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Subject to Legal Privilege – Prepared in Connection with Mediations

POST OFFICE LTD BOARD SUB COMMITTEE

Initial Complaint Review and Mediation Scheme

1. Purpose

The purpose of this paper is to provide the Board with:

- 1.1. an update on Scheme progress; and
- 1.2. a proposition for the way forward to inform a discussion at the subcommittee meeting on 12 January 2015.

2. Case progress

- 2.1. There are now 106 cases remaining in the Scheme and Post Office has completed its investigation of all but two cases. In terms of case progress:
 - 16 cases have been resolved prior to consideration by the Working Group.
 - Of the 26 cases where the Working Group has made a recommendation on whether a case should be mediated:
 - it recommended against mediation in two cases;
 - Post Office declined to mediate two cases;
 - Post Office resolved two cases prior to the actual mediation; and
 - ten cases have been mediated; four have been resolved, five closed without resolution and one is on-going.
- 2.1. Cases have been 'resolved' for a variety of reasons but generally this has been where Post Office could arguably have done more to assist the Applicant and where the Applicant's expectations in terms of resolution was reasonable and broadly consistent with our assessment of the potential risk and cost of litigation. It has cost c£670k in total to settle the 232 cases which have been resolved. There are a number of cases in the Scheme where collection of debt was suspended pending investigation of the case through the Scheme and the recovery of that debt is factored into mediation.

Commented [BC1]: Tom: please add in correct figures – inc. resolution of M055 and withdrawal of the de nahik case (another category! – as of Monday

3. Overall investigation findings

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- 3.1. To date we have found no evidence, nor has any been advanced by either an Applicant or Second Sight, of either faults with the Horizon system or unsafe convictions (on the latter point, every case investigated has been scrutinised by our external criminal lawyers) and no convictions have been appealed. Although there are a small number of cases where Post Office should or could have done more to assist Applicants, such as by etc...etc.... in the majority of

Commented [MD2]: How? I think the Board will want to know the wider context – what things should we have done which we didn't? Important for context and also for telling the story externally. Also important when we say 22 cases resolved to be very clear what the complaints were i.e. not Horizon deficiencies

Commented [MU3]: In relation to MD's above comment, we could include the absurd vs less absurd case studies we prepared for the meeting with Letwin in an annex?

Commented [MU4]: I have 23 down as now resolved

Commented [MD5]: Very important I think to set out, perhaps in an annex, the avenues which criminal case applicants could pursue (i.e. Court of Appeal) and how they might access funds to support such appeals

Commented [MU6]: See above comment about case studies incl in annex

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cases our investigations have shown that it has been the actions of the Applicants themselves which have caused or contributed the losses they suffered in branch. Where Post Office has recovered the losses, it has been entitled to do so under the terms of the contract. Also, where Post Office terminated its contract with the ~~s~~Subpostmaster this is where we were entitled to do so under the terms of the contract for material breach. In these cases Post Office cannot and should not accept responsibility or make substantive compensation payments.

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4. General progress/issues

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4.1. Since last ~~s~~Summer Post Office has followed the strategy, agreed with the Board, of operating within the Working Group Terms of Reference whilst promoting Post Office's own interests (as explicitly allowed under the Terms of Reference). This approach has, not unexpectedly, resulted in a concerted attempt by JFSA to apply pressure to Post Office to mediate all cases where Second Sight so recommend. Having failed to persuade the Chair of the Working Group that Second Sight's recommendation in favour of mediation should be determinate, JFSA has enlisted the support of MPs and the media in an attempt to pressurise Post ~~O~~ffice into mediating all cases.

4.2. The General Counsel and Communications and Corporate Affairs Director have provided regular, ad hoc updates for the Board on significant developments over recent weeks, but in summary:

i. Following discussions and written exchanges with Post ~~O~~ffice, ~~James~~ Arbuthnot MP issued a press release and open letter to the CEO withdrawing his support (along with, purportedly, 140 other MPs) for the Scheme having lost faith in the Post ~~O~~ffice and its commitment to the Scheme. The primary reason was Post Office's refusal to commit to mediate all cases where Second Sight recommends mediation. This sparked a limited degree of media interest which was anticipated and managed so that it did not generate widespread coverage. A full analysis of the PR position is at Annex 1

Commented [MD8]: Are there cases where, given the point about our doing more to assist applicants, we might have chosen a different course of action rather than terminating contracts etc...?

ii. JFSA has engaged Edwin Coe LPP to explore legal options should the mediation scheme not resolve Applicants complaints. Alan Bates subsequently confirmed JFSA's continuing commitment to the Scheme

Commented [MD9]: Need to clarify this further – something like "There is limited evidence of active support for the MP's actions by that many MPs"

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despite exploring legal options describing its position as “hoping for the best but planning for the worst”.

