



Answering the five questions: subjective analysis

Should Post Office make Settlement Payments under the Scheme?

Settlement payments are payments made to applicants to settle their complaint against the Post Office. They are more substantial than Ex-Gratia payments with the potential to run into thousands of pounds although it is not envisaged following Linklaters advice that they could, or should, run into the hundreds of thousands or millions that have been claimed by applicants.

A settlement payment might be considered where Post Office feels it should make a payment as it has not acted fairly towards a SPMR or not done the right thing. A settlement payment could also be considered to close down a complaint or to save money against the cost of investigating the complaint and running the Scheme.

A previous draft settlement policy was considered by ExCo prior to receipt of the Linklaters advice. This is now obsolete in light of that advice.

SUBJECTIVE ANALYSIS

Pros

- Provide a means of Post Office financially addressing a claim where they feel they have not been fair or done the right thing.
- Provides an opportunity to shorten the Scheme as settlement does not have to wait for mediation.
- Provides an opportunity to save money by saving on costs of investigation, mediation and administration.

Cons

- Level of settlement contemplated is unlikely to satisfy applicants who have submitted large claims.
- Need to be paid on the basis of fairness and parity between those in the scheme and those outside it.
- Likely that Post Office will receive claims for the payments from this who did not enter the scheme.



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Risk Analysis	
Operational	NA
Financial	Risk of Post Office paying substantial amounts of money without legal liability.
Legal	Limited legal risk in settling a case although there is a need to ensure that wider precedent is not set
Reputational	Settlement payments are unlikely to enhance Post Office' s reputation and there is a risk that Post Office could suffer reputational damage due to : (i) the SPMR reaction to the amount of money offered in comparison to the level of their claim; (ii) criticism for the use of public money in this way.

Conclusions:

As Post Office has not yet investigated all the case it is important to leave open the option of financial settlement but do so in a tightly controlled manner.
Secondly ExCo would welcome the Sub Committee' s views on whether it wishes to pursue making settlements to save money by reducing the investigative and administration spend of the Scheme.

Recommendation:

Post Office should leave the option of making a settlement payment open and commission the programme team to draft a tightly restricted settlement policy with Linklaters advice.
The board subcommittee provide their view on the issue of making a settlement payment to save money where there is no liability.



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Should Post Office make ex-gratia payments under the scheme?

- Ex gratia payments are small payments of the order of £50 - 250. These payments are not linked to legal liability and need to be seen as separate to any settlement payment.
- Ex gratia payments are designed to make those receiving them feel better.
- If Post Office decide to make any ex gratia payments these need to be made against a clear set of principles. These principles are still to be defined and would need to limit payments to those on the Scheme. Advice on limiting payments thus far has not yielded any palatable options.
- but current legal advice has only proposed a unpalatable set of principles in order to limit payments to those in the Scheme.
- Legal advisors have noted that most firms do not make ex gratia payments for unfounded claims.

SUBJECTIVE ANALYSIS

Pros

- Low value payment so low overall cost to Post Office if limited to the Scheme.

Cons

- Need to be paid on the basis of fairness and parity between those in the scheme and those outside it.
- Applicants have claimed very large amounts in some cases millions of pounds. A payment of a few hundred pounds is unlikely to make them feel better.
- Likely that post office will receive claims for the payments from this who did not enter the scheme.



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Should Post Office make ex-gratia payments under the scheme?

Risk Analysis	
Operational	Making payments on an ex gratia basis to a small number of people risks claims from all the SPMRs from outside of the Scheme. This could lead to instability and unhappiness across existing SPMRs.
Financial	Although individual claims will be small there is a risk that Post Office will come under pressure to make payments to all existing SPMRs.
Legal	There is a potential for Judicial Review of the basis upon which Post Office selected to make payments only to applicants in the Scheme. DN can linklaters confirm
Reputational	Ex Gratia payments are unlikely to enhance Post Office' s reputation and there is a risk that Post Office could suffer reputational damage due to : (i) the SPMR reaction to the offer of such a small amount of money in comparison to the level of their claim; (ii) criticism for the use of public money in this way.

Conclusions:

The analysis and legal advice demonstrates that ex gratia payments have little positive benefit to Post Office , a number of challenges to successfully implement and are likely to cause reputational damage.

Recommendation:

Post Office Board Sub-Committee agrees not to pay any ex-gratia Payments to Scheme applicants.