



Confidential and legally privileged



Confidential and legally privileged

INITIAL COMPLAINT REVIEW AND MEDIATION SCHEME [DRAFT] SETTLEMENT POLICY

Version 1.3

[...] November 2013



Confidential and legally privileged



Contents

1. Document Control
2. Objectives
3. General approach to settlements under the Scheme
4. Process for considering individual complaints
5. Settlement principles
 - 5.1 Overarching principles
 - 5.2 Criminal cases
 - 5.3 Settlement thresholds
 - 5.4 Settlement options
 - 5.5 Compensation matrix
 - 5.6 Goodwill payments
6. Glossary



Confidential and legally privileged



1. Document control

Privilege

- 1.1 This Policy has been prepared:
 - 1.1.1 To assist Post Office in settling complaints raised through the Scheme.
 - 1.1.2 To manage the risk that a complaint could escalate to full litigation.
 - 1.1.3 With the advice and assistance of both internal and external lawyers.
- 1.2 Accordingly, this Policy is subject to both legal advice privilege and litigation privilege. It is also commercially sensitive and confidential to Post Office.

Circulation control

- 1.3 This Policy should:
 - 1.3.1 Never be sent to or discussed with any person outside of Post Office without the prior consent of POL Legal.
 - 1.3.2 Be circulated inside POL unless it is strictly necessary to do so, for which purpose the following may need to review this Policy:
 - Board
 - ExCo
 - ARC
 - The Steering Group
 - Those employees and contractors involved with the Scheme.
 - 1.3.3 Any FOIA or DPA request in respect of this document must be immediately referred to POL Legal.



Confidential and legally privileged



Version history

Version	Status	Date
1	Draft	22 October 2013
1.1	Draft	30 October 2013
1.2	Draft	4 November 2013
1.3	Draft	9 November 2013

- 1.4 The first "Live" version of this Policy has been approved by the Steering Committee and ExCo.
- 1.5 Any amendments to this Policy must be approved by the Steering Committee.



Confidential and legally privileged



2. Objectives

Post Office's Objectives for the Scheme

- 2.1 Listen to Subpostmasters' concerns
- 2.2 Explain Post Office's position
- 2.3 Offer solutions where possible
- 2.4 Compensate if loss has been unfairly suffered
- 2.5 Demonstrate that Post Office is being transparent
- 2.6 Ensure that Post Office's decisions are defensible

Objectives of this Policy

- 2.7 Ensure that each applications is treated consistently
- 2.8 Ensure that Post Office complies with its criminal law / prosecution duties
- 2.9 Ensure that the outcomes of the Scheme are compliant with any subsequent criminal appeal process
- 2.10 Help scope and control the size of the Scheme and costs of settlement
- 2.11 Assist Post Office in preparing for difficult mediations / decisions
- 2.12 Ensure that all internal stakeholders are consulted on the handling of individual Complaints
- 2.13 Enable a Post Office representative to enter a mediation with a clear mandate for settling (or not) each complaint



Confidential and legally privileged



3. General approach to settlements under the Scheme

This section sets out the methodology for monitoring and scoping the overall costs and outcomes of settlements under the Scheme.

Settlement Principles

- 3.1 A set of Settlement Principles will be drawn up that will guide the approach to settling each Complaint.
- 3.2 The Settlement Principles will be set out in this Policy – see section 5
- 3.3 The Settlement Principles will be reviewed regularly.
- 3.4 The Principles will be revised as necessary to address any changes in:
 - 3.4.1 the Scheme
 - 3.4.2 the number/nature of the Complaints
 - 3.4.3 past mediations or settlements
 - 3.4.4 The Outcome Assessment (see below)

Fix the number of complaints

- 3.5 Applications by Applicants to the Scheme must be received by 18 November 2013.
- 3.6 Following the application deadline, the total number of applications will be known but the value of any complaints may still be unclear.
- 3.7 An initial review and assessment of the complaints will be undertaken at this stage applying the Settlement Principles to test the efficacy of the Principles in practice.