- iii. The BBC's “The One Show” featured the Post Office and the Scheme for two consecutive weeks in what was a clearly co-ordinated JFSA/James Arbuthnot inspired media campaign.
- iv. James Arbuthnot secured a Westminster Hall adjournment debate, attended by xx MPs, about the Scheme and Post Office's alleged lack of commitment to it (and therefore resolving Applicants' complaints). This debate received no media coverage other than The One Show.

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4.3. There were a number of elements to the media and MPs' accusations about Post Office. However, the main thrust appears to have moved away from Horizon itself (except for the suggestion that the fact that nothing has been found does not mean no fault exists – based on the proposition that 150 subpostmasters cannot be wrong) to centring on allegations of 'miscarriages of justice' and accusations about the subpostmaster contract, which was described in Parliament – without foundation – as xxxxx-

5. Analysis

- 5.1. Although Post Office is being accused of bad faith the evidence, set out in detail at Annex 2, suggests the opposite is true and it is in fact others involved in the Scheme who have acted in bad faith.
- 5.2. Post Office, in its role as Secretariat, has sought to administer the Scheme as efficiently and fairly as it possibly can and, in its role as a Party in each dispute, has at all times acted in good faith, paying particular attention to the obligations of confidentiality which binds all parties involved in the business of the Working Group. Despite incurring direct financial costs to date of c£5m, and diverting other scarce resources away from Post Office's strategic priorities, it has been a frustrating exercise which has failed, in large part, to meet the expectations of relevant stakeholders or to draw a line under this issue in a way which might enable Post Office to move forward.
- 5.3. This is not the product of poor execution or lack of positive effort on the part of Post Office, but is instead reflective of the erroneous assumption which underpins the approach of Applicants and their supporters – that is, that Post Office is responsible, if not through Horizon then in other ways, for the difficulties they have experienced and/or the losses they have incurred. This has been exacerbated by the inappropriate and unjustified raising of expectations by Applicants' professional advisers, JFSA and MPs over what the Scheme can, and in their minds should, deliver in terms of significant compensation payments and/or Post Office support in efforts to have criminal convictions overturned.

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Commented [MD11]: I think it very important that the Board understands the nature of the MP accusations, and the strength of words used against us (sham etc...). There is a risk that because the minister has asked us to 'rebuild confidence' among MPs, that we deviate along this path: it would be pointless given the view this small group of MPs have about us, and I want the Board to be very aware just how wild the MP accusations were (and the personal nature of attacks on CEO and chairman).

Commented [BC12]: Patrick drafting

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- 5.4. Post Office has, in the process, sustained a ~~degree of reputational damage~~. Even if the net volume of media interest has remained relatively low, negative public perception around this issue [certainly exists]is pretty firmly entrenched. Even in circumstances where Post Office might be free of its obligations of confidentiality and be in a position to share more balanced factual information about the Scheme and the cases in it, the lazy but media-friendly David and Goliath characterisation of this story would likely retain much of its appeal, particularly for the small number of journalists who have focused a great deal of attention, and their reputations, on insisting that there is a conspiracy at work against those in the Scheme.
- 5.5. Against this backdrop, it would be easy to forget that there are some very real positives to have emerged from this exercise.
- 5.6. Now all the cases in the Scheme have been comprehensively re-investigated, Post Office can be satisfied that the Horizon platform, which is critical to its entire operation across the network, operates reliably. There is, quite simply, no evidence whatever of a systemic flaw in the system. This is positive news for the business.
- 5.7. Moreover, with the exception of a small number of cases in which Post Office might have done more to support individual Applicants (whether by being more timely in providing additional training, in responding to enquiries or other interventions), the investigations paint a largely favourable picture of Post Office's engagement with the individuals running its network.

