

**CONFIDENTIAL – NOT POLICY**

**Issue**

1. A discussion about the relative merits of a number of options for breaking through the impasse.

**Recommendation**

2. That participants to the meeting consider and discuss this paper before coming to a view on the best course of action to take, taking all equities into account. The conclusions drawn in the meeting will inform a recommendation to the Post Office Board (via Sub- Committee?) for final decision.

**Background Summary**

3. Dissatisfaction with the Scheme has been laid bare and a number of unwelcome developments have occurred even since the last meeting of the Sub Committee of the Board on 12 January 2015. Three unfavourable BBC pieces have been broadcast, relevant MPs have withdrawn their support and secured a Westminster Hall Debate to make this plain, JFSA continue to refuse to take any meaningful part in the Working Group (indeed they do not think it ought to meet at present), appeals have been made for BIS to intervene, the BIS Select Committee has launched an Inquiry and the Criminal Cases Review Commission has begun to demand the production of documents. A firm of specialist lawyers has been engaged by JFSA, raising the spectre of a new risk of a group court action against Post Office.

4. In the circumstances, it is difficult to escape the conclusion that the Scheme no longer serves as an expedient and fair way to explore and, where possible, resolve a small number of individuals' complaints but, instead, acts as a lightning rod for a campaign against Post Office as an organisation. Criticisms of how our staff and processes may have performed in a specific case have given way to accusations calling into question our values and integrity as an Institution.

**Options**

5. Following much deliberation over the last few months over a range of options, 4 emerge as candidates for this discussion:
  - **Seek to maintain the status quo** – in circumstances where JFSA do not participate in any meaningful way, Second Sight's impartiality is a fiction and all those involved consider that the Scheme is not fit for purpose; this option appears to have little to recommend it. This approach risks providing further space and time for our detractors to build upon and continue to prosecute the campaign we now face, as well as incurring the maximum financial and probably reputational cost ahead of inevitable litigation.

- **Mediate all cases or all cases apart from criminal cases** – bring an end to the Working Group by agreeing to mediate all cases in the Scheme regardless of evidence or merit. Post Office is looking to address any issues surrounding criminal cases with the Criminal Cases Review Commission (CCRC), the independent public body established to review possible miscarriages of justice, with which Post Office is now engaged in correspondence.
  - **Payout or pay-to-litigate** – call an end to the Scheme either by trying to offer a sufficiently attractive (in multiples of £10k) amount for Applicants to waive all and any claims they may have against Post Office or undertake to pay a sum to each Applicant for professional fees in bringing a claim against us, trusting the outcome to the Courts.
  - **End the Scheme, mediate cases with merit, defend remaining claims as business-as-usual** – bring an end to the Working Group while inviting Second Sight to enter into a new contract (ending all others) to complete their review of all cases (anticipated in May 2015) and specifically precluding the production of a Part II report. If Second Sight decline, end their engagement immediately and consider whether to implement an alternative means of providing neutral oversight.
6. An appendix providing a working assessment of each of these options is attached, as is a summary matrix showing their comparative profiles measured against Reputational, Commercial and Legal risks.
7. Colleagues are invited to offer their views on the relative merits of these options.

26/01/15

**OPTION A**

**CONFIDENTIAL – NOT POLICY – FOR DISCUSSION**

**OPTION A: STATUS QUO**

**Option Description**

- Post Office treats Scheme as fit for purpose and attempts to take part in, and administer, it in the same way as now, encouraging others to do the same.

**Reputation/Perception**

- We know that MPs, JFSA and Applicants consider the current arrangements to be a sham and command no confidence and this is reflected in media reports, particularly those broadcast through BBC TV and Radio outlets
- Seeking to make the unworkable work will fuel that anger
- New and unpredictable lines of attack will be explored and continued damage to the brand is the likely result
- A new Minister post-election and a new critical Second Sight report will also make containing negative media coverage more difficult
- Mediation will take place but often not result in resolution, creating significant frustration and leaving the impression that the Scheme is a 'cover up' and/or failure

Risk	0-3 months	3-6 months	6+ months
profile:	RED	RED	RED

**Commercial (including Costs)**

- Sparrow will continue to eat up high level staff time, diverting it away from more strategic challenges facing the business
- Currently projected costs (assuming a more benign media environment) will comfortably reach £8.3m, this figure does not include any payments we may or may not make to Applicants
- Detrimental effect on business and, crucially, on the businesses of our (non-Scheme) Subpostmasters
- Highly uncertain outcomes over a long period of time

Risk	0-3 months	3-6 months	6+ months
profile:	RED	RED	RED

**Legal (Judicial Review and Litigation)**

- An attempt at legal challenge to the Scheme as a whole (by Judicial Review) is possible at some stage under this option, although the risk of a successful challenge has recently been assessed as being low.
- Litigation by Applicants in relation to at least some of the cases seems inevitable under all options.
- The failure to reach resolution in a large number of mediations potentially incentivises legal action by angering relevant Applicants
- However, in Court, the disputes will proceed in a controlled environment, tested on relevant evidence and legal principles and determined by an impartial Judge.
- Should Applicants mount a group action against Post Office and find solid resources collectively to fund it, our costs in defending against it could be extremely substantial and litigation at this level always carries a higher risk, although the Court's processes provide for a constant evaluation of risk and opportunity to address it.

