

Bond Dickinson



Post Office Limited  
Initial Complaint Review  
and Mediation Scheme

Legally privileged and confidential  
8 October 2013

## Privilege – a reminder

Legal privilege = vital to success

Do not discuss any legal advice or anything to do with SPMR settlements with:

- Anyone outside Post Office
- JFSA
- Second Sight
- Subpostmasters
- BIS / MPs
- Your teams unless absolutely necessary

Never use legal advice or information about SPMR settlements for any purpose other than in relation to the Scheme.



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## Settlement process

1. Objectives
2. Scheme policy
3. Settlement process

## **Objectives of the Scheme**

- Listen to SPMRs concerns
- Explain Post Office's position
- Offer solutions where possible
- Compensate if loss has been unfairly suffered
- Ensure that all convictions are fair
- Demonstrate that Post Office is being transparent
- Ensure that Post Office's decisions are defensible



## Objectives of today

Begin to establish principles of settlement including:

- When will a remedy be offered?
- What types of remedy will be available?
- How much compensation may be paid?

Deliverable: Settlement Policy

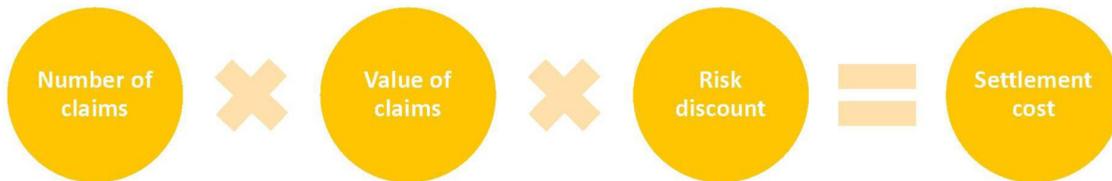


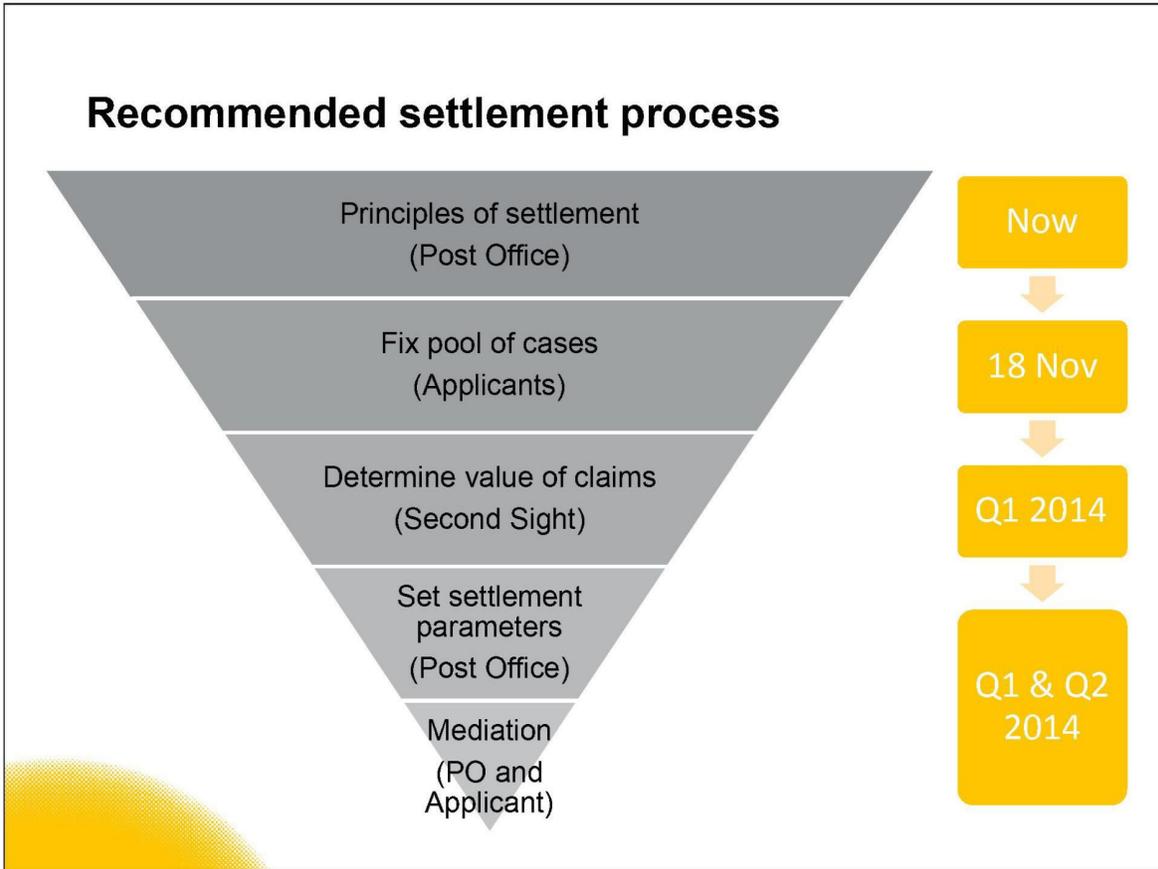
## **Settlement policy – why?**

1. Many different types of case – need for consistency
2. Need to comply with criminal procedures
3. Control size of scheme / scope of settlement
4. Allow Post Office to prepare for difficult cases / decisions