6. Challenges

- 6.1. In accordance with the Board's mandate, Post Office has adopted an approach towards the individual complaints in the Scheme in which it accepts its shortcomings where these have been apparent but defends its interests robustly in cases where it is clear that it is neither the cause of, nor otherwise responsible for, the difficulties and/or losses experienced by Applicants. To do otherwise would, of necessity, have produced yet more negative outcomes in terms of legal risk, substantial further cost and financial exposure, as well as promoting opportunism and eroding confidence across the network.
- 6.2. This approach has been hugely frustrating for JFSA whose Chairman, in the absence of evidence of a flaw in Horizon, has sought to broaden the scope of the Scheme, actively solicited media interest and mounted a political campaign to bring further pressure to bear on Post Office to change tack. In addition, JFSA has also instructed a firm of solicitors, Edwin Coe LLP, to raise the temperature still further while ostensibly maintaining support for the Scheme. The truth is that this apparent support is conditional on the Scheme producing the results JFSA favours, results which the available evidence simply does not support. The message is clear: find in our favour or face litigation. Taken together with JFSA's longstanding lack of meaningful participation in the business of the Working Group, these developments do

Commented [BC13]: Mel – could you pl check consistency with your analysis

Commented [MD14]: Too strong. I do not believe public perception is 'firmly entrenched on this issue.'

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nothing but undermine the ability of the Scheme to reach an equitable conclusion in individual cases or as a whole.

- 6.3. A further challenge for Post Office in all of this is Second Sight's lack of impartiality and professionalism in the execution ~~performance~~ of their work. To date, they have determined that only 2 cases are unsuitable for mediation where any reasonable and objective assessment of the evidence would lead to significantly higher number. In many cases, Second Sight offer no suggestion or judgment as to what may have happened in individual cases, and, ignoring what evidence there is, simply recommend mediation on the grounds that mediation might offer the parties 'closure'.
- 6.4. Evidence has now emerged of Second Sight's potential distortion of their own findings to support a recommendation that a case be mediated when their own internal analysis demonstrates that the relevant Applicant is wholly responsible for the losses they incurred. Further, this came to light in a chain of emails between Second Sight and one of the Applicant's professional advisers in which Second Sight seek to provide reassurance that their findings in the case would meet with the professional adviser's approval. This represents an inappropriate degree of co-operation, to say the least, between Second Sight and those with a clear stake in the Scheme.
- 6.5. Lastly, and presumably discouraged by the lack of evidence of a flaw with Horizon, attempts by Second Sight to broaden the remit of the Scheme continue: the most recent manifestation of this being through a lengthy list of questions for Post Office to answer to inform a further draft of their Part Two briefing report. This is a~~An~~ approach which closely reflects the wishes of JFSA and MPs.
- 6.6. However, the biggest challenge is managing what are now blatant attempts by others to hijack the Scheme. The evidence from recent events suggests that, should the Scheme not produce a conclusion that Post Office, whether through Horizon or otherwise, is responsible for the difficulties and losses of Applicants and that Post Office is responsible for wrongful convictions, it will continue to be labelled as a sham by JFSA and MPs.
- 6.7. It is also apparent that the Scheme is being distorted from its initial function – to examine individual complaints about Horizon and associated issues and seek, where possible, to resolve these fairly. Although JFSA has confirmed its commitment to the Scheme, and desire to continue participating in it, the explicit threat of litigation now leaves Post Office in the position where JFSA receives detailed information about Post Office and individual cases to which it would not otherwise be entitled and later be able, potentially, to pass that information to Edwin Coe to use in litigation.
- 6.8. As noted in previous advice, there are no circumstances in which Post Office emerges from this process in a positive light, no matter how objectively unfair

Commented [BC15]: Alternative wording? Patrick?

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that reality is. It is for this reason that the Sub Committee is invited to endorse the approach set out below.

7. A way forward

Immediate steps

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7.1. January brings a number of important dates and activities in relation to the Scheme. We have taken and continue to take a number of steps to mitigate the recent activities of JFSA and the media including:

- i. providing a robust response to allegations in the media including writing to BBC lawyers where appropriate and engaging at senior levels with programme editors;
- ii. writing to individual MPs who have raised cases offering to go through their constituent's cases, with consent;
- iii. compiling a 'dossier' addressing the general accusations made against Post Office in the Westminster Hall debate, specifically about prosecutions, which the Minister can table in Parliament.