Confidential and legally privileged



Value the complaints

- 3.8 On receipt of an Applicant's applications and case questionnaire, Second Sight will work with Post Office to investigate the Complaint.
- 3.9 This investigation should produce greater clarity as to the types of settlement and compensation being sought by Applicants.
- 3.10 This information will be regularly reviewed to assess the possible outcome and costs of settlements under the Scheme (**the Outcome Assessment**).

Set Settlement Parameters

- 3.11 Following the investigation phase, it should be possible to separately assess the merits of each Complaint and produce a Recommendation for Settlement (see section 4 below)
- 3.12 The Recommendations for Settlement will be reviewed holistically on a regular basis and used to further update the Outcome Assessment.

Mediation

- 3.13 At mediation, a settlement will be sought within the parameters of the Recommendation for Settlement.
- 3.14 The result of any Mediation (whether or not there is a settlement) will be communicated to all internal key stakeholders.
- 3.15 The results of any mediations will be reviewed holistically on a regular basis and used to further update the Outcome Assessment.

Reporting

- 3.16 The updated Outcome Assessment will be presented to the Steering Group on a regular basis for their consideration.
- 3.17 The following management information about the Scheme will be tracked:
 - Applications received
 - Applications accepted for funding



Confidential and legally privileged



- Applications rejected (by grounds)
- Case Questionnaires received
- Cases investigated by POL
- Cases investigated by Second Sight
- Value of claims
- Cases approved / rejected for mediation (with reasons)
- Mediations completed (by outcomes)
- Cases settled



Confidential and legally privileged



4. Process for considering individual complaints

This section sets out the process for handling and trying to resolve each individual Complaint.

Background

- 4.1 Following the investigation into a specific Complaint, the Working Group will take a decision on whether the case is suitable for mediation.
- 4.2 Mediation is a consensual process so even if the Working Group decides that a case is suitable for mediation, Post Office is not required to mediate (though there may be negative consequences in refusing to do so).
- 4.3 It may be that some cases can be resolved before mediation through direct engagement with the Applicant.
- 4.4 If a settlement is agreed through mediation, the mediator is likely to insist that the parties sign a settlement agreement on the day of the mediation.
- 4.5 Those persons attending mediation (or engaging directly with an Applicant) on behalf of Post Office therefore need a clear mandate as to the nature and scope of any settlement that might be offered.

Suitability for mediation

- 4.6 Following the investigation into a specific Complaint but before the Working Group decides whether a case is suitable for mediation, POL Legal will, in consultation with other internal stakeholders, advise on whether POL should:
 - 4.6.1 Vote against mediation at the Working Group and refuse to mediate even if the Working Group votes in favour of mediation.
 - 4.6.2 Vote against mediation at the Working Group but allow mediation to proceed if the Working Group votes in favour of mediation.
 - 4.6.3 Vote in favour of mediation at the Working Group.



Confidential and legally privileged



- 4.7 This advice will be passed to Post Office's representatives on the Working Group.

Recommendation for Settlement

- 4.8 If POL wishes to attempt to settle a Complaint (by mediation or direct engagement), the Complaint and the investigation findings will be internally reviewed in order to produce a Recommendation for Settlement.
- 4.9 Where the Applicant has been subject to a criminal conviction, the investigation findings will be sent to POL's prosecution team to ensure that Post Office is complying with its prosecution duties (in particular, its on-going disclosure duties).
- 4.10 POL Legal (or external counsel) will be responsible for leading the process of producing the Recommendation for Settlement in order to ensure that legal privilege is preserved. The Recommendation for Settlement will recommend:
 - 4.10.1 Whether Post Office should attempt to resolve the Complaint before mediation?
 - 4.10.2 Possible settlement options
 - 4.10.3 If applicable, the financial limits for a compensation payment.
- 4.11 Internal stakeholders will be consulted as appropriate on the Recommendation for Settlement.
- 4.12 The Recommendation for Settlement will be revised and finalised by POL Legal (or external counsel) and the communications team.