Risk	0-3 months	3-6 months	6+ months
profile:	AMBER	RED	RED

**OPTION B****CONFIDENTIAL – NOT POLICY – FOR DISCUSSION****OPTION B: MEDIATE ALL****Option Description**

- All aspects of current Scheme maintained, including Working Group to oversee scheduling and case through-put, but Post Office accepts the recommendation of Second Sight to mediate as final, and mediates all cases.
- One variant might include agreeing to do this for all cases other than criminal cases, in relation to which we could offer to submit the review into Post Office's handling of those conducted by Cartright King to an external (for instance, an eminent QC) to verify, independently, that we have acted correctly.

**Reputation/Perception**

- Current attacks on Post Office will, clearly, subside very quickly but accusations of having made a 'u-turn' will replace one sort of criticism with another
- Any reduction in negative coverage will be of short duration since while we are prepared to mediate all cases, we will not accept responsibility to the levels sought by Applicants without any evidence showing that we should.
- That will lead to huge frustration on the part of Applicants, their professional advisers and MPs since it does not meet the outcomes they seek in terms of compensation/redress.
- Increase in accusations that Post Office is entering into mediation in bad faith and we will find ourselves in the same situation as at present, though the false dawn will have aggravated this
- Not mediating criminal cases will produce further opprobrium.

Risk	0-3 months	3-6 months	6+ months
profile:	AMBER	RED	RED

**Commercial (including Costs)**

- This option entails the maximum possible costs incurred since we will incur the costs of mediation and then face litigation when mediations fail to produce the results sought by Applicants. The £8.3m cost projected under Option A (Status Quo) will rise very significantly indeed
- We can expect this option to take the greatest time, with at least 6 months spent on mediation, followed by prolonged litigation.
- Detrimental effect on business and, crucially, on the businesses of our (non-Scheme) Subpostmasters
- High level resource is distracted away from transforming the business, for an undefined period of time.

Risk	0-3 months	3-6 months	6+ months
profile:	RED	RED	RED

**Legal (Judicial Review and Litigation)**

- An attempt at legal challenge to the Scheme as a whole (by Judicial Review) is possible at some stage under this option, although the risk of a successful challenge has recently been assessed as being low.
- Litigation by Applicants in relation to at least some of the cases seems inevitable under all options.
- The failure to reach resolution in a large number of mediations potentially incentivises legal action by angering relevant Applicants
- However, in Court, the disputes will proceed in a controlled environment, tested on relevant evidence and legal principles and determined by an impartial Judge.
- Should Applicants mount a group action against Post Office and find solid resources collectively to fund it, our costs in defending against it could be extremely substantial and litigation at this level always carries a higher risk, although the Court's processes provide for a constant evaluation of risk and opportunity to address it.

Risk	0-3 months	3-6 months	6+ months
profile:	AMBER	RED	RED

**OPTION C****CONFIDENTIAL – NOT POLICY – FOR DISCUSSION****OPTION C: PAY TO LITIGATE OR PAYOUT****Option Description**

- Scheme is closed but all Applicants, with the exception of those with criminal convictions, are given a sum (£5K/10K) to bring claims against Post Office together with the documentation created as a result of being accepted into the Scheme. Post Office then defends all and any claims in Court.
- A variant of this option would involve offering a more substantial payment to all Applicants, with the exception of those with criminal convictions, on condition of a waiver of all and any claim they may have against Post Office.
- Post Office is looking to address any issues surrounding criminal cases with the Criminal Cases Review Commission (CCRC), the independent public body established to review possible miscarriages of justice, with which Post Office is now engaged in correspondence.