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7.2. Post Office is due to respond to Second Sight's questions to inform their Part Two report on 6 January, to be followed by a meeting on 9 January with a relevant Post Office staff to discuss the issues raised in more detail. Of Second Sight's 110 questions/requests for information, around a third are either out of scope of the Scheme or are disproportionately wide 'fishing' requests with no direct reference to complaints in the Scheme.

7.3. The next face to face Working Group meeting is on 14 January.

7.4. We understand through social media that there is to be a JFSA meeting on 18 January 2015. We have no specific information about that meeting and can only speculate about why it has been called but it is reasonable to assume

Commented [MD16]: Am unclear about this paragraph – what are we trying to say? I think the 'man on the Clapham omnibus' narrative remains a strong one – we listened, we investigated, we acted. True, will never satisfy the applicants or the conspiracy theorists but will work more widely.

Commented [MD17]: Have we now written to the MPs?

Commented [MD18]: Why just criminal cases? Should be a comprehensive 'myth buster' about the claims made in parliament?

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that it will deal with the success (or otherwise) of the recent public campaign against Post Office and the engagement of Edwin Coe.

7.4.7.5. We can expect more interest from The One Show – or specifically the journalist supplying the programme with reports on this issue – in January.

8. Decision point

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 - 8.1. In the circumstances set out in this paper, it is now difficult to see how the Scheme can continue to function on its current path.
 - 8.2. Post Office has little option but to force the issue with members of the Working Group. The Sub Committee is therefore invited to endorse an approach whereby Post Office uses the next meeting of the Working Group on 14 January 2012 as a final attempt to get the Scheme 'back on track' by seeking to gain acceptance of and adherence to:
 - i. the Scheme and its processes as originally designed (by all);
 - ii. the Scheme's proper scope (Horizon and associated issues only);
 - iii. the need to remove the threat of litigation made plain by JFSA's instruction of Edwin Coe LLP (which we consider to be, at this stage, generally an exercise to exert pressure rather than, at this stage, a real litigation threat (see **Annex 3**);
 - iv. the need to respect obligations of confidentiality and actively to promote this to individual applicants; and
 - v. (crucially) the principle that evidence must drive its recommendations and conclusions.

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- 8.3. There is no doubt that achieving this is unlikely. There would appear to be very little to be gained from a JFSA/MP perspective in participating in the Scheme on these balanced terms since it will not produce the pre-determined outcomes they seek.
- 8.4. That said, providing this final opportunity to address these issues sensibly is important since it is a further demonstration of Post Office's genuine attempts to resolve Applicants' complaints and may offer us some further protection against possible attempt to challenge, perhaps by way of Judicial Review, any subsequent decision we may need make about the future of the Scheme. The risk of a successful challenge of this nature has already been assessed as being low – recent legal advice suggests that this step will likely reduce it still further. A full analysis of the Judicial Review risk is at **Annex 4**.
- 8.5. While it is highly unlikely that JFSA and its supporters will agree to a 'reset', continuing on the same trajectory as presently, in other words seeking to muddle along as we currently are, is not a realistic option. Post Office has, to date, been extremely accommodating in relation to Scheme. Regrettably this approach has not produced the sort of dividend one might normally have expected in terms of any sort of recognition for our efforts: instead, it could be argued that our goodwill has to a certain extent been exploited.
- 8.6. An attempt to maintain the status quo will entail, inter alia:
 - i. the continuation of a process conducted in the public eye, with every unpopular decision of Post Office being questioned and/or challenged in the media and in Parliament, with obligations of confidentiality preventing Post Office from making any sort of effective rebuttal;
 - ii. the completion by Second Sight, likely to coincide with the run-up to the General Election, of their Part Two report which, judging from their performance to date and the questions they have put to Post Office to inform its content, is near certain to place further unsubstantiated 'charges' at Post Office's door and broaden, quite unjustifiably, the lines of enquiry it will be expected to address;

