



INITIAL COMPLAINT AND MEDIATION SCHEME: THE WAY FORWARD

Summary of options and
issues as presented by legal
advisers.

Summary of options and issues identified within Linklater's paper: Preliminary note on the future of the Mediation Scheme – dated 31 March 2014

Key Issues arising:

- ^{Confirming whether} The extent to which the Horizon system is fit for purpose
 - Fundamental to establishing extent of legal liability and in shaping overall response.
- The extent to which the mediation scheme in its current form is ^{capable of resolving complaints and issues about Horizon to the satisfaction of most or all stakeholders.} fit for purpose:
 - Structured process and framework based on key principles
 - Role and remit of Working Group
 - Role and remit of Second ~~Vision~~ ^{Sight}

The nature and extent of the risks arising from and associated with the Scheme in its current form

Four key risks have been identified, and these are summarised in the table below:

Risks identified	Issues arising	Mitigation / approach to quantification
Financial liability arising from claim settlement	• If legal liability exists a financial ^{likely} claim in settlement may be agreed during mediation. • ^{appear} Frequency and value of successful claims ^{considered} to be low. ^{number} • Ex-gratia payments could be offered to expedite resolution of claims regardless of legal position.	• Review claims against framework and identify those with potential liability • Apply average value to determine estimated liability • [Use mediation process to resolve claims where no liability through ex-gratia payments] ^{TBD} • [Value of ex-gratia payment to be agreed and payment considered in context of PR and reputational risks of prolonged process] ^{TBD}

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Risks identified	Issues arising	Mitigation / approach to quantification
Cost of administering the scheme	- Under scheme rules, POL have agreed to meet costs incurred by PSMRs: - up to £1,500 plus VAT for claim investigation - up to £750 plus VAT for a half day mediation - up to £1,250 plus VAT for a full day mediation - Liability estimated at £415k (plus VAT) - Costs incurred by Second Sight in region of £500k to date - No agreed contract or terms of reference - No pattern of instruction or direction for their work - Risk of increased costs without achievement of desired outcomes - Risk of dispute where quality of work under question - Lack of clarity in respect of role and remit resulting in a lack of impartiality	- Agree rules to establish eligibility for contribution towards costs - Agree terms of reference - Clarify role and responsibilities - Agree QA and approval process in terms of contract to support payment of fees - Test rationality / reasonableness of approach and conclusions.
PR and reputational risk associated with non-settlement	- Establishment of scheme sets expectations of a settlement - Views expressed publicly by Second Sight and other stakeholders, often with little evidence to support position, raises expectations of applicants. - Low risk of litigation if PSMR not satisfied with outcome of mediation - scale of claim will drive decision making in this regard. - Low risk of class action	- Clarity around process - Transparency in relation to decision making - Consistency of approach
PR and reputational risk associated with settlement	- The reaction of stakeholders to the payment of compensation to PSMRs where there is no legal liability to do so - The effects of such payments on the criminal convictions secured to date and sought in the future - These risks are potentially more significant than non-settlement.	- Clarity around process - Transparency in relation to decision making - Consistency of approach

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The Way Forward:

The paper has identified a number of issues which when brought together form a long list of options for the future operation of the scheme.

The following suggestions are made with reference to restructuring the current scheme as constituted:

- Clarifying eligibility under the scheme for ^{applicants} claimants subject to criminal convictions or civil judgements *confirm that such applicants are not eligible.*
- Establishing independent view of Horizon system and whether it is fit for purpose.
- Establishing criteria for payment of "standard" compensation irrespective of the legal merit of their claims;
- Revising role and responsibilities and governance of Working Group.

It is recommended that the Board consider which ^{some or all} of the above options to take forward as part of a restructured scheme.

The role of Second Sight *Considering the merits and potential significant risks of*

The paper has identified a number of issues in relation to the appointment of Second Sight, and the effectiveness of their involvement in the scheme to date. Two options are considered:

- Terminate appointment *and where necessary and possible, limiting the scope of*
- Formalising and revising the terms of their appointment *and testing their approach and conclusions.*

It is proposed that Second Sight's role in supporting a restructured scheme be considered as part of the options appraisal.

Operation of the scheme

There may be concern over the way in which the scheme has been operated and whether applicants have been treated "fairly". Whatever the perception, this is unlikely to lead to any obligation to pay compensation. Considering making payments to applicants for this reason may further exacerbate the issues the Post Office presently faces.

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What is "fair" is difficult to define in a legal (or any) context. It could mean no more than 1) treating all applicants consistently 2) assessing all complaints by references to the same, objective criteria 3) giving all applicants a chance to be heard (i.e. by openly inviting applications to the scheme) 4) not taking unexpected steps which would benefit the wider body of SPMRs if only they had known to apply (e.g. ex gratia payments) and 5) instituting the scheme itself. The Post Office has voluntarily entered into it and not given any binding assurances as to its outcome or how it would be conducted. The scheme would seem to have satisfied most or all of these criteria.

Clarification of Desired Objectives

The paper also sets out a requirement for clarity in respect of desired objectives for the Scheme, in particular:

- ~~Is there a desire to~~ limit the costs incurred in running the scheme? *What*
- ~~Which would take priority:~~ public reputation, relations with HMG and MPs ~~or its~~ ongoing relationships with all SPMRs? *would the Post Office place on*
- Does the Post Office wish to take a more or less conciliatory approach in dealing with applicants?
- In providing redress to Applicants, does the Post Office wish:
 - to compensate all applicants in accordance with their claim regardless of the nature of their complaint, simply to "make the problem go away"?
 - to compensate all applicants on a more limited basis by reference to objective criteria?
 - not to provide monetary compensation at all and seek to address SPMRs' concerns in other ways, such as by way of apology, additional training, upgraded hardware etc.?
 - to take a harder line and not provide redress of any kind?
- Does the Post Office wish to get to the bottom of the alleged "problems" with Horizon or only to the extent necessary to satisfactorily resolve the complaints in the Scheme?
- Is there a view that there will always be a proportion of ~~SPMRs~~ *SP* dissatisfied with Horizon, and any replacement for it, and therefore little point in taking a holistic approach to resolving issues with Horizon or seeking fully to satisfy all applicants ~~in this case?~~ *applicants and*

The options appraisal will seek to ensure that any recommended option provides best fit against desired objectives. The Board's position in respect of the above should be sought as a matter of priority.

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Potential Options for Appraisal

Based on the foregoing, the following options should be presented to the Board for consideration:

1. Maintain current position (base case for appraisal)
2. Close scheme *and offer no alternative*
3. Restructure scheme – terminating Second Sight's involvement; *commission "fit for purpose" report on horizon; the*
4. Restructure scheme – formalising and revising the terms of Second Sight's appointment; *formalising/revising role of working group; include possibility of alternative dispute resolution mechanisms in certain, limited cases.*

Basis for Appraisal

1. A report will be produced which will describe each option, outlining the pros and cons and risks of each.

A scoring matrix will be developed which will enable each option to be scored in relation to alignment with scheme objectives, estimated financial exposure and ease of implementation. A weighting will be agreed to reflect the relative importance of each criteria.

The outcome of the appraisal will form the basis of the recommended way forward for the Scheme to the Board.

Option Description	Pros	Cons	Risks	Alignment with Scheme Objectives	Estimated Financial Exposure	Ease of Implementation
Maintain current position (base case for appraisal)						
Close scheme						
Restructure scheme – terminating Second Sight's involvement						
Restructure scheme – formalising and revising the terms of Second Sight's appointment.						