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Draft for discussion 5 March 2014

## **The Post Office Limited**

### **Horizon Mediation Scheme**

#### **1 The aim of this paper**

- 1.1 Aims and objectives.
- 1.2 Paper considers issues from the perspective of the general law. We appreciate that there are public relations and/or political implications which arise from many of the issues raised in the Paper. We have sought to highlight where this is the case.

#### **2 The basis on which the Paper has been prepared**

- 2.1 The work done for the purposes of this Paper is summarised in Appendix 1.
- 2.2 Limitations on the work we have been able to do.

#### **3 Determination of “Losses”**

- 3.1 The importance of Horizon in determining losses. How losses can arise. Whether Horizon is conclusive as to the state of accounts. The relevance of stock takes.
- 3.2 The methods of recoupment available to the Post Office.

#### **4 The basis on which the Post Office can claim losses from Sub-Postmasters**

- 4.1 Claims under the Contract. The relevance of “fault.”

#### **5 Horizon**

- 5.1 The Horizon system does seem to be working to the satisfaction of a very large proportion of those using it. Contextualise the problem.
- 5.2 Problems with Horizon which the Post Office identified. Evidence given in prior civil proceedings. The Receipts and Payments Mismatch Problem and the Local Suspense Account Problem.
- 5.3 Discussion between the Post Office and Fujitsu as to the operation of Horizon.
- 5.4 Work done by the Post Office, other than through Second Sight, to satisfy itself as to the proper functioning of Horizon.
- 5.5 Second Sight have concluded that they have found “no evidence of systemic problems with Horizon software.”
- 5.6 It may be helpful to have an idea of industry standards/comparison with other systems. Horizon is described as complex and difficult. Is this fair by reference to comparable systems? How would we obtain this?

#### **6 Training and other obligations under the Contract**

- 6.1 A description of the obligations on the Post Office and on Sub-Postmasters as to training and support.

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- 6.2** Contractual obligations and/or rights as to Horizon. When was it introduced? How is the use of Horizon reflected in the contractual arrangements?

## **7 The engagement of Second Sight**

- 7.1** There is a draft engagement letter for Second Sight which is undated. We are not aware of when they started work for the Post Office or how they came to be selected. The engagement letter has not been signed because Second Sight have objected to certain terms. We recommend resolving these issues so that there is a contract with Second Sight, not least because of the confidentiality provisions.
- 7.2** Second Sight are said to be engaged by the Post Office in relation to the Scheme and Second Sight are said to be a member of the Working Group.
- 7.3** The Scope of Services to be provided.
- 7.4** The distinction between matters of fact and matters of opinion. Comment on the extent to which Second Sight appear to see themselves as an advocate for Sub-Postmasters.
- 7.5** The approach taken by Second Sight – to examine and “investigate” individual cases rather than to start with an in principle review of Horizon and an account of the way it is operated as between the Post Office and Sub-Postmasters.
- 7.6** Comment on the information available to Second Sight for their work.
- 7.7** Second Sight can be terminated on 30 days written notice to be given by the Post Office or the Working Group (clause 4.2) though we fully appreciate that there would be consequences were the Post Office to terminate them.
- 7.8** The Spot Report process, its benefits and limitations.
- 7.9** The ability of Second Sight to “find out what really happened” and the relevance of this limitation on their work.
- 7.10** The Interim Report and the issues which it identifies. The relevance of those issues to claims by Sub-Postmasters.
- 7.11** The ability of the Post Office to challenge conclusions reached by Second Sight. Options to a formal challenge.

## **8 The Working Group**

- 8.1** The Terms of Reference.
- 8.2** Its status, role and ability to bind the Post Office.

## **9 The Mediation Scheme**

- 9.1** Mediation as a dispute resolution technique. Its benefits and limitations.
- 9.2** Public announcements and comments by the Post Office in relation to the Scheme – what have people been led to expect.
- 9.3** Comment on the political backdrop.
- 9.4** The Rules and dynamics of the Scheme.

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- 9.5 The nature of the legal relationships created.
- 9.6 Note that the focus of much of the published material is on “resolving concerns” and not directly on payment of “compensation.”

## **10 The Post Office Settlement Policy**

- 10.1 The Draft Settlement Policy of December 2013.

## **11 Complaints by Sub-Postmasters**

- 11.1 The basis of complaints – the extent to which they focus on “reversal” of valid claims for payment of losses.
- 11.2 Whether there is a legal basis for Sub-Postmasters to claim that they should have losses reversed/be relieved of liability for them.
- 11.3 The issues if claims for compensation are not paid in accordance with legal principles. Fairness among Sub-Postmasters. Justifying and explaining payments to stakeholders. Achieving consistency of approach. The difficulty of compensating some Sub-Postmasters for issues which may be of general application eg poor training or communication.
- 11.4 The liability of the Post Office for further claims which fall into two groups: those which might be said to be contingent on the loss recovery itself (eg stress, consequential loss) and those which are not so contingent eg inadequate training.
- 11.5 The relevance and status of the Second Sight “findings.” The implications of disagreeing with them.
- 11.6 The burden of proof in each case – should the Post Office justify its claim to losses or should the Sub-Postmaster have to show that they are not due?
- 11.7 In each case, the principles which would apply to determine what, if any, compensation is due.

## **12 Cases in which the Applicant has been convicted of relevant offences**

- 12.1 Whether, as the Draft Settlement Policy envisages, a different test should be applied to claims involving convicted applicants.
- 12.2 Public policy and other issues in relation to compensating a Sub-Postmaster who has been convicted of a relevant offence in particular any risk to the Post Office connected with possible appeals against conviction.
- 12.3 General post-conviction disclosure implications for the Post Office as prosecutor, including as regards Sub-Postmasters who are not parties to the Mediation Scheme.

## **13 Some fundamental questions**

- 13.1 The Post Office will have, or will need to have, a view on a number of fundamental points which will guide the decisions as to future options:
  - 13.1.1 The aims of the Mediation Scheme – is it primarily to improve relations with some Sub-Postmasters or offer apologies and explanations, or to enable compensation to be paid/explain why none is due, or to establish what happened? Clarity around the aims of the Scheme is important.

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- 13.1.2 In any claim is the Post Office's stance to be more conciliatory than adversarial? What are the limits of this approach?
- 13.1.3 How important is it to the Post Office to determine the facts in any individual case? How easy might it be to achieve this?
- 13.1.4 To what extent is the Post Office comfortable defending the operation of the Horizon system but perhaps accepting that there could have been better training or communication?
- 13.1.5 Does the Post Office wish to consider paying compensation by reference to principles other than legal entitlement? If so, how will it articulate and apply those principles? What will it say to Sub-Postmasters and stakeholders?
- 13.1.6 How will the Post Office strike the balance between resolving past issues and putting the future operation of Horizon and the relationships with Sub-Postmasters on a sound footing?

#### **14 Options for the future**

- 14.1 All of the future options depend on a view being taken on the issues identified in section 13.
- 14.2 The future of the Mediation Scheme; the need for a further Scheme.
- 14.3 The role of Second Sight.
- 14.4 The role of the Working Group.
- 14.5 Other methods of dispute resolution – their benefits and disadvantages: litigation, adjudication, arbitration, ombudsman.