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POST OFFICE LTD

PROJECT SPARROW SUB-COMMITTEE

UPDATE AND OPTIONS

1. Purpose

The purpose of this paper is to:

- 1.1. Update the sub-committee on Project Sparrow following the Parliamentary select committee meeting on February 3 2015.
- 1.2. Seek agreement from the committee to implement changes to our approach for handling this issue.

2. Background

- 2.1. The BIS select committee took evidence on Horizon and the Mediation Scheme on February 3. It heard also from Second Sight, the JFSA, CWU and NFSP. A transcript is at Annex xxx. Written evidence for its short inquiry has also been submitted by xxx.
- 2.2. The evidence session highlighted further attempts to increase the scope of the work being undertaken by Second Sight. Post Office faced hostile questioning from MPs about the range and scope of information being shared with Second Sight, while Second Sight themselves criticised Post Office for perceived failures in sharing information. Second Sight's evidence, which was inaccurate in places, covered a range of issues well outside the scope of their work (for instance, the subpostmaster contract) and beyond their expertise.
- 2.3. We are urgently preparing a detailed note setting out the position in relation to inaccurate, incomplete and misleading evidence presented to the committee, for submission by February 11. This note is at Annex xx. It is untrue to suggest, as Second Sight has done, that the Post Office has withheld relevant information: indeed the opposite is the case – the Post Office has provided thousands and thousands of pages of information to Second Sight (in line with their requests). However, it is true that Post Office has declined wide-ranging and untargeted requests for bulk information where it is not clear why the information is either relevant or necessary for Second Sight to discharge its mandate.
- 2.4. The select committee is expected to report on its findings in early March and will be under pressure to do so by MPs supporting some of those in the Mediation Scheme. James Arbuthnot MP has been quoted as saying he expects the committee to call on Government to launch a public inquiry or 'take control' of the Mediation Scheme.
- 2.5. The committee's recommendations, which we should expect to be highly critical of Post Office, do not carry power beyond the ability to generate difficult headlines and further parliamentary pressure. There is a risk,

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however, that MPs led by James Arbuthnot will seek urgent questions in Parliament, leading to pressure on ministers during an increasingly sensitive period in the run up to the general election.

- 2.6. There was limited media coverage of the select committee hearing itself, though we face continued interest from one part of the BBC, which is able to generate some coverage, largely regional to date. While we are able to withstand this interest, it is resource intensive. We have made representations to the Director of BBC News and Current Affairs.
- 2.7. A further development has been the increased willingness of Second Sight to make its criticism of Post Office known publicly. It is now abundantly clear that the organisation is increasingly aligned with critical voices: one of its directors, for instance, is engaged in public and critical discussion of the Scheme and other Post Office issues via social media. Screen grabs of these discussions are at Annex xxx
- 2.8. We have also been contacted by the Criminal Cases Review Commission with a broad request for information based on Sir Brian Altman QC's review of our procedures in relation to prosecutions. This request may be related to the select committee inquiry, indeed it probably is, while it is unclear exactly what its locus is in relation to these matters.
- 2.9. The Scheme itself continues to make progress. The chair of the Working Group, Sir Anthony Hooper, wrote to the select committee to outline this progress. His letter is at Annex xxx.
- 2.10. The developments described above are set against a background where
 - MPs have withdrawn their support for the Mediation Scheme and made wide-ranging attacks on Post Office and its directors through a Westminster Hall debate in December and in the media;
 - JFSA has lined up a legal firm with a publicly declared intent of preparing litigation should the Scheme not meet their pre-determined outcomes
 - It appears that at least one firm of professional advisers is indicating an unwillingness to settle cases deliberately where Post Office xxxx [Belinda]
 - JFSA is refusing to engage in the Working Group process
 - Pressure is increasing to extend the scope of the Scheme beyond Horizon and into areas such as the subpostmasters' contract, Post Office prosecutions policy and other matters.
 - Second Sight continues to press for information to produce what it describes as its "part two" thematic report covering all aspects of Post Office's engagement with postmasters, whether or not relating to Horizon and associated issues. This report, while initially pitched as confidential briefing for mediators and applicants, is now being discussed publicly and will undoubtedly be used by MPs and the media to place further pressure on the business through parliamentary and other means.

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- We have completed Post Office investigations into all those cases in the Scheme and secured confirmation that the Horizon platform works as it should.
- We have written to all MPs who raised cases during the Westminster Hall debate but received only three responses: one of which refused to meet, indicating a focus on litigation and, ultimately, compensation. This letter is an Annex X.

2.11. Attempting to contain the concerted campaign we are facing is demanding increasing senior management time, with significant resource being necessarily devoted to this project at a time when a number of other business critical projects require greater focus.

2.12. It is against this background that we are recommending that we change our approach with the Scheme: ensuring that we meet our obligations to applicants but also seeking to regain control of the process and bring it to a conclusion as soon as possible.

