

PRIVATE & CONFIDENTIAL

# **Post Office Complaint Review & Mediation Scheme 2014 – 2016**

## **Final Report**

Published May 2016



## **1 Introduction**

- 1.1 The Centre for Effective Dispute Resolution (CEDR) was selected via an open tender to provide mediation services for the Post Office and sub-postmasters as part of the wider Complaint Review & Mediation Scheme set up by the Post Office along with other stakeholders.
- 1.2 CEDR's role throughout the mediation phase of the Scheme, was to provide a panel of independent mediators who can mediate cases brought by applicants to the Scheme. We did not review the applications nor did we take a view on the eligibility or otherwise of individual applications.
- 1.3 CEDR originally reported to the Secretariat of the Complaint Review Working Group that was set up to review and consider applications' suitability for mediation, that were then in turn referred to CEDR for mediation. The Working Group was disbanded in 2015 and CEDR has since then reported to the Post Office on progress.
- 1.4 All scheduled mediations have now taken place, with the last taking place in February 2016.
- 1.5 This is the final report on the Scheme and follows on from Review No.2 dated 31<sup>st</sup> July 2015 and the Initial Review dated 24<sup>th</sup> February 2015.

## **2 Resources**

- 2.1 In preparation for the Scheme a small panel of CEDR accredited mediators was selected and briefed on the Scheme's purpose and the procedures. The mediators were selected on the basis of CEDR's assessment of their ability as mediators to demonstrate an appropriate level of skill and empathy to mediate cases of this nature.

It was considered appropriate to use a small group of mediators in order that a consistent approach to the mediation process for this scheme could be established.

- 2.2 Selection of the mediator for each case was decided by CEDR and was based mainly on availability and location.
- 2.3 The administration of the cases was undertaken by a team of three CEDR case managers using the procedure agreed between CEDR and the Working Group Secretariat at the beginning of the contract. The administration has proceeded smoothly and no issues of note have occurred. Liaison with the Post Office administration team also worked smoothly.

### 3 Referrals

- 3.1 CEDR received 84 referrals for mediation under the Scheme. When we compared our data with the Post Office they have identified 85 cases but the additional case was ultimately considered not suitable for mediation (by Post Office) and was never referred to CEDR so it has been excluded from the data that appears in this report.
- 3.2 The breakdown of the outcomes of the cases referred to CEDR are as follows:

Status	No. Cases
Mediated	44
Withdrawn by Applicants	36
Settled Prior to Mediation	2
Withdrawn by Post Office	2
<b>Total Cases</b>	<b>84</b>

### 4 Outcomes

- 4.1 Focusing on the outcomes of those cases that proceeded to mediation, 50% resulted in the dispute being resolved, while 50% remained unresolved. Across the full spectrum of mediation work that CEDR conducts the average settlement rate is approximately

60% of cases are resolved at the mediation session and up to a further 20% resolve within a few weeks of the mediation taking place.

- 4.2 It is difficult to compare one mediation or scheme with another but considering the significant length of time that many of these disputes have been running, the strong sense of grievance amongst many applicants, the claim amounts at stake, and the various external factors involved, a settlement rate of 50% where applicants accepted final resolution of difficult and sensitive personal circumstances, is, in our view, reasonably successful.
- 4.3 The remit of the Scheme was to classify the outcomes as either resolved or unresolved but on other mediation work that we undertake we also review the party's views on whether any progress was made if the dispute did not settle at mediation. We have recorded a number of cases which did not settle, where the mediator considered that significant progress had been made and it may well be the case that some of the unresolved disputes will be resolved in the coming weeks.

## **5 Process Observations**

- 5.1 In terms of the operation of the Scheme, and the collaboration with the Post Office, the Scheme has worked well. Communication between the Post Office and the CEDR Case Managers has been very good and Post Office have provided all the required information on each case in a timely fashion and they have also been willing to be flexible in their approach which has been very helpful.
- 5.2 Communication with the individual subpostmasters and/or their appointed representatives has also been good on the whole. There have been some challenges on individual cases to overcome, largely related to availability, but considering the nature of the Scheme this was not unexpected.
- 5.3 We often find that identifying a date that all concerned (including the mediator) can agree on is the most time consuming part of the mediation process so it was no

surprise that some cases have taken some time to arrange. Only a handful of cases however experienced delays.

## **6 Post Office Approach**

- 6.1 In terms of process management, we found that the Post Office was receptive to feedback provided by CEDR and worked collaboratively to ensure the process was effective. They also showed flexibility in terms of accommodating the requirements of the subpostmasters in terms of availability and allowing them a significant window in which to consider the offer to mediate.
- 6.2 In previous reports and since, we have identified a number of points that were flagged by the mediators as follows:
  - 6.2.1 Subpostmasters' expectations of the process and potential outcomes which could create challenging negotiation scenarios;
  - 6.2.2 Ensuring the subpostmasters understand that, in order for the mediation day to be as effective as possible, all issues they intend to raise should be identified in advance;
  - 6.2.3 The Post Office considering the need for greater flexibility in their approach even when expressing confidence in their legal position;
  - 6.2.4 The benefits of professional representation for the subpostmasters.
- 6.3 Post Office worked with CEDR to address these issues following our early reports and we believe improvements were made which contributed to some of the Scheme's success.

## **7 Subpostmasters' Expectations**

- 7.1 On a number of the mediations that took place the Subpostmaster has not fully comprehended the nature of mediation as a process and they have also been influenced by the wider campaign asserting the failings of the Horizon system. They did, therefore, sometimes attend with the expectation that they were going into a compensation process rather than a facilitated dialogue with the Post Office in which

claims made by either party do require some prior notification, explanation, evidential validation and negotiation work. Some applicants and/or their representatives considered the approval for mediation had indicated an acceptance of liability by the Post Office, but that was not the case. This issue was addressed following the publication of Review No. 2 with the provision of more guidance by CEDR and more dialogue between the Post Office and the subpostmasters' representatives, prior to mediation.

## **8 Feedback from Mediators**

- 8.1 The feedback from the mediators during the final phase (July 2015 to February 2016) has not identified any new points of action. It was noted, however, that in some of the mediations, the possibility of a potential group action in the future which had been emerging outside the scheme had a negative effect on the process and led to a number of potential settlements failing to be achieved because of the prospect of an apparent alternative route to redress.
- 8.2 It was also noted from the reports that, despite the best efforts of all concerned, a number of subpostmasters pursued claims at mediation that had little realistic chance of success in litigation in the opinion of the assigned mediator (though with the proviso that mediators do not usually express opinions within the actual mediation), or reflected expectation that had little prospect of being met by Post Office negotiators.
- 8.3 However, despite some of the obvious challenges to the scheme, 50% of mediated cases settled. This suggests that participants found it valuable to have the opportunity the scheme provided for an intensive review of what their needs were and how they could be met. In 50% of cases they were met by voluntary agreement at the end of mediation under the scheme.

## **9 Conclusions**

- 9.1 The mediation Scheme was a useful process within which individual subpostmasters have engaged with the Post Office in confidential discussions concerning a sensitive

and controversial set of circumstances, and this has led to practical agreed resolutions in half of the cases mediated allowing these individuals to put the issues they have behind them.

This scheme was a relatively innovative approach to a very difficult situation and there are undoubtedly lessons that can be applied in other scenarios involving groups of individuals with a major grievance against a public or private sector organisation.

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