## Settlement factors





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## Settlement principles

1. Settlement options
2. Compensation principles
3. Settlement thresholds

## 1. Settlement options

Settlement	In-post SPMR	Ex-SPMR No Conviction	Ex-SPMR Convicted (unsafe)	Ex-SPMR Convicted (safe)
Explanation of issue	✓	✓	✓	✓
Apology	✓	✓	✓	✗
Compensation	✓	✓	✓	✗
Costs	✓	✓	✓	✗
Commitment to change	✓	✓	✓	✗
Branch improvements	✓	✗	✗	✗
Support criminal appeal	✗	✗	✓	✗
Support reversal of bankruptcy	✗	✓	✓	✗

## 2. Compensation principles

Possible head of loss	Value	Specific factors that may reduce compensation for particular heads of loss
SPMR wrongfully repaid losses that were not due to POL.	Depends on level of loss suffered by the branch	
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.
Loss of retail business.	Depends on value of individual business	Difficult 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.
Distress / loss reputation.	Difficult to value in cash terms.	These types of loss are generally irrecoverable at law for most claims.

## 2. Compensation principles

Possible head of loss	Value	Specific factors that may reduce compensation for particular heads of loss
Costs / expenses related to the mediation scheme.	Depends on nature of legal support but SPMRs can exceed more than the POL contribution level for legal support.	Typically only reasonable and proportionate legal costs are recoverable.
Costs / expenses in other legal proceedings.	Depends on nature of legal support provided to SPMR.	Typically only reasonable and proportionate legal costs are recoverable.
Losses relating to wrongful prosecution / conviction	Depends on nature of sentence – usually comprises a combination of loss of earnings and reputation losses	Wrongful convictions are usually compensated by the state rather than the prosecutor.

## 2. Compensation principles

- Limitation – claims over 6 years old are generally irrecoverable at law. Should settlements be offered on old claims?
- Causation – At law, SPMRs need to show that their complaints have actually caused, or at least materially contributed to, the losses claimed. This is more difficult for claims relating to, say, a lack of training and support. Should Post Office insist on evidence of causation?
- Remoteness - Peculiar or excessive losses that are unforeseeable to POL may not recoverable at law. Should POL compensate these types of losses?
- Mitigation – At law, SPMRs are obliged to take reasonable steps to reduce their losses. Should POL be looking for evidence of mitigation before offering a settlement?



### 3. Settlement thresholds

Nature of complaint	Recommended threshold of proof before offering a remedy	Risks
<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>Very clear proof of a technical defect in Horizon.</p>	<p>POL should be slow to concede that Horizon has any technical faults. To do so, could open the floodgates to a large number of claims. It will be almost impossible to reverse this position if conceded.</p>
<p>Defective hardware in the branch (pin pads, terminals, etc.).</p>	<p>Clear proof that a specific branch had defective equipment</p>	<p>Hardware failures should be localised to a particular branch so less risk of a flood of claims by making a concession.</p>

### 3. Settlement thresholds

Nature of complaint	Recommended threshold of proof before offering a remedy	Risks
<p>Horizon is too complex. Operating processes are unclear.</p>	<p>SPMR identifies a specific problem transaction that did not have a clear or established operating practice.</p>	<p>Issue should be confined to a specific problem so allows that problem to be discretely defined and remedied without undermining all transaction processes.</p>
<p>Lack of support for SPMR. Helplines were unhelpful.</p>	<p>SPMR shows that they have sought support and that the support did not (1) solve the issue and/or (2) POL failed to follow its established practices.</p>	<p>Issue is confined to the specific circumstances of an SPMR so less risk of negative consequences when offering a remedy.</p>
<p>Poor / inadequate training on Horizon system</p>	<p>General complaints about POL's standard training are not sufficient. SPMR needs to identify special circumstances that made training inadequate.</p>	<p>POL should be slow to concede that its general training is defective as defective training could impact on a large number of branches. To do so, could open the floodgates to a large number of claim.</p>

### 3. Settlement thresholds

Nature of complaint	Recommended threshold of proof before offering a remedy	Risks
<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. SPMR needs to show a problem with the audit trail of a specific product / transaction.</p>	<p>Issue should be confined to a specific problem so allows that problem to be discretely defined and remedied without undermining all transaction processes.</p>
<p>POL unfairly pursued losses / prosecution with a bias against SPMR.</p>	<p>Clear evidence that POL failed to look into <u>specific</u> issues (not general complaints) raised by the SPMR or failed to follow its normal investigation processes.</p>	<p>Any remedy in response to a claim that a criminal investigation / prosecution is unsound should be approved by POL's criminal legal team. Offering any remedy may undermine a conviction and so any remedy in this situation needs to be considered with great care.</p>

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