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- iii. a substantial risk of increased scrutiny in Parliament, perhaps through the Business, Innovation and Skills Select Committee, bringing with it an inevitable and unwelcome increase in the involvement and concern of Ministers in respect of this issue, when we need the focus on other matters of commercial importance to Post Office;
- iv. a lengthy process given that there remain **100** cases in the Scheme; the process of moving cases through the Working Group, attempting to challenge recommendations of mediation by Second Sight no matter how absurd, and scheduling and conducting mediations is certain to take much of 2015;
- v. pressure to allow new cases in the Scheme, some of which are likely to be entirely opportunistic (there is already evidence of this happening);
- vi. poor results in terms of public perception since mediation can only resolve those complaints in which the Applicant has both a legitimate claim and is prepared to settle on reasonable terms. This is a small number of cases in the Scheme since most include **unrealistic** claims for consequential loss, effectively negating the likelihood of a resolution. Post Office will be accused of bad faith in respect of each 'failure' to reach a resolution which is satisfactory from an Applicant's point of view and/or that of JFSA and the MPs; and
- vii. no meaningful reduction in the risk that Applicants, individually or as a group, will resort to litigation to pursue their claims against Post Office.

Commented [BC19]: Check figures with para 2

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9. Conclusion and recommendation

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- 9.1. In summary, **Post Office** the situation Post Office now faces creates the opportunity to alter the Scheme to something more realistic and proportionate to the issues raised in the complaints. Post Office should make it clear that it is prepared to stand by the Scheme if, and only if, it operates as originally intended, with other Parties displaying the same degree of fairness and responsibility as it has shown. If those terms (which had previously been agreed to on all sides) are no longer acceptable to JFSA, Post Office should indicate, explicitly, that it will need to reconsider the future of the Scheme.

Commented [MD20]: This section is all fine but we need to have done more to prepare the ground i.e. have some very frank discussions with MPs including Kevan Jones about their specific cases – and potentially have a discussion of this kind with BBC editors. If we go down this course of action without having prepared the ground like this, we risk it blowing into a wider media issue. We need to cut off or at least restrict the JFSA's supply of media and parliamentary outlets

- 9.2. Contingency plans are being developed which:

Commented [MD21]: Previous comment applies

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- i. would move the governance and management of the Scheme in-house (ending Second Sight's current role and dissolving the Working Group);
- ii. might include the retention of an independent oversight function in the interests of transparency and public confidence (though not by Second Sight); [how?] and
- iii. provide for negotiations with individual applicants, where it is fair and reasonable to do so, in order to try to resolve their complaints. [mediation?]
- iv. preparing our own report of the Scheme so far and our findings as a document which could be provided to applicants (as our response to part two was for mediation) and at the end of the Scheme be published as a formal report of the Scheme.

9.3. The Subcommittee is invited to note the current position, agree the approach outlined above.

9.4. We will update the Subcommittee towards the end of January and provide a detailed implementation plan for bringing the Scheme in house should that be necessary.

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8.1.

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Annex 1

Communications Analysis

Background/ Overview

1. The communications strategy to date has focussed on providing a measured and proportionate response to key audiences on the central allegation of faults within the Horizon system. There have therefore been proactive announcements on Post Office measures to investigate and address this and about the subsequent findings of Second Sight's 2013 published interim report.
2. There was wide media interest and reporting of those findings but with Post Office's response, including the establishment of the Complaints Review and Mediation Scheme, media interest has narrowed and the story is only being **closely** followed by a handful-very limited number of journalists, although significant developments are reported slightly more broadly.
3. Since the Scheme began, there have been two short bursts of active media interest – one from the selective leaking of the confidential P2 report produced by Second Sight for use in mediation and, more recently, the orchestrated publicity when James Arbuthnot announced the withdrawal of his support for the scheme and organised a Westminster Hall debate.
4. Neither of these two events resulted in wide or sustained media coverage and the damage, although regrettable, was contained as planned under the strategy. One journalist has, however, adopted the story as a personal campaign (see media analysis below).
5. Similarly, the story has failed to find any depth of traction with the majority of MPs. Few MPs have, in reality, continued to follow the progress of their constituency cases closely. From [144] MPs with cases in the scheme only [x] have been publicly speaking out or in contact with Post Office at any point. [x] MPs spoke at the debate, with none of the content yet widely reported. James Arbuthnot made clear that 'withdrawal of support' for the scheme was personal to him and that he did not speak for other MPs about that. Meetings have been offered on three occasions to all MPs with cases in the Scheme and only x have taken up this offer. [please check with Jane Hill].
6. Internally, the issue has been low-key and the periodic media attention has resulted in very little increase in enquiries from postmasters or employees through any Post Office channels. The very few cases expressing concern about Horizon that have been raised have been quickly addressed and have been found to be based [on user error or misunderstanding of process]. Internal communications has been intranet-based and/ or reactive to reflect and maintain the low level of interest. The Communications plan manages continuing risk of leverage being provided (via the media or elsewhere) for postmasters or employees to seek to avoid their responsibilities or the law and any attempts by some former postmasters to re-open, on spurious grounds, cases not in the scheme.