Approval to settle

- 4.13 The Recommendation for Settlement will be considered by Charles Colquhoun (or a suitable alternative person nominated by Charles) who will:
 - 4.13.1 Ensure the Recommendation for Settlement complies with the Settlement Principles and this Settlement Policy.
 - 4.13.2 Ensure that the Recommendation for Settlement is consistent with the approach adopted in other Complaints.



Confidential and legally privileged



4.13.3 Approve or propose changes to the Recommendation for Settlement.

4.14 A mandate will be issued to those attending mediation or engaging directly with Applicants confirming that they may settle the Complaint within the scope of the approved Recommendation for Settlement.

Mediation

4.15 The attendees for mediation will be identified which shall include at least 1 lawyer and 1 representative of Post Office. The representative of Post Office shall be:

4.15.1 Of appropriate seniority commensurate with the nature of the Complaint and the level of settlement envisaged in the Recommendation for Settlement.

4.15.2 From a part of the business that relates to the nature of the complaint raised.

4.16 POL Legal (or external counsel) will liaise with CEDR (the mediation provider) regarding the logistics of the mediation.



Confidential and legally privileged



5. Settlement Principles

This section sets out the Settlement Principles that will guide the scope of any settlement offered to an Applicant.

A. Overarching Principles

The following principles overarch the general approach to settlement:

- 5.1 Any settlement must take account of the risk that the settlement may set a precedent that could (a) open the floodgates to more claims (both inside and outside the Scheme) and/or (b) increase expectations for existing claims.
- 5.2 Applicants will generally need to show that the matters that they are raising actually led them to suffer a financial loss in their branch before a settlement is offered.
- 5.3 Generally, settlements (including compensation) will only be offered for alleged harm that arises directly out of, or was an obviously foreseeable consequence of, a breakdown in the business relationship between the Applicant and the Post Office.
- 5.4 The extent of any settlement (including the value of any compensation) will be based on Post Office's "Risk Assessment" of the Complaint which shall take account of:
 - 5.4.1 The weight of the evidence adduced to demonstrate that the Complaint and any harm suffered by an Applicant is true;
 - 5.4.2 Post Office's culpability for the Complaint;
 - 5.4.3 The extent to which the matters complained of caused the alleged harm suffered by an Applicant; and
 - 5.4.4 The extent to which the Applicant's own acts or omissions contributed to the Complaint or harm suffered as a result.
- 5.5 Settlements involving convicted Applicants should only be offered where there is clear evidence of a miscarriage of justice (see section 5.2 below).



Confidential and legally privileged



-
- 5.6 Settlements will generally be driven by commercial fairness rather than legal principles, but legal risk will still be a factor.
 - 5.7 Settlements should take account of the reputational implications for the Post Office arising from any adverse publicity or political reactions but that should not be an overriding factor. The greater the value of the settlement, the more public interest is likely to be attracted.
 - 5.8 Settlements that involve commercial solutions, apologies and other non-financial compromises are to be favoured over compensation.
 - 5.9 Although settlements are likely to be subject to confidentiality agreements, any settlement should take into account the risk that details of that settlement may leak into the subpostmaster community and/or the media.
 - 5.10 Settlements should reflect the fact that for the purposes of the Scheme, Post Office will not be relying on any legal limitation or time-bar defence and will consider all Complaints regardless of age.



Confidential and legally privileged



B. Criminal cases

Background

- 5.11 Offering a settlement to an Applicant who has been convicted could:
 - 5.11.1 Be used as the basis for an appeal against that conviction; and/or
 - 5.11.2 Cause that conviction to become unsafe.
- 5.12 As such, settlements involving convicted Applicants should only be offered where there is clear evidence of a miscarriage of justice and the process below has been followed.

