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## POST OFFICE LTD BOARD

### Initial Complaints Review and Mediation Scheme: Sub Committee Recommendation

#### 1. Purpose

1.1. This paper and accompanying annexes:<sup>1</sup>

- Updates the Board on the discussion of the Sub Committee today (6 June 2014)
- Seeks agreement to a recommended way forward subject to the clarification of an outstanding legal point on the likelihood of Judicial Review (JR)

#### 2. Background and current position

2.1. The detailed background is set out in the annexed Sub Committee paper and attachments but in summary:

- The Scheme progress is picking up pace, and as early as next Thursday (12 June 2014) the Working Group will seek to make a decision on whether a further two cases should be recommended for mediation. This pattern will continue and adds urgency to the need for a firm decision if Post Office intends to depart from the status quo.
- Of the 136 applicants still in the Scheme only three have received a draft Second Sight report. But the Working Group Chair is now applying more pressure to Second Sight to deliver their reports promptly – we believe this is in response both to pressure from the JFSA and the knowledge that we may seek to change the Scheme.
- Second Sight have committed to producing three cases a week. At this rate of productivity (which we consider highly unlikely to be delivered) they will have completed their work on all cases in about a year from now, and allowing additional time for mediation, a best case and extremely optimistic scenario would be for the Scheme to complete in August 2015. A more realistic assessment would be that Second Sight would produce no more than two cases a week and the Scheme would not end until November 2015.

#### 3. Options

3.1. Against this backdrop, the Sub Committee considered three options:

1. Continuing with the Scheme as currently configured and managed.
2. Continuing with the Scheme but seeking to refine its work within the existing Terms of Reference, with Post Office taking a firmer more proactive line to

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<sup>1</sup> Paper and slides that went to Sparrow Sub Committee for discussion on 6 June 2014  
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defend its position and ensure a greater degree of transparency around our approach to the Scheme, with mediation being based on our understanding of the legal position and desire to control programme costs and timescales.

3. Completing the Post Office investigation in each case and moving the governance and management of the Scheme in-house (ending Second Sight's engagement and dissolving the Working Group).

#### 4. Summary of Sub Committee Consideration

- 4.1. In reviewing the options the Sub Committee took account of time, cost, legal risk, communications and stakeholders and the best interests of the business.
- 4.2. The Sub Committee reviewed the initial appraisal of legal risk and in particular the potential susceptibility of the Post Office to Judicial Review under the Scheme. The Sub Committee asked the General Counsel to obtain more detailed advice and asked that this should be disseminated to the Board to inform their final decision. In the interim, they noted that all of the gains from modifying the Scheme would be outweighed if the revised Scheme was likely to be subject to successful JR. Even an application for JR has the potential to become a story in and of itself, or may act as a lightning rod for public scrutiny of any changes being proposed to the Scheme.
- 4.3. The Sub Committee noted that Option 2 and Option 3 present (very) difficult stakeholder handling challenges and the prospect of negative PR. The PR issues are ones that we believe could be contained as it is unlikely that the Scheme would remain "in the news" for any length of time.
- 4.4. The stakeholder challenges are more complex. While the Scheme plays into a number of Post Office stakeholders, the critical relationships are those with our shareholder, Sir Anthony Hooper and James Arbuthnot MP. Detailed stakeholder planning approaches would of course be developed for the relevant option and more details on this and communications approaches are included in the annexed slide pack.
- 4.5. This communications approach has been tested with Brunswick PR and they support the analysis above with their conclusion set out below:

*"We would concur with the Communications Director and his team that, from a PR point of view, simply continuing unchanged is not a desirable option....."*

*Refining or reforming the working group is expected to cause disaffection amongst the 'implacables' leading to as much negative 'noise' as if the group were to be disbanded.*

*If disbanding the group and taking the process back in-house is deemed the preferred option from an operational point of view, we would support this."*

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**5. Deloitte Report and Linklaters Advice**

- 5.1. The Deloitte report raises two types of issues: the first relates to Sparrow, the second to wider business learnings. This second set of issues will be dealt with through the Risk and Compliance Committee and the business assurance functions.
- 5.2. As regards the Sparrow-related issues it is believed that given the limited scope of the work Deloitte were able to undertake it is highly unlikely that we will be able to extract any further comfort or assurance without their doing substantially more work. Furthermore, it is also clear that Deloitte will not consent to the publication of their report or the use of their name to publicly assert that the system is working with integrity unless they undertake specific testing. That said, the report does give some comfort for the Board on the design for processing and storing transaction data with integrity<sup>2</sup>.
- 5.3. Against that background, the public facing version of the Linklaters advice is being reworked to reflect this in a narrative about our legal position. That narrative focuses on three important features in connection with those complaints. Firstly, Horizon produces and maintains the accounts between Post Office and its subpostmasters and other agents. Secondly, unless there is proof that Horizon is not operating as intended, Post Office can enforce its legal rights against agents relying on those accounts. Thirdly, in the unlikely event that Post Office has any financial liability to applicants, it would not include any liability for consequential losses (e.g. loss of reputation, injury to feelings, mental distress etc.).
- 5.4. For the avoidance of doubt Deloitte are not recommending that any further "backward looking" review of the Horizon system would be appropriate. In fact they have said 'One could thus do a lot of work and not be any further forward'. They have however though gone on to say that, if Post Office were looking to gain a greater degree of assurance over the Horizon system there are approaches that could be considered - none of which could be delivered in the near term. These will be brought to the ARC (or Board) via the R&CC.
- 5.5. We propose to produce a version of the Linklaters advice for the Sub Committee's consideration as soon as possible so that it is ready for wider release, whatever approach the Board should choose to take.

**6. Conclusion and Next Steps**

- 6.1. It is the view of the Sub Committee that Option 3, where the Scheme is effectively moved in-house, is the one which on the face of it is in the best interest of the business. We must however have regard to wider considerations such as the possibility of JR. In considering the best (long term) interests of the business we must also take into account our relationship with the Government. We recognise

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<sup>2</sup> Subject to the limitations and assumptions expressed in their report, Deloitte 'have not become aware of anything to suggest that the system as designed would not deliver the objectives of processing of baskets of transactions and keeping copies of them in the Audit Store with integrity.'

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that we would place the Post Office's shareholder, and particularly the minister, in a difficult position were we to move ahead with our preferred option without first taking steps to discuss it with the Shareholder Executive and the minister, and to set out other options and our handling plans.

- 6.2. In conclusion, there appears to be a consensus developing that:
- Option 1 (continuing as is) is rejected as untenable given the challenges it poses to the best interests of the business and value for money.
  - Subject to the further legal advice on JR the Board agrees that the Chair explores with the Minister the extent to which she would be prepared to support Option 3 and explain the alternative approach of Option 2 as a fall-back position.
  - The programme team and the Communications and Public Affairs Directorate continue to plan for the implementation of both Option 2 and Option 3 on a contingency basis.
- 6.3. If the Board agrees to the recommendation that maintaining the status quo is untenable then it is also asked to agree that an approach is developed for Option 2 which is sensitive to stakeholder handling but which could be implemented quickly in the event that the risks associated with Option 3 prove unacceptable.
- 6.4. The Sub Committee also invites the Board to note that it would be imprudent to announce Option 3 in recess. On that basis there is a large amount of work to be conducted urgently to deliver the option in the short window before Parliament rises on 22 July.

**Chris Aujard and Mark Davies**

**6 June 2014**