Commented [BC22]: Mel, I have extracted from your paper – would you be able to have a look and ensure you are happy with this?

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7. For customers there has also been extremely muted interest. Following television coverage there is very low-level customer comment on social media and enquiries about Horizon's integrity/ protesting about Post Office's handling of the cases are in [single figures].

Other parties in the Scheme

8. There is evidence of considerable collusion and orchestration of publicity between the Justice for Subpostmasters Alliance and Second Sight (and with the office of James Arbuthnot MP). But the JFSA, whilst clearly briefing 'behind the scenes', have remained largely silent on the record and part of our communications plan is to ensure that their position is properly drawn out publicly regarding the conflict between their confirmation of support for the scheme yet apparent criticism of it and instruction of solicitors.
9. Second Sight remain highly unlikely to go 'on the record' to media at this point but there continues to be evidence of breaches of confidentiality and further 'off the record' briefings to media and/ or other audiences remain highly probable. They have continued to be positioned by other stakeholders as an independent voice.
10. Sir Anthony Hooper has not been commenting publicly and is unlikely to do so. He is not predisposed to support any of the parties regarding communications, although might continue to be prepared to provide factual information via particular routes, as he did recently with a letter to [Postal Affairs Minister] Jo Swinson about mediation of cases. Post Office strategy with Sir Anthony will continue to respect and be supportive of his position as impartial Chair.
11. The Minister's current position regarding communications is to remain arm's length from Post Office's management of the issue and the detail of the Scheme, but supportive (within those constraints) in terms of ensuring high-level factual information about the approach is provided appropriately.
12. The applicants themselves are largely respecting confidentiality and no applicants have withdrawn from the scheme. There are [x] applicants from the [x] remaining in the scheme who are providing media interviews, the vast majority of whom [pledged guilty to false accounting] and are seeking for their convictions to be overturned, public apologies and, in some cases, very significant compensation. Their messaging is changing, as expected given the findings of investigations, from allegations about Horizon faults to wider Post Office issues – a central argument being that they were "forced" to falsely account (see media assessment below).

Media assessment

13. Media coverage drives the internal and customer interest for this issue - this interest remains minimal but any damaging perceptions caused by this coverage will be addressed with definitive, proactive and carefully targeted communications at the

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relevant moment[s] of our choosing. These communications will support Post Office taking confident and assertive action to conclude the issue and designed to draw the strongest possible line to separate myths from reality. This will not be best achieved by degrees and will not be without criticism or some further damage but it is vital to demonstrate confidence and to provide clear parameters for any future questioning on the issue. It can be contained to a story of very limited duration and damage (albeit with some residual web content) if action is swift and encompasses all present barriers to resolution.

14. [insert high level key findings from recent overall media/ PR analysis – shows modernisation/ transformation continues to dominate]
15. The majority of mainstream or social media is not closely following the story and their coverage is dependent on reasonably significant new angles. One journalist has however increasingly adopted the story as an attempted campaign via his blog and social media, with recent films on BBC1's tabloid consumer programme, the One Show, mostly highlighting the criminal cases. The journalist is briefed by others closely involved in the scheme, as well as James Arbuthnot MP and some applicants (who appeared) and also relies on third party expert opinion from those with no detailed knowledge either of Horizon or the investigations and the scheme. There has been obvious orchestration to try to maximise publicity. Detailed rebuttals to the programme's senior editors has removed some of the most damaging and untrue content - about legalities of Post Office investigations processes – and there has also been measured legal correspondence from Post Office about both fairness of content and the requirement to disclose any evidence if it exists. The usefulness of one journalist's 'campaigning approach' to the issue is that it can have the effect of down-dialling the story for other media and is more easily isolated and managed as part of communication plan.
16. The withdrawal of James Arbuthnot MP's support for the scheme and the subsequent recent Westminster Hall debate has supplied fresh content for media but it is not yet significantly covered outside of the One Show. However, some of the allegations and issues raised -with no qualification or balance - by a number of MPs are likely to be returned to in the New Year.
17. The ~~c~~Communications messaging has largely centred on the fact that there is no evidence of faults with Horizon that have caused the issues complained about. This has been consistently landed and, because the thorough PO approach regarding investigations into individual cases has provided increased confidence and certainty about Horizon, the messaging has been strengthened and is now accepted/ acknowledged to a reasonable degree with most audiences. There remain a few particular individuals within audiences who will never accept this for a range of reasons, but they are increasingly isolated.
18. Communication plans address the predicted **changing nature of the allegations**, which focus increasingly on the scheme itself, the criminal cases and postmaster contracts:

