

**Confidential and Legally Privileged**

**POST OFFICE LTD BOARD**

**PROJECT SPARROW - UPDATE AND OPTIONS**

**1. Purpose**

The purpose of this paper is to:

- 1.1. Update the Board on Project Sparrow following the Board Sub-Committee meeting of 18 February 2015.
- 1.2. Endorse the Sub-Committee's recommendation of the preferred course of action:
  - Post Office adopt a presumption in favour of mediating all non-criminal cases within the Complaint Review and Mediation Scheme;
  - the Working Group overseeing the Scheme role ceases and is closed; and
  - the current engagement with Second Sight be terminated.

**2. Background**

- 2.1. The Project Sparrow Sub-Committee met on 18 February to discuss the latest developments on the Complaint Review and Mediation Scheme (the Scheme) and considered 5 possible options for taking the Scheme forward. The Sub-Committee minutes and papers are attached to this paper.
- 2.2. After discussion, the Sub-Committee endorsed the Project Team's preferred approach (summarised at para 1.2 above) and asked for the proposal to be circulated for the Board's endorsement along with some additional material to inform the Board's consideration.
- 2.3. The Sub-Committee asked for a clear articulation of how a presumption in favour of mediating non-criminal cases would be applied and where exceptions may be made. In summary:
  - In the documents being drafted for publication, the proposed approach is described as Post Office offering the opportunity for mediation in all cases that do not involve Court decisions.
  - In effect, Post Office would plan to offer to mediate all 71 cases remaining in the Scheme where the applicant has not had a criminal conviction. Post Office would only deviate from this approach if the circumstances of a case were genuinely exceptional (e.g. a Civil Court judgment against the applicant) or where there was patently no prospect of achieving resolution.
  - For example, Post Office has already declined to mediate 1 case where the applicant did not have a conviction but had been subject to a lengthy High Court Judgment that made it clear that they were solely responsible for the loss.
  - It is not possible to be definitive on the number of cases where an exception may be made but we anticipate this being very low.
  - There are approximately 19 cases where we believe that the applicant is very unlikely to be satisfied by the mediation process owing to the lack of evidence to support their claim.

### Confidential and Legally Privileged

2.4. Since the Sub-Committee meeting we have received a report from CEDR summarising their findings from the first 11 cases that have been mediated. The key comments made by CEDR were:

- the current settlement rate in the Scheme is 45% against their wider experience where settlement rates range between 65 – 75%;
- some applicants have attended mediation in the expectation that they were entering into a compensation process rather than a facilitated dialogue where the claims made by either party require some material evidence;
- mediation works best where applicants have legal representation (as opposed eg to accountants);
- it has proved challenging to agree mediation dates in a number of cases;
- nonetheless CEDR would advocate Post Office having a relatively small team responsible for mediations in order to deal with them most effectively; and that
- “Post Office has approached each one with a willingness to explore the options, express empathy and have constructive dialogue with the sub-postmasters”.

2.5. We are working with CEDR to ensure that the information being sent to applicants and their advisors is appropriate to ensure they understand the mediation process, what information they need to provide and manage expectations. Post Office will also ensure that its mediation statements (issued in advance of mediation) are clear on Post Office’s assessment of what it is reasonable to expect might be achieved through mediation.

### 3. Timing and Next Steps

3.1. As set out in the Sub-Committee paper, we expect to be ready to announce Post Office’s change of approach in week commencing 9 March. We believe that there are good arguments for doing so as early as possible. The two key drivers of the proposed timetable are:

- Second Sight have advised that they expect to circulate the draft of their second report most likely during the first week of March and the draft report is scheduled to be discussed at the March Working Group meeting to be held on 24 March. We think it is unlikely that we will be able to prevent the release of that report to the Working Group, and there is therefore a material risk that the draft report may be leaked whether or not we have stood Second Sight down. It would be preferable to have made our announcement first.
- If the BIS Select Committee decide to issue a report, it must be published by end March. The Select Committee are under pressure to produce up to 5 reports within this timescale which is not feasible. This may mean that they do not publish a report on Post Office but we should assume that they will. Again, it would be preferable to have made our announcement first.

3.2. We have developed a detailed timetable (attached) setting out the various required actions and communications and the sequencing of these, both leading up to, and following the implementation date. This timetable and the development of the individual items referred to in it, remain work in progress, but will give the Board an overview of the various stakeholders that will be managed through the process.

3.3. In addition, we are working on an “End of Term” report setting out Post Office’s position. Attached is a first draft summary of the report for information. This is a

### **Confidential and Legally Privileged**

work in progress. It will be reviewed and edited alongside completion of the report this week.

- 3.4. The precise date of the announcement should be determined by our best opportunity to manage media and Parliamentary risks. As flagged above, we currently believe that this will be in the week commencing 9 March. Accordingly, the Board are asked to agree that responsibility for agreeing the implementation date for the plan should rest with the CEO. The Board would be informed ahead of implementation.
- 3.5. Although we believe we can manage down the risks of widespread coverage of the announcement when it is made, significant work will flow from it. Alongside managing a substantial mediation process, we can expect a continuation of the campaign against Post Office from JFSA and potentially the MPs who continue to back them. It may also hasten any legal action from JFSA.

#### **4. Second Sight**

- 4.1. The Sub-Committee requested that we consider the relationship with Second Sight and the legal position should it need to be enforced. These plans impact on the role of Second Sight going forward as its role will be substantially reduced. Post Office can terminate Second Sight's engagement in the Scheme at any time and for any reason on 30 days' written notice. Second Sight may claim that it has some other engagement beyond the Scheme but would need to convince Post Office of the rationale for this.
- 4.2. During the notice period, Second Sight's preference is likely to be to work on completing its "Part Two" report. However, our proposal is that they should be asked to complete the individual case reports that are due to be delivered in that period. Post Office need only pay for the work it asks Second Sight to perform.
- 4.3. Second Sight will continue to have access to all material until the end of the 30 day notice period. Second Sight will continue to be bound by confidentiality throughout the notice period and following termination, and are prohibited from acting against Post Office's interests and reputation for 15 months. Post Office could enforce these obligations through legal action if appropriate.
- 4.4. Post Office will therefore remind Second Sight of its obligations regarding delivery of work product and use of non-public information at the same time as it serves notice of termination.

#### **5. Recommendation**

The Board is asked to:

- endorse the Sub-Committee's recommendation of the preferred course of action; and
- agree that responsibility for agreeing the implementation date for the plan should rest with the CEO.

**Jane MacLeod / Mark Davies**  
**2 March 2015**



**Confidential and Legally Privileged**

**Attachments:**

- A. The minutes of the Sparrow Sub-Committee meeting of 18 February.
- B. The papers submitted to the Sparrow Sub-Committee, including:
  - The update and options paper
  - Sir Anthony Hooper's letter of 30 January to the Chair of the BIS Select Committee
  - A series of tables summarising the options set out in the Sub-Committee paper
- C. A first draft summary of the proposed "End of Term" Report.
- D. A communication and stakeholder management plan for Post Office's announcement based on the proposed option.
- E. A proposition for how mediation could be completed in approximately 6 months under the proposed option.