Process

- 5.13 Where a Complaint relates to an Applicant who has been convicted, the following additional processes should be followed:
 - 5.13.1 The Applicant's application, case questionnaire and any investigation findings should be forwarded to Post Office's criminal lawyers (Cartwright King – "CK")
 - 5.13.2 CK will review the above documents to determine whether any disclosure is required under Post Office's prosecution duties.
 - 5.13.3 CK will be consulted on any Recommendation for Settlement and advise how the proposed settlement may affect the Applicant's conviction.
- 5.14 Post Office has no power to overturn a conviction. If, following the investigation phase, grounds for appeal are identified, the standard approach will be to:
 - 5.14.1 Suspend the standard mediation process.
 - 5.14.2 Disclose the information giving rise to the grounds for appeal to the Applicant (via CK).
 - 5.14.3 Consider whether Post Office will support or oppose any appeal.
 - 5.14.4 Consider whether Post Office might offer financial support to the Applicant in order to conduct the appeal.



Confidential and legally privileged



- 5.14.5 Consider whether it is more appropriate to conduct the mediation before or after any appeal is heard. In most cases, it will be more appropriate for the appeal to be heard first.
- 5.14.6 Write to the Applicant explaining Post Office's stance on the above matters and seek their views on how they wish to proceed.
- 5.14.7 Where a conviction is overturned on appeal, mediation may subsequently be used to resolve the Applicant's claims / losses that flow from that wrongful conviction.



Confidential and legally privileged



C. Settlement thresholds

- 5.15 Complaints will have various degrees of credibility and will be supported by evidence of varying quality. To ensure consistency, this section sets out guideline thresholds for when a Complaint may be considered to have sufficient credibility/supporting evidence to merit a settlement.
- 5.16 The list of Complaints set out below is not exhaustive – where a Complaint is not on the list below, a case-by-case decision will be required.
- 5.17 The Settlement Thresholds are for guidance only – settlements may be offered in other circumstances if good reasons exist.

	Nature of complaint	Threshold of proof before offering a settlement
5.18	<p>Horizon inaccurately records data/transactions.</p> <p>Horizon has a technical problem that caused branch losses.</p> <p>Horizon suffered communication and power failures that caused losses in a branch.</p>	<p>Second Sight's Interim Report found that there were no systemic errors in Horizon.</p> <p>As such, very clear proof will be required of a technical defect in Horizon along with evidence that that technical defect (i) caused a quantifiable financial loss in the Applicant's branch accounts and (ii) had a material adverse effect on an Applicant.</p> <p>Any case that is considering a settlement on this ground should be referred immediately to the CIO for comment.</p>



Confidential and legally privileged



5.19	Defective hardware in the branch (pin pads, terminals, etc).	<p>The Applicant needs to produce very clear proof that a specific branch had defective equipment which was not fit for purpose and that the defective equipment caused a quantifiable financial loss in the Applicant's branch accounts.</p> <p>SPMRs may have issues with evidencing such complaints as POL often replaced equipment following a complaint. However, evidence of loss must be provided before a settlement is considered.</p>
5.20	<p>Horizon is too complex.</p> <p>Operating processes are unclear.</p>	<p>The Horizon system is being successfully used by thousands of users without complaint about the usability of the system or that its processes are unclear / too complex.</p> <p>As such, a general complaint that Horizon (or its related processes) is too difficult to operate will therefore not be sufficient to warrant a settlement.</p> <p>The Applicant needs to identify a specific problem transaction that did not have a clear or established operating practice.</p> <p>The facts of the case should be considered carefully as there may be circumstances where Post Office has offered training but the SPMR has refused to attend or take up Post Office on the offer of further training.</p> <p>However, in circumstances where Post Office has allowed the issue to grow, by for example, not addressing the issue in a timely manner, a settlement may be considered (but only if there is a clear evidence of a failure/delay on Post Office's part).</p>