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- a) The complaint review and mediation scheme being a "sham"
- b) Individuals being "forced" to commit the offence of false accounting and to pleading guilty to it
- c) Contracts being unfair and out-dated, passing all risk and responsibility for losses to postmasters with Post Office having no incentive to investigate
- d) "Remote access" - the [main issue] being used in an attempt to continue to cast some doubt about Horizon's integrity

19. There are other connected and currently outlying allegations, but the communications plan manages these distractions and remains focussed on addressing the central, now very clearly unjustified point attempted i.e. that Post Office is responsible for some miscarriages of justice and will not admit it/ is covering it up.

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Annex 2

Good and bad faith

Commented [BC23]: Placeholder for Patrick's draft

This would, in effect, also form the basis for a letter to Tony/statement for the media setting out what POL has done in good faith and where others have acted in bad faith.

Faith, Good and Bad...

Commented [BC24]: Placeholder for Patrick's draft

1. Post Office is being accused of bad faith in its approach to the Scheme as never before, with recent accusations by MPs, in the context of a Parliamentary Debate held on 17 December, of duplicity, malicious prosecutions and deliberate frustration of the Scheme on its part representing a particularly low point but by no means an isolated one.
2. As noted in the Sub Committee's paper, however, these accusations are devoid of any legitimate basis and, indeed, the facts underpin a compelling argument that the precise opposite is true. As reminder, Post Office:
 - has spared no effort and no resource in addressing the concerns first expressed to it in 2012 by James Arbuthnot MP;
 - established a Scheme, largely designed by JFSA and Second Sight;
 - appointed the Working Group's recommendation for the Independent Chair as suggested to it by JFSA;
 - comprehensively re-investigated each and every complaint brought against it;
 - paid, not only for the administration of the Scheme as a whole, but also for professional advisers to assist applicants bring their complaints against POL as effectively as possible;
 - acted in accordance with the Terms of Reference; and
 - fulfilled its legally binding obligations of confidentiality agreed by all Parties to the Scheme, not least out of concern for the privacy of Applicants.
3. In contrast, there is clear evidence that other participants and stakeholders in the Scheme have paid scant regard to their obligations and/or deliberately sought to frustrate the Scheme:

Orchestration of Campaign

- JFSA's instruction of Edwin Coe LLP, a 'Today' programme broadcast, two BBC 'One Show' broadcasts and the Westminster Hall Debate are clearly not the product of coincidence. Instead, POL finds itself on the receiving end of an orchestrated campaign designed to build a huge amount of pressure to force it to reach decisions which meet the outcome sought by JFSA and MPs, an outcome which has been pre-determined without regard for the available evidence. It is now near crystal-clear that any outcome not involving a finding of fault on the part of Post Office is unacceptable

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to other parties in the Scheme: mediation offers no solution nor part solution in such circumstances;

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Undermining of the Working Group

- JFSA has, since [DN: please provide date], refused to play a meaningful part in the deliberations of the Working Group. Its decision to take no part in any discussion whatsoever about the merit of cases recommended by Second Sight as being suitable for mediation, while asserting its right to do so where Second Sight's recommendation goes the other way, clearly indicates that it is acting on the basis of a pre-determined agenda in which the only acceptable finding is one of fault on the part of the Post Office;
- Quite aside from the self-evident lack of reasonableness of this approach, it also places the Working Group's Chair in the invidious position of having the determining say in almost every case and deprives him of a critical element in seeking to reach an equitable decision. This frustrates, perhaps fatally, any sensible operation of the current arrangements;

