

**Strictly Confidential**

**POST OFFICE LTD BOARD**

**Insurance issues arising from the Complaints and Mediation scheme**

**1. Purpose**

The purpose of this paper is to set out the insurance-related issues for the Complaints and Mediation scheme and is an update to the paper submitted to the Board reading room in December 2013.

**2. Introduction**

Until September 2012, insurance for Post Office was provided by an RM Group insurance programme. Following separation, it was decided to mirror the existing insurance programme to ensure Post Office had no less cover than when part of RM.

Post Office's post-separation insurance programme, which was put together with Post Office's newly appointed broker, Miller, covers Property (£250m), Business Interruption (£10m), Employers' Liability (£25m), Public Liability (£50m), Motor (Comprehensive Full Cover), Crime (£400m), Kidnap and Ransom (£20m), and Directors' and Officers' Liability (£20m).

**3. Nature of the risk**

So far c150 applications have been received of which only about a third have been worked through so the assessment below is based on our estimation of the issues. It is possible, but unlikely, that the pattern of cases might develop in a way that changes this assessment.

**4. How much might the compensation cost?**

The legal and financial risks arising from the process are covered in a separate Board paper. However, for insurance purposes, it is important to be clear which costs are incurred as a direct consequence of specific legal obligations. Whilst cover would theoretically extend to costs incurred as well as compensation paid, insurers will argue that anything above the level relating to legal obligations represents a 'goodwill' payment that must be funded by the policyholder.

**5. What insurance cover might respond?**

Summaries of the relevant insurance policies can be found in the annex attached to this paper.

Based on the current position none of our existing policies are expected to respond for the following reasons:

- there is no legal obligation to make material payments
- the levels of excess that would apply
- the precise nature of the cover in place.

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Independent advice has been sought to provide a definitive view on all aspects of insurance ie organisational and personal. This advice will cover what policies Post Office has and what they cover, as well as the actions Post Office has undertaken to fulfil its obligations under these policies. This view will be provided at the Post Office Board meeting.

**7. Impact of mediation process on potential claims**

As noted above, only payments made due to a legal obligation would be covered so if an insurer did face a claim from a mediation process they would insist on being involved in order to be certain that any payments related to a legal obligation and were not simply goodwill.

**8. Directors' liabilities**

Directors are highly unlikely to be personally liable in respect of past prosecutions unless a court determines that they have acted maliciously or in bad faith, which is very hard to envisage. In any event the D&O policy provides cover up to £60 million and has a £25,000 excess for claims by the Company but no excess for claims brought against individual directors. It is also retrospective so applies to historical claims. Whether or not the policy will respond in relation to a claim will depend on the circumstances of the claim. However, we have notified our brokers of the circumstances which may give rise to a claim.

**9. Our strategy with insurers**

In August 2013, we formally notified the insurers for our D&O, Public Liability and Professional Indemnity policies. They have also all received a copy of the Second Sight report.

All the insurers have noted the contents of the report. There has been no further comment from insurers, though this is normal given there are no claims or notifications at this stage.

Post Office's legal advisors (Bond Dickinson) have been instructed to review each application submitted into the Mediation Scheme to identify any matters which could trigger insurance coverage (none have been identified to date).

The strategy remains to keep insurers updated via our brokers. Post Office, Bond Dickinson and Miller will meet once Second Sight provides its report on the Horizon-related "themes" it has identified.

At this meeting, which will be within a week of receiving the Second Sight report, we will discuss next steps including whether:

- insurance cover is available from RM's captive (which is complicated as it is 100% RM controlled);
- individual cases can be treated as connected or interrelated claims for insurance purposes;
- a different approach should be followed in light of the independent report;
- adopting a different approach to dispute resolution to the current Scheme would assist in obtaining insurance cover; and
- insurers should be more fully engaged.

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More generally, we will continue to monitor the position as more cases are submitted to the Mediation Scheme (as mentioned above, to date, only c25% have been received), though clearly the final position will not be known until all the cases have been submitted.

**10. Recommendation**

The Board is invited to note the position on insurance.

**Chris Day  
March 2014**

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### Annex

#### Directors and Officers Liability (D&O)

D&O Liability provides full cover for Post Office (PO) directors and officers where they are sued as a result of a wrongful act resulting from something allegedly done while acting as a PO manager. The policy will also respond if there is a formal external investigation into an individual's actions or the affairs of the company.

This policy is a joint and several contract between Insurers and each insured individual, which means that any individual can make a claim under the policy, with or without PO's consent.

The policy covers claims against individuals, not PO, so an individual has to be named in a claim for the D&O policy to apply. If there were to be an official external investigation, the policy might also cover some investigation costs (e.g. the costs for a director attending the investigation).

The policy is unlikely to cover mediation, which on its own is neither a claim against an individual nor a formal external investigation.

#### Public Liability (PL)

Public Liability covers injury or damage to Third Parties arising out of PO's actions. We have notified our PL insurers because a claim against PO for "stress" arising out of this matter could be classed as a third party "injury". This policy however carries a high excess of £250k per claim.

#### Professional Indemnity (PI)

Professional Indemnity insurance covers a breach of professional duty by PO resulting in a third party loss. This policy covers Civil Liability, Defence Costs and Expenses, Libel and Slander (committed by PO or any person employed by PO), and Breach or Infringement of copyright/intellectual property rights. This policy also carries a £250k excess for each and every claim.

PO's PI cover was purchased last year to cover specific Government Services contracts, which will make it difficult to make a Project Sparrow-related claim.

Further, in addition to the general uncertainty as to whether any PI policy would provide insurance cover for Project Sparrow-related claims, there is also an issue of when PO first became aware of the matters which would give rise to a PI claim. Given that the Second Sight report refers to problems with the Horizon system (and the resultant issues with the sub-postmasters) occurring prior to the PI policy's inception date, underwriters may claim that this was a "known" issue and therefore excluded from the cover.

On separation, PO did not to take out company-wide PI cover principally because it was difficult to foresee a scenario whereby PO would have an exposure for professional negligence (from the information available, there is no evidence of any circumstances or claims being made against PO for professional negligence since it was created c30 years ago, or indeed the RM Group over that period).

This position was supported by historical advice and aligned with RM and their broker's (JLT) view, and the purchase of a PI insurance policy in September 2012 was specifically to meet contractual requirements for the two Government contracts and not because of any foreseen increase in exposure.

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Whilst there is some evidence that PO were misinformed by RM and there was PI cover from 2002 to 2012 it was via RM's captive, therefore any claim will be complex as PO doesn't have any access to any records from the captive. In addition there was an excess of £1m per case. Further action may be taken on this depending how the claims develop.