesce around a particular option.

2. Background

- 2.1 The background to the Scheme has been set out previously and is not rehearsed again here. It has been assumed that any proposed way forward should address the following points:
 - the cost of administering the Scheme;
 - the likely timescales for concluding the Scheme; and
 - the extent to which any changes to the Scheme are consistent with Ministerial or other public statements about the Scheme.

3. Options for the future of the Scheme

- 3.1 In considering the options for the future of the Scheme it has been assumed that continuing the Scheme as currently structured is not acceptable because it is not delivering its aims because of:
 - the delays by applicants' advisors submitting full details of their case (CQR);
 - the longer than anticipated Post Office investigation and legal clearance process ;
 - continued concerns about the role of Second Sight and the way they are fulfilling that role;
 - concerns about the costs of administering the Scheme;

Initial Complaints Review and Mediation Scheme
Options for the closure/accelerated completion of the Scheme

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- the need to address the 'expectations gap' and the potential implications of doing so.
- 3.2 There are three broad options for accelerating the closure or completion of the Scheme:
- Closure of the Scheme with immediate effect;
 - Continue investigating cases but bring it within the full control of the Post Office; or
 - Redefine the Scheme and the role of the Working Group.
- 3.3 The options are not mutually exclusive, each could be varied slightly and would require the development of a detailed handling plan. All three options are likely to lead to media criticism from commentators who have previously engaged on the issue. It is envisaged that although this will be difficult it will be manageable. All three would also involve the publication of the Linklaters' advice and Deloitte's report which is dealt with in a separate paper.
- 3.4 Detailed pros and cons for each option are set out in Annex 1 together with the actions needed to deliver them. A summary analysis follows.

Option 1: Closure of the Scheme with immediate effect

- 3.5 Although this option would provide the quickest and most cost effective way of completing the Scheme, the fact that the Scheme is already underway, and some applicants would not have received a completed Post Office investigation make this option unappealing. Post Office could not be sure that the applications do not contain an issue which needs to be addressed making it difficult for Post Office to mount a robust defence of its approach.

Option 2: Continue investigating cases but bring it within the control of the Post Office

- 3.6 Under this option all cases would be investigated but Post Office would take control of all aspects of the Scheme, Second Sight's engagement would be ended and the Working Group disbanded. Post Office would take positive steps to manage expectations and would set and enforce timelines for all cases. There would be substantial time savings in the investigative process and significantly reduced the management overhead would be reduced by allowing the Scheme to transition into BAU.
- 3.7 Variations on this option, could include:
- Continued involvement of the Chair to provide challenge to the Post Office investigation (which he has already, helpfully, done in a few cases) to ensure it addresses the core issues raised in the case

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- Publication of a final report at the end of the Scheme setting out the approach, a high level assessment of case outcomes (for example x cases investigated, x cases mediated, x cases settled)
 - Engaging a professional services provider to undertake all investigations.
- 3.8 This option provides best value for money whilst also being seen to “do the right thing” for SPMRs. That said, it does not meet the Ministerial commitment about the continuing involvement of Second Sight, although it generally meets all others in terms of investigating cases and an element of independence through the Deloitte report and, if agreed, the continued involvement of the Chair. The independence of the process could be strengthened by engaging a professional services provider to investigate cases.
- 3.9 This option could result in savings of c£1.4m, depending on the number of cases reaching mediation. However that figure would be reduced should a professional services provider be engaged (taking account of savings from reduced Post Office investigative resource we envisage reducing the saving to c£0.5M). With this approach it should be possible to complete the Scheme by the autumn.

Option 3: Redefine the Scheme and the role of the Working Group

- 3.10 As with Option 2, all cases would be investigated by Post Office but not by Second Sight. The Working Group would continue to oversee the Scheme and challenge the Post Office investigation results, but Post Office would have greater role in setting timescales and making the final decision on whether or not cases should be mediated, taking the views of the Working Group into account.
- 3.11 Variations on this option could include:
- Engaging a professional services provider to undertake all investigations.
 - Allowing Second Sight to complete a thematic report at the end of the Scheme.
- 3.12 Option 3 stays closest to Ministerial commitments and maintains the Working Group and Second Sight’s involvement. Whilst it should provide a more efficient administration of the Scheme, and a reduced role for Second Sight, the amount saved is estimated to be less than £500k depending on how many cases resulted in mediation. It should also be noted that option 3 would still require a considerable amount of senior engagement in order to manage Second Sight’s involvement.