Breaches of Confidentiality

- JFSA have also been in manifest breach of their obligations of confidentiality, having discussed the working of the Scheme and the detail of individual cases with MPs and in the media;
- It has also become clear that applicants and their professional advisers have shared their case details with various media outlets. In some cases, a highly questionable picture of the facts supporting their complaints has been painted in their applications to the Scheme and in representations to their Members of Parliament;
- This is also true of Second Sight, a clear example being their comment, as reported by Andrew Bridgen MP during the Westminster Hall Debate on 17 December 2014, that one would have to be both 'legally and economically illiterate' [DN: check quote] to enter into an SPM contract with Post Office;

Exaggerated Compensation Claims

- In a majority of cases [DN: is this right ?], and presumably on the basis of the advice they have received, Applicants have submitted wholly inappropriate and unrealistic claims for compensation from Post Office. Alan Bates, who leads JFSA, himself has a claim against Post Office in the sum of £1.3m, despite having suffered no loss during his time as a Subpostmaster.
- Not only are these claims in themselves almost invariably without legal or other foundation, but they make the prospect of reaching a satisfactory resolution in the majority of cases extremely remote, if not impossible.

4. Those involved in the day to day of the Scheme express their reservations about continuing on the same track in the strongest terms: we can't and won't satisfy those who argue against us: to continue to seek to do so will represent a waste of funds and, arguably, run against HM Treasury Guidelines on the establishment and operation of such Schemes.

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5. Difficult as it may be to close the Scheme in its current guise, the alternative to so doing may well be interpreted, with the benefit of hindsight, as prolonging a line of (public) expenditure unnecessarily. One would expect a Select Committee to use this as one of its points of reference.

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Annex 3

Assessment of the litigation risk posed by Edwin Coe's involvement

1. Edwin Coe LLP, self-styled as "*the UK's leading class action firm*", states on its website that JFSA has asked it to "pursue the rights" of Subpostmasters and that litigation "*appears inevitable*". Given this, it appears that JFSA is seeking to pursue some form of group action against Post Office, presumably to recover compensation.
2. English courts do not have US-style class actions. In England each individual claimant must ask the Court for a remedy, and the Court uses its case management powers to manage multiple, similar claims in the most efficient manner.
3. The legal basis and subject matter for this type of action by Subpostmasters is not currently clear. There are a number of issues that are sufficiently common to many Subpostmasters that *could* form the basis for some form of group action, particularly around the true meaning and effect of the standard Subpostmaster contract.
4. However, each Subpostmaster's claim is dependent on their individual dealings with Post Office. It is therefore difficult to envisage a scenario where a single Court decision would automatically give rise to compensation being paid to many. After proceedings on a number of core issues, many pieces of satellite litigation about specific points in particular cases would be necessary before a Court would make any compensation award.
5. The greatest bar to a group claim is likely to be cost. This type of litigation is costly and many of the Applicants are in financial difficulties. There are third party funders in the market who fund this type of litigation in return for a cut of the compensation awarded. However they will only do so if the legal merits of the claim are good and the return on their investment high. It is doubtful whether the true value of the Applicants' claims, once assessed against legal principles and not the artificially inflated figures many have put forward, would be sufficient to attract a funder.
6. Edwin Coe does not, however, need to win in Court to be successful. It is possible that their involvement is part of a strategy involving legal proceedings, media attacks and political pressure to force Post Office to the negotiating table. Edwin Coe would only need to find a viable but weak legal claim to go down this route.
7. However having reviewed all the Scheme cases, it is difficult to see an obviously meritorious claim against Post Office that would have wide application to many Subpostmasters. In 2011, Shoosmiths gathered together 100+ Subpostmasters and attempted to run a test case challenging Horizon. Post Office defeated this claim on procedural grounds and Shoosmiths never tried again. This suggests that a group action is not an easy proposition and may not be viable.
8. In any event it would take time for Edwin Coe/JFSA to marshal and organise a critical mass of Applicants into a group action. It would require a legally binding governance structure in order to make decisions on behalf of the whole group, funding and they should, in accordance with court rules, send a Letter of Claim to Post Office before commencing Court proceedings. These steps could take 2 - 6 months..

Commented [BC25]: Rod, you were going to do a half/one page summary of the BD advice

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Annex 4

Judicial Review Advice

Commented [BC26]: Placeholder for Tom Weisselberg's advice
– Patrick organising

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