**Reputation/Perception**

- We can expect either variant to result in substantial criticism of Post Office for seeking to 'wash its hands' or 'buy its way out' of the issues raised by MPs, JFSA and Applicants
- Option is likely to generate substantial activity, eg from those dissatisfied with the level of payment and/or from those who did not apply but now wish to bring issues to our attention
- Media environment is likely to become more hostile in the short term, however we could expect this to subside after a relatively short time, producing more acute pain but over a much shorter period
- However, the problem of potential aggregation of the individual payments to Applicants to fund a sustained group action by Edwin Coe LLP raises the spectre that this early advantage may be short lived, as the case is followed by the media

Risk	0-3 months	3-6 months	6+ months
profile:	RED	AMBER	RED

**Commercial (including Costs)**

- Currently projected costs are reduced but this is offset by the risk of extremely costly litigation, namely a well-funded group action spearheaded by Edwin Coe LLP
- Uncertainty of the process is removed, though accusations of bad faith will remain.
- High level resource previously diverted is freed up with litigation treated as business as usual
- There is a definitive end, as a court judgment can be robustly defended as the end of any claim/dispute – that said, this would be some considerable way off – and it will remain open to the parties to consider settlement at all times.

Risk	0-3 months	3-6 months	6+ months
profile:	AMBER	RED	RED

**Legal (Judicial Review and Litigation)**

- An attempt at legal challenge to the Scheme as a whole (by Judicial Review) is possible at some stage under this option, although the risk of a successful challenge has recently been assessed as being low.
- Litigation by Applicants in relation to at least some of the cases seems inevitable under all options.
- The failure to reach resolution in a large number of mediations potentially incentivises legal action by angering relevant Applicants
- However, in Court, the disputes will proceed in a controlled environment, tested on relevant evidence and legal principles and determined by an impartial Judge.
- Should Applicants mount a group action against Post Office and find solid resources collectively to fund it, our costs in defending against it could be extremely substantial and litigation at this level always carries a higher risk, although the Court's processes provide for a constant evaluation of risk and opportunity to address it.
- In this scenario, we would effectively be providing that funding, so the risk is much more pronounced.

Risk	0-3 months	3-6 months	6+ months
profile:	RED	RED	RED



**OPTION D****CONFIDENTIAL – NOT POLICY – FOR DISCUSSION****OPTION D: END SCHEME, MEDIATE CASES WITH MERIT, DEFEND REMAINING IN COURT****Option Description**

- Post Office closes the Scheme but invites Second Sight to enter into a new arrangement to complete their independent review of all investigations
- New contract could specifically preclude the production of a Part II Report
- Post Office is the sole decision maker in terms of which cases are mediated
- If Second Sight decline, terminate engagement and consider whether to implement some form of alternative means of independent oversight
- Any litigation is defended against as business as usual

**Reputation/Perception**

- We can expect this option to result in substantial criticism of Post Office for abandoning the Scheme (despite the complaints to which it is subject)
- Accusations of bad faith will be very pronounced
- Media environment will become very hostile in the short term, however we could expect this to subside after a relatively short time, producing more acute pain but over a much shorter period
- We also have a clear plan for media and Parliamentary engagement to run alongside any announcement to assist with limiting negative coverage and offer an alternative view.

Risk	0-3 months	3-6 months	6+ months
profile:	<b>RED</b>	<b>AMBER</b>	<b>AMBER</b>

**Commercial (including Costs)**

- This option leads to a substantial reduction in projected costs in large because Post Office becomes in control of its duration
- After an initial period of heightened involvement, Sparrow will cease to eat up high level staff time, allowing key individuals to concentrate on the more strategic challenges facing the business
- The current detrimental effect felt on the business and, crucially, on the businesses of our (non-Scheme) Subpostmasters ends

Risk	0-3 months	3-6 months	6+ months
profile:	<b>RED</b>	<b>AMBER</b>	<b>AMBER</b>

**Legal (Judicial Review and Litigation)**

- An attempt at legal challenge to the Scheme as a whole (by Judicial Review) is possible at some stage under this option, although the risk of a successful challenge has recently been assessed as being low.
- Litigation by Applicants in relation to at least some of the cases seems inevitable under all options.
- The failure to reach resolution in a large number of mediations potentially incentivises legal action by angering relevant Applicants
- However, in Court, the disputes will proceed in a controlled environment, tested on relevant evidence and legal principles and determined by an impartial Judge.
- Should Applicants mount a group action against Post Office and find solid resources collectively to fund it, our costs in defending against it could be extremely substantial and litigation at this level always carries a higher risk, although the Court's processes provide for a constant evaluation of risk and opportunity to address it.

Risk	0-3 months	3-6 months	6+ months
profile:	RED	AMBER	AMBER

**MATRIX**

**High level Impact and Risk over time Matrix by Scenario**

Options to bring the Scheme to a conclusion, taking reputational, commercial (including cost) and legal considerations into account. This diagramme does this, over time, for the four options detailed within the paper.

- Option A: Status quo
- Option B: Mediate
- Option C: Payout or pay-to-litigate
- Option D: End scheme