Confidential and legally privileged



5.21	Lack of support for SPMR. Helplines were unhelpful.	<p>The Applicant needs show that they sought support from Post Office and that the support provided did not solve the issue.</p> <p>The facts of the case should be considered carefully as there may be circumstances where Post Office has offered training but the SPMR has refused to attend or take Post Office up on the offer of further training.</p> <p>If, given the particular circumstances, there is evidence that Post Office has not properly supported a SPMR in that Post Office:</p> <ul style="list-style-type: none"> (a) failed to follow its established practices in effect at the time of the events complained about; or (b) there was a manifest error in those practices that should have been remedied at the time of the events complained about; <p>a settlement may be considered.</p>
5.22	Poor/inadequate training on Horizon system.	<p>The Horizon system is being successfully used by thousands of users without complaint about Post Office's training.</p> <p>As such, general complaints about POL's standard training are not sufficient.</p> <p>The Applicant needs to identify specific circumstances that made his/her training inadequate.</p>



Confidential and legally privileged



		<p>POL should consider the following:</p> <ul style="list-style-type: none"> • Is there an issue with guidance/training? i.e. does the Applicant's complaint relate to an issue where there is little guidance/training? • Is there any pattern in the Applicant's behaviour? • Has the Applicant failed to take POL up on the offer of training?
5.23	<p>SPMR unable to investigate losses.</p> <p>SPMR did not have access to adequate transaction records.</p>	<p>General complaints about a lack of visibility of historic transactions are not sufficient.</p> <p>The Applicant needs to show a problem with the audit trail of a specific product/transaction and that a quantifiable financial loss in the Applicant's branch accounts has been suffered as a result.</p> <p>The Applicant also needs to show reasonable attempts to investigate losses.</p> <p>It should be considered whether it would have made a difference had a full audit trail been available. In some cases even if the audit trail had been available it would not have resolved the overall complaint.</p>
5.24	<p>POL unfairly pursued losses/prosecution with a bias against SPMR.</p>	<p>The Applicant must show that Post office systemically failed to look into <u>specific</u> issues (not general complaints) raised by the Applicant or systemically failed to follow its processes that were in effect at the time of the events complained of.</p>



Confidential and legally privileged



		Any remedy in response to a claim that a criminal investigation/prosecution is unsound must be approved by POL's criminal legal team (see section B above).
5.25	SPMR was "forced" to file false accounts	POL does not accept that an Applicant can ever be forced to render false accounts. No settlement will be offered where problems / losses were a result of (a) an Applicant filing false accounts or (b) an Applicant's own deliberately wrong actions or decisions.



Confidential and legally privileged



D. Settlement Options

5.26 If a Complaint warrants a settlement (see section C) then, in general, Post Office will consider any type of settlement that is fair and legally enforceable. The table below summarises the types of settlement that may, in Post Office's discretion, be offered. The selection of an appropriate Settlement Option (or Options) will be assessed on the particular circumstances of each case and in line with the Overarching Settlement Principles (see section A).

	In-post SPMR	Ex-SPMR No Conviction	Ex-SPMR Convicted but overturned on appeal	Ex-SPMR Safe Conviction
Explanation of issue	✓	✓	✓	✓
Apology	✓	✓	✓	x
Compensation	✓	✓	✓	x
POL pays legal costs	✓	✓	✓	x
Branch / network improvements	✓	✓	✓	x
Individual branch solutions	✓	x	x	x
Support criminal appeal	x	x	✓	x



Confidential and legally privileged

**E. Compensation matrix**

5.27 If a Complaint meets a Settlement Threshold (see section C) and Post Office considers that compensation may be appropriate (see section D), the level of compensation that may be offered to an Applicant will be guided by:

5.27.1 Post Office's Risk Assessment of the Complaint (see section A); and

5.27.2 The matrix below.

5.28	Claimed head of loss	Value / factors	General position <i>Post Office's general position may be departed from if there are good reasons to do so.</i>
5.29	SPMR wrongfully repaid losses that were not due to POL	Depends on level of loss suffered by the branch	Decided on the merits of the case (ie. SPMRs ability to prove that sums were not properly due to Post Office).
5.30	Loss of remuneration due to contract termination	Depends on SPMR's remuneration level. Loss probably capped at 3 month's remuneration as POL always has a right to terminate on 3 months' notice (save if POL has acted in bad	Compensation limited to a maximum of 3 months' remuneration.