3. Proposal

We propose to accelerate the conclusion of the Scheme. This would meet a request from MPs on the select committee, who were clearly concerned about how long the process is taking. But it would primarily allow the business to regain control of the Scheme while adhering to some fundamental guiding principles.

From an applicants' point of view these principles mean ensuring that we meet the commitments given to them at the outset: a through re-investigation of their case by Post Office, the opportunity of an independent review by Second Sight and, where appropriate, mediation.

From a Post Office perspective, we must ensure that the future direction and control of the Scheme is within our gift and able to guard against external pressures.

In setting out this proposal we have considered a range of other options, including maintaining the status quo.

We do not believe that continuing with the Scheme as it is currently working is an option for a range of reasons including the impact on business priorities, the heightened risk of ongoing reputational challenge pre and post general election and the fact that the only point on which all parties appear to be agreed is that the Scheme is not delivering, albeit for different reasons.

We therefore propose that we:

- Agree to mediate all non-criminal cases in the Scheme, thereby meeting the calls of some of our detractors that we should do so
- Make clear that we do not intend to mediate criminal cases, save in the most exceptional circumstances where the facts of the complaint are dissociable from those leading to the conviction

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- Release Second Sight from their engagement with Post Office, but make clear that Post Office will meet its commitment to any applicant wishing to avail themselves of a review by Second Sight of their case by providing the necessary funding to do so on an individual basis
- Publish a report on the operation of the Scheme and the branch support programme, both to get accurate facts in the public domain and to stem the influx of Freedom of Information requests and other enquiries which are likely to follow: a report also has the important impact of drawing a clear line under the issue.

The impact of this approach would serve to make the role of the Working Group redundant because its primary function is to decide on whether or not cases move to mediation, a point that JFSA has forcefully contested.

Implementing this approach would require a carefully orchestrated handling strategy, on which timing and stakeholder management will be key considerations. A handling plan is at Annex xx. It remains our assessment that making this decision would lead to a burst of reputational challenge over a short period, it would dissipate rapidly: whereas the alternative where we continue with the status quo will inevitably mean many more months of handling [sometimes unpredictable] reputational challenge through the media and parliamentary channels.

The general election is a critical factor in our thinking: the risk to Post Office is that this issue straddles the election and is given renewed focus, through lack of direction, in the aftermath of polling day, when we could face a new minister seeking to make his or her mark by acceding to pressure for a public inquiry.

Other options

For the reasons set out above, we do not believe that continuing with the status quo is preferable given the impact on the business and the growing reputational risk.

We believe that the option we are recommending to the committee is the one which best ensures we meet our obligations to applicants while at the same time accelerating delivering of the Scheme and ring-fencing its impact.

There are a number of variants on this approach, which would include:

Mediating all cases including criminal: we have ruled out this option on the basis of very strong legal advice that this would expose Post Office to untenable risks in relation to convictions: we could also be accused of bad faith as mediation cannot by its nature overturn convictions

Closing the Scheme in its entirety: we would be accused of bad faith – fairly – given our public commitments [including at the select committee hearing] to applicants as set out above. It would be extremely difficult to justify a decision of this nature and would exacerbate the delicate handling of the select committee inquiry and MPs [a factor which the minister has been particularly keen that we should address]

We have considered options around offering a financial settlement to all those with cases in the Scheme: this would be both costly and risky in reputational terms, as it would mean an implicit acceptance that Post Office

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is in the wrong: against all evidence. It would also have a potentially damaging impact on the wider branch network and those working within it.

4. Timing

- 4.1. The key consideration in next steps is around the select committee and its expected report. We would not wish to take any step which had an adverse influence on this process, especially as it is likely to be critical come what may. We therefore propose preparing all the relevant materials and handling plans for use at the optimal moment, depending on the select committee's approach.
- 4.2. We propose setting out this approach in response to the select committee (which is likely in any event to call on Post Office to accelerate the process). If the select committee does not issue a report, we propose implementing this option before the end of March.
- 4.3. The sub-committee is asked to be mindful of the fact that the success of this approach will depend to a significant extent on our ability to move with pace and agility at the optimal moment. We will ensure that should the sub-committee agree to this proposal it is kept informed of developments during the period ahead.

7. Risks

- 7.1 **The key risk in this approach is around reputational challenge. Implementing this option will lead to some adverse media coverage. However, the alternative is no less challenging – indeed it is our assessment that allowing the Scheme to continue without change will lead to greater risk, with prolonged reputational challenge in the media and in Parliament, particularly after the general election.**

The option set out above gives the business, in our view, the best chance of closing this issue down as a reputational threat to our transformation and our brand.

5. Recommendation

The sub-committee is asked to:

- 5.1. Agree the option set out above.

**Mark Davies
26 January 2015**

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