4. Conclusion

- 4.1. Experience of the Working Group to date suggests that any changes to the Scheme are likely to be met with resistance and would potentially cause some members of the Working Group to “resign”. We are already aware that JFSA have reservations about the way the Scheme is working and their continued

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membership of the Working Group may not, in any event, survive the first decisions on whether cases should be advanced for mediation.

- 4.2. On balance we believe that the most appropriate option for the business is one which "does the right thing" by SPMRs whilst managing down the cost, risk exposure and senior management overhead. Subject to a satisfactory outcome from the Deloitte assurance assessment, it is recommended that the sub-committee authorises in the programme team to develop an implementation plan coalesced around option 2 (or one of the other 2 options if the Sub Committee so decide).

Chris Aujard
28 April 2014

Strictly Confidential**Annex 1 Pros and Cons and Actions to Implement****Option 1 Closure of the Scheme**

Pros	Cons
<ul style="list-style-type: none"> • Quick and simple • Enables senior management attention to be focused on core business. • Limits operating costs and financial liabilities in the short term. • Could be argued that the court system is a more appropriate forum for these cases to be discussed. 	<ul style="list-style-type: none"> • Could be seen as failing to meet commitments made to SPMR community to properly investigate all issues, and to give them the opportunity to be heard. • Any underlying process issues may not be uncovered, which may not be in Post Office's best interests. • Will lead to conflict with JFSA and Second Sight and may alienate Working Group chair • Likely to lead to increased parliamentary scrutiny • Post Office are still committing substantial resource to the investigation phase

Key Actions to Implement

- i. Cease all investigations (or complete those where a detailed CQR has been received).
- ii. Notify all applicants and advise them of their right to pursue their complaint through the Courts.
- iii. Pay all fees incurred by applicants/advisors (in line with the Post Office published contribution).
- iv. Disband the Working Group.
- v. Terminate Second Sight's engagement (this would probably require giving them one month's notice).
- vi. Retrieve all information currently held by Second Sight and members of the Working Group.

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Strictly Confidential**Option 2 Continue with the Scheme but bring it within Post Office control**

Pros	Cons
<ul style="list-style-type: none"> • Fairness and transparency • Continued engagement with all stakeholders • Thorough process, consistently applied • Minimises short term conflict • Will enable completion of the Scheme to be accelerated • Reduces Scheme operating costs 	<ul style="list-style-type: none"> • Will lead to conflict with JFSA and Second Sight • May alienate Working Group chair • Likely to lead to increased parliamentary scrutiny • May damage relationships with SPMRs impacted • Could lead to accusations of a Post Office whitewash • Post Office are still committing substantial resource to the investigation phase

Key Actions to Implement

- i. Secure Ministerial approval
- ii. Secure Working Group Chair's agreement and on-going involvement
- iii. Disband the Working Group
- iv. Terminate Second Sight's engagement
- v. Appoint a professional services firm to act as independent investigator (if required)
- vi. Notify applicants/advisors to submit CQRs within a deadline or they will be excluded from the Scheme
- vii. Post Office continue to investigate all cases (combining investigations and triaging cases where possible)
- viii. Make no decisions on settlement/mediation until all cases have been investigated and assessment made of issues arising across the whole caseload.
- ix. Provide all applicants with the report of the investigation report including an assessment of the merits of the case and a proposal for next steps (e.g. No further action on the part of Post Office, offer of settlement, offer of mediation).

Strictly Confidential**Option 3 Redefine the Scheme and the role of the Working Group**

Pros	Cons
<ul style="list-style-type: none"> • Fairness and transparency • Continued engagement with all stakeholders • Thorough process, consistently applied • Minimises short term conflict 	<ul style="list-style-type: none"> • Operating costs remain high • Time to settle remains lengthy • High senior management overhead • Investigation costs remain high • Potential substantial mediation costs given size of caseload • Post Office likely to be pressed for adviser costs at mediation • Second Sight have not demonstrated impartiality, or expert knowledge to date

Key Actions to Implement

- i. Amend the Terms of Reference of the Working Group
- ii. Revise Second Sight's letter of engagement
- iii. Notify applicants/advisors to submit CQRs within a deadline or they will be excluded from the Scheme
- iv. Post Office continue to investigate all cases (combining investigations and triaging cases where possible)
- v. Make no decisions on settlement/mediation until all cases have been investigated and assessment made of issues arising across the whole caseload.
- vi. Provide all applicants with the report of the investigation report including an assessment of the merits of the case and a proposal for next steps (e.g No further action on the part of Post Office, offer of settlement, offer of mediation).

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