Confidential and legally privileged



		faith).	
5.31	Loss of retail business	<p>Depends on value of individual business</p> <p>Difficult for SPMR to claim because POL could always terminate on 3 months' notice and so loss of branch and subsequent loss of wider retail business was always at risk.</p> <p>Commercially, Post Office does not accept responsibility for performance of retail business.</p>	Compensation for loss of retail business will not be paid.
5.32	Distress / loss reputation	<p>Difficult to value in cash terms.</p> <p>These types of loss are generally irrecoverable at law for most claims.</p>	Compensation to be offered on a case-by-case basis – see Goodwill Payments Policy at section F below.



Confidential and legally privileged



5.33	Costs / expenses related to the mediation scheme and/or other legal proceedings	<p>Depends on nature of legal support procured by the SPMR.</p> <p>SPMRs can spend more than the POL contribution funding for legal support for the mediation scheme.</p> <p>Typically only reasonable and proportionate legal costs are recoverable.</p>	Decided on the merits of the case.
5.34	Losses relating to wrongful prosecution / conviction	<p>Depends on nature of sentence – usually comprises a combination of loss of earnings and reputation losses.</p> <p>Wrongful convictions are usually compensated by the state rather than the prosecutor (POL).</p>	Only to be considered in the most exceptional circumstances (see Criminal Cases Policy section B above)



Confidential and legally privileged



F. Goodwill payments

5.35 Goodwill payments may be considered where an Applicant suffers harm that cannot be quantified in pecuniary terms (eg. injury to feelings, distress, social discredit, reputation damage, etc.). A goodwill payment may, in Post Office's discretion, be offered if:

5.35.1 A settlement threshold has been met under section C; and

5.35.2 The Applicant has not deliberately caused the non-pecuniary harm (eg. where the applicant has invited adverse media attention); and

5.35.3 The harm suffered is sufficiently serious to warrant a goodwill payment in accordance with the thresholds below:

Type of harm	Threshold
Distress / injured feelings	The distress must be more than normal commercial pressure that would be experienced through loss of contract / business.
Damage to reputation / social discredit	The damage to reputation requires evidence that the relevant events were publicly known and led to public criticism (eg. adverse press coverage).

5.36 If the above thresholds are met, the level of goodwill payment will be dependent on the level of harm and Post Office's culpability for that harm in accordance with the guidelines below. It is anticipated that where a goodwill payment is appropriate, most cases will fall in the bottom band.

Band	Goodwill payment
Bottom band for less serious cases, such as a one-off incident or an isolated event, which has contributed to the Applicant's distress or reputation damage. This band will be appropriate where the Applicant has also contributed to their own problems through negligence or carelessness.	£600 - £6,000



Confidential and legally privileged



Middle band for a serious failure by Post Office Limited which has been the sole or predominant cause of distress to the Applicant and/or damage to his/her reputation.	£6,000 - £18,000
Top band for exceptional cases, such as where there has been a lengthy campaign of repeated failures by Post Office Limited or bad faith on the part of Post Office Limited.	£18,000 - £30,000



Confidential and legally privileged



6. Glossary

Applicant	Any applicant to the Scheme which can include subpostmasters and crown employees.
Complaint	The complaint raised by an Applicant in his/her application to the Scheme
Scheme	The Initial Complaint Review and Mediation Scheme
Steering Group	The internal Post Office steering group that supervises Post Office's response to the criticisms of Horizon.
Working Group	The group supervising the Scheme whose members include Post Office, Second Sight, JFSA and the Independent Chairman.