

PRIVILEGED AND CONFIDENTIAL
DRAFT: 8 March 2013

Post Office Limited

Sub-post office claims

Questions for Post Office

A. Post Office/Sub-post office relationship

1. Can we see any examples of the final form of the Post Office/Subpostmaster contract i.e. not the internal Post Office administrative version we have seen? Should we assume that all claimants would have a contract substantially in the form in which it has been provided to us and if not, how are they likely to differ?

Response:

2. Are there any other key documents which might govern the Post Office/Subpostmaster relationship (e.g. operating procedures or policies relating to Horizon, the sale of scratch cards or the preparation of accounts)?

Response: *There is an overarching operating manual for Subpostmasters to guide them on the workings of all financial transactions, however it does not specifically cover Horizon in isolation; it mentions Horizon wherever relevant as part of broader processes. It therefore is unlikely to be of assistance in explaining the Post Office/Subpostmaster relationship in the context of Horizon.*

3. Does the Post Office have a policy or practice for the termination of a Subpostmaster arrangement? How does the Post Office issue breach notices? What breaches (either a one off breach or a number of cumulative breaches) necessitate the termination of the Subpostmaster arrangement?

Response: *There is a schematic diagram of the termination process. Post Office will provide a copy.*

4. If and when the accounts presented by the Subpostmaster disclose a discrepancy, how does Post Office proceed to recover the outstanding money and what do those steps entail? Is there an internal written policy for recovery action?

Response:

5. When Horizon was introduced in 2000, please describe the training which was provided to Subpostmasters and which has been provided to new Subpostmasters since that time? Are there records which evidence the Subpostmasters' attendance at Horizon training, if any, and their level of competency achieved?

Response:

6. Have any Horizon-related claims or related misconduct by Subpostmasters been dealt with under the appeals process in section 18 of the contract? How does that fit with the Scheme?

Response: *Yes, all Scheme applicants must have exhausted Post Office's existing claims processes including those contained in the contract before applying to the Scheme. Further question for Post Office: what are the existing claims processes, if not those which are contained in the contract? Aren't the contract processes (i.e. section 18) directed at misconduct on the part of Subpostmasters, rather than complaints/claims against Post Office and therefore not directly relevant to qualification for the Scheme?*

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B. Mediation Scheme

7. What has happened to the 27 MP cases and 19 JFSA cases dealt with before the Mediation Scheme? Are they intended to be rolled into the Scheme? What was the outcome of the process set out in the December 2012 agreement between Post Office, JFSA and Second Sight? Are these the 27 MP and/or 19 JFSA cases?

Response: *All of the 27 MP cases are part of the group of 147 applicants who have now applied to the Scheme. Seven of the 19 JFSA cases have also applied to the Scheme, although all JFSA cases were encouraged to apply before the deadline. Some applicants were slow to apply and Post Office tried to bring those claims to an end, but the JFSA sought to have them included in the Scheme (and now has included them?) regardless.*

8. What was the rationale for allowing claimants whose claims have been determined in Court or who have been convicted of crimes in respect of their claims, to claim in the Scheme? By what test will “ miscarriages of justice” be measured, where they are said to justify settlements involving convicted complainants? What is the rationale/need for revisiting the judicially determined outcomes of cases?

Response: *Criminal cases were permitted in the Scheme largely to deal with the following two issues: a) there was a lot of public “ noise” created (by the JFSA/Subpostmasters/MPs?) about Post Office bringing vexatious prosecutions against Subpostmasters and b) there was a sense of unfairness in some cases because, claimants had pleaded guilty at early stages without the facts of their case being forensically tested and where the facts only gave rise to technical, “ no fault/strict liability” infringements not attended by any criminal intent (e.g. for false accounting, by pressing the wrong button on Horizon and not realising that the consequence of doing so was or might be wrongful).*

As to civil cases, there have only been two decided civil cases which have been accepted into the Scheme.

9. Is there a final version of the Scheme Settlement Policy?

Response: *The current version is the final version. As to governing documents for the Scheme, there 1) is the Overview document (already seen) 2) is a short agreement covering the payment of claimants’ costs and 3) there will be a confidentiality agreement in respect of any mediations.*

10. It appears that complainants have been led to believe that if their case is suitable for mediation, it is likely that they will be referred for mediation (see p8 of the Overview). Why was that approach taken?

Response: *There is no specific policy on the proportion of cases that will or should go to mediation, although the CEO has expressed a desire that a large number of cases be mediated. Post Office does not consider itself bound by the Overview or Settlement Policy in this regard.*

11. How much focus has there been (or will there likely be) on seeking to resolve disputes through direct engagement before mediation (see p 9 of the Settlement Policy), especially in light of the apparent tendency towards mediation?

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12. There is reference in several documents to the object of the Scheme being to resolve claims concerning Horizon and “ any associated issues” . What are those associated issues?

Response: *The “ associated issues” largely cover non-technical issues in connection with Horizon, such as whether and if so what training was provided. There is a list of what the “ associated issues” are. Post Office will provide a copy.*

13. Is there any proposal for dealing with complaints which a) are not accepted into the Scheme b) are not sent for mediation (e.g. in this case, is the proposed expression of regret likely to be the extent of any response?) or c) are not satisfactorily resolved after mediation?

Response:

14. Are there monetary limits on settlements? If Bond Dickinson has estimated claims are worth £6 million, does Post Office have a view on whether it will accept settlements closer to that overall figure rather than the £100 million estimated to be claimed?

Response: *Not currently.*

15. Have there been any budgetary limits placed on the cost of the Scheme, including settlement payments, and if so what are they?

Response: *Not currently.*

16. Can we see copies of the Bond Dickinson advice? What is the thrust of their advice?

Response: *Post Office will provide key advices. Linklaters can if necessary follow up directly with Bond Dickinson if any questions arise.*

17. Can we see copies of the Cartwright King advice? What is the thrust of their advice?

Response: *Post Office will provide key advices. Linklaters can if necessary follow up directly with Cartwright King if any questions arise.*

18. May we see a copy of any prosecution policy which may have been applicable at the time of any criminal proceedings?

Response:

19. Are records available of the disposals in the various criminal proceedings? In particular, may we have details of the sentences passed upon conviction, including details of ancillary orders such as costs, compensation and confiscation?

Response:

20. May we have details of any appeals, successful or unsuccessful, so far brought by those convicted?

Response:

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C. Second Sight

21. How were Second Sight initially engaged and by whom? What basis do they have for seeking to widen the scope of their engagement? Were they not in effect intended to be an independent “expert” /adviser?

Response: *Originally it was thought one of the “big four” should be engaged to investigate Horizon and the claims in respect of it. But it was decided (by whom?) that a different organisation would be better which was more independent and not engaged by Post Office; Second Sight were “passionate” about finding the truth. It was thought that in order to satisfy as many parties as possible Second Sight would be engaged, especially as JFSA were agreeable to Second Sight and had got them involved in a few specific test cases which JFSA had been pushing at the outset.*

22. How did Second Sight demonstrate their capability/expertise for providing the services currently envisaged in the draft engagement letter? What was the Post Office rationale for appointing them? For example, they are tasked with providing recommendations on the merits of complaints accepted into the Scheme and their suitability for mediation, yet there may be issues involved in the cases which are not limited to technical issues with Horizon or other accounting issues, not least the suitability of mediation as a dispute resolution mechanism itself in each case?

Response: *See above and below. Further question for Post Office: is there anything else you can add here?*

23. Having reported previously on Horizon, why were Second Sight engaged further to investigate complaints and “work with” complainants? Was their impartiality ever questioned?

Response: *Second Sight were favoured by the JFSA and other parties (as described above) and were somewhat entrenched by then.*

24. Has any investigation or analysis of the alleged issues with Horizon been conducted by anyone other than Second Sight? What is Fujitsu's position?

Response: *No, not aside from the regular audit of the system. Post Office have provided an example of a recent independent service audit from Ernst & Young.*

D. Working Group

25. Why were terms of reference with the Working Group not finalised at the outset? When are they likely to be?

Response: *It is anticipated the Terms of Reference will be settled shortly.*

26. Is it intended that decisions of the Working Group are binding on Post Office and the JFSA? The Terms of Reference on one hand say that majority decisions are binding but on the other that the terms do not create any legally binding rights or obligations between the members of the Working Group or third parties.

Response: *It is an open question whether decisions of the Working Group will be, and Post Office will treat them as being, binding on Post Office (or any other parties). To date, no decisions have been taken by the Working Group which have required a formal vote so it remains to be seen how it will be formally run, particularly where there is a lack of unanimity or conflict. Further question for Post Office: did anything arise from the Working Group meeting on 7 March which sheds light on this issue?*

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27. Further, 4.6.1 of the Settlement Policy indicates that Post Office might decide to refuse to mediate in a particular case, even if the Working Group votes in favour? Has or is that likely to happen? How does that reconcile with the draft statement in the Terms of Reference that says it is not the role of the Working Group to recommend or decide on the merits or settlement of any complaint i.e. it appears from the Terms of Reference that the Working Group has a purely administrative function with no merits-based role other than to consider the merits of any particular complaint from time to time for administrative purposes to ensure the complaint is progressing appropriately? Is it the role of the Working Group to decide whether each case goes for mediation?

Response: *The Post Office does not yet have a settled view on how it will respond to a decision by the Working Group to mediate with which it disagrees. As above, the functions of the Working Group and how it will operate are not yet settled.*

28. How did the JFSA come to be included on the Working Group?

Response:

29. How many meetings of the Working Group have there been and what were the key outcomes, if any, of those meetings? Can we see copies of minutes of meetings?

Response: