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OFFICIAL - SENSITIVE

To: Jo Swinson

From: Richard Callard GRO

Date: 15 December 2014

BIS
Department for Business Innovation & Skills

Subject: Westminster Hall Debate: Horizon Case Review and Mediation Scheme

Purpose

1. James Arbuthnot MP has secured a Westminster Hall Debate on the Case Review and Mediation Scheme ("the Scheme") that was established to provide a process for former-subpostmasters to have their cases considered for mediation. It is overseen by an independent Working Group. The Post Office is a member of the Working Group, but does not 'own' or is responsible for the Working Group or the Scheme. Government is independent of the scheme.

Your objectives

2. To be clear that matters concerning the Horizon system do not relate to any Government action or policy decision, but are wholly operational matters in which HMG has no role;
3. To re-iterate that the independent Second Sight review published in July 2013 explicitly confirmed that there are no systemic problems with the Horizon software;
4. To convey that following last year's report, there have been further detailed investigations into individual cases that corroborate the Post Office's view that there are no issues with the system;
5. Those detailed investigations have taken place as part of the Scheme that was designed in concert with the JFSA, Second Sight and James Arbuthnot MP; and
6. The small number of subpostmasters who have made complaints are a minute proportion of the tens of thousands (68,000) of people successfully using the system across the network of over 11,500 branches on a daily basis.

Background to the Scheme

7. In response to the publication last year of the Second Sight report, you made a statement to Parliament setting out three initiatives that the Post Office has since been delivering:
    - To set up a Working Group that includes the Justice for Subpostmasters Alliance to review cases;
    - To ensure an independent chair is appointed to oversee the process; and
    - To provide a branch user forum providing a channel for subpostmasters to raise concerns at the highest level in the business.
8. The Working Group comprises representatives from the JFSA, the Post Office and Second Sight. It is overseen by an independent Chair, Sir Anthony Hooper, who was recommended by the JFSA, and whose appointment was approved by members of the Working Group. The Working Group, collectively, is responsible for the design and delivery of the Scheme. Both are entirely independent of Government, which has played no role in either the design or delivery of the Working Group or the Scheme. **This is entirely appropriate as HMG cannot intervene in any process that reviews past convictions, as this should only properly be dealt with by the relevant judicial authorities.**
9. In simple terms, Post Office and members of the scheme present Second Sight with the relevant information on each case. Second Sight then investigate, and present a report to

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the Working Group. As members of the Working Group, the JFSA and POL decide whether a case should go to mediation. If there is a difference of opinion, the Chair provides the casting vote. Mediation is nevertheless voluntary, and POL (or the applicants) can decide whether to proceed or not (see below). Of the 24 cases that have been recommended for mediation, POL has refused to mediate in only 2 cases. Annex E shows a process map of the scheme.

Key facts on Progress

10. Sir Anthony Hooper has written to you with regard to progress of the scheme (Annex F). This is summarised below:
    - There were 150 applicants originally, of which 4 were ineligible
    - Of the 146 remaining, 12 were resolved early
    - Since that point, 24 cases have been proposed for mediation by the working group:
        - 2 of those were resolved before the mediation meeting
        - 7 have been mediated
        - 9 are waiting for mediation (3 scheduled for this week)
        - 2 were rejected for mediation by the post office
11. He notes in the letter the issue of confidentiality means that he cannot share much greater information about the respective cases than that noted above, including the results of mediation. This is a core principle of the mediation process, as laid down by the Centre for Effective Dispute Resolution (CDER) the external mediation provider, and in accordance with the European Code of Conduct for Mediators.
12. It is worth noting that many of these cases involve highly personal details which members of the scheme may not want disclosing, and such disclosure may dissuade other members from continuing to participate in the scheme.
13. Sir Anthony notes that the scheme is not expected to be completed before around March 2015 (although POL's view is that this will take until around November 2015). This is longer than expected, but as explained in Sir Anthony's letter, this is a complex process involving a number of parties, which took some time to design, and accuracy is more important than speed, on balance.
14. To date, Post office has invested significant amounts in to the scheme, both in terms of time and cost. In addition to POL's internal costs in investigating the issues raised, they also pay for Second Sight, and the applicants' professional advisers.

Recent developments

15. On 8 December, James Arbuthnot published a letter (attached at annex C) placing heavy criticism on the Post Office's role in the Scheme, and announcing that he was withdrawing his support for the Scheme and the Working Group. A high level summary of Arbuthnot's criticisms are set out below, and fuller rebuttals are included in the speech (Annex A) and Q&A (Annex B). He also appeared on the Today programme, and the issue has also now featured on The One Show.
16. On 10 December, ShEx became aware that the JFSA has instructed a legal firm, Edwin Coe, to "pursue the rights" of subpostmasters whose claims are currently being considered through the Scheme. The JFSA did not inform the Post Office (as joint

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member of the Working Group) of this and the nature of the instruction is not clear. The Post Office has written to JFSA for more information about their intention. JFSA have responded to say that they will continue to participate in the scheme, but it is unclear as yet how this tallies with their intention with regard to separate legal action.

17. This change in behaviour by the JFSA and James Arbuthnot can be understood due to the absence of any evidence of systemic issues with the Horizon system from either the 2013 independent report, or the further detailed investigations undertaken as part of the Scheme. The JFSA (and James Arbuthnot MP as their sponsor) are possibly in an increasingly uncomfortable position given that scheme members expectations have been allowed to inflate when the reality is that few are likely to receive any compensation given limited issues with the system have been found.

18. Although the outcomes of the mediation process are subject to strict confidentiality arrangements, ShEx understands that where cases have been resolved with a financial payment, the scale of these payments is very low and can be generally classed as 'goodwill'. This is information that should not be relayed publicly as it relates to the outcome of a confidential mediation process. Although neither JFSA nor James Arbuthnot should be party to the outcome of the mediation processes, it appears that applicants are feeding information to both parties[1].

James Arbuthnot's position

19. In his letter and accompanying press release of 8 December, James Arbuthnot and others[2] focus on two key themes:

    - The Post Office's approach within the confines of the Scheme for those applicants who were convicted following a guilty plea; and
    - The interpretation of what is meant by 'Horizon'.

20. On the first of these points, Arbuthnot is pushing a line that suggests the Post Office is excluding 90% of applicants from mediation. This is a number that the Post Office does not recognise (and does not reflect the progress noted above which shows that POL have only refused to mediate 2 of the 24 cases recommended for mediation by the working group).

21. James Arbuthnot is arguing that all cases should proceed to mediation as a default position. This is contended by the Post Office that argue the purpose of the Working Group is to consider applications on a case-by-case basis and to reach a decision whether to mediate on its merits, where it offers the prospect of a fair resolution.

22. James Arbuthnot also wants cases that involve a subpostmaster who has been convicted on a guilty plea to be mediated, but the Post Office is not accepting mediation in such cases as this would undermine a judicial ruling. However, the Post Office is willing to consider mediation for cases where a subpostmaster has been convicted but where their application for mediation does not relate to that conviction (e.g. if the conviction relates to false accounting, but the application relates to concerns about training).

23. On the second point (that the Post Office is changing the definition of what is meant by Horizon), the scope of the investigation was recorded in Second Sight's interim report as the following:

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[1] For example, in James Arbutnot's letter to Paula Vennells of 8 December, he quotes the minutes from the January Working Group meeting, ,which are confidential.

[2] Mike Wood MP (Lab, Batley & Spen), Kevan Jones MP (Lab, North Durham), Huw Irranca-Davies MP (Lab, Ogmore), Andrew Bridgen MP (Con, North West Leicestershire)

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"…Horizon relates to the entire application. This encompasses the software, both bespoke and software packages, the computer hardware and communications equipment installed in Branch and the central data centres. It includes the software used to control and monitor the systems. In addition, …… testing and training systems are also referred to as Horizon"

24. The scheme was therefore set up with a very specific and defined purpose, but which was sufficiently wide to encompass more than just the software. However, given the lack of "smoking gun" found to date, the working group has come under pressure to widen its remit still further, which POL are resisting.

List of annexes

A – Speech modules (see separate attachment)
B – Q&A (see separate attachment)
C – Arbuthnot letter and accompanying Press Release (8 December)
D – Paula Vennells letter (28 November)
E – Scheme process map
F - Letter from Sir Anthony Hooper (with attached letter from CDER)
G – Postal regulation and postal competition top lines

Copied to: Cable MPST; Hancock MPST; Perm Sec MPST; Cable SpAd MPST; Hancock Spad; ShEx Post Office Team; Christina Murphy, Jo Fletcher

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Annex A – Speech

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Annex B – Q&A

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Annex C – Arbuthnot letter (8 December)

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Annex D – Paula Vennells letter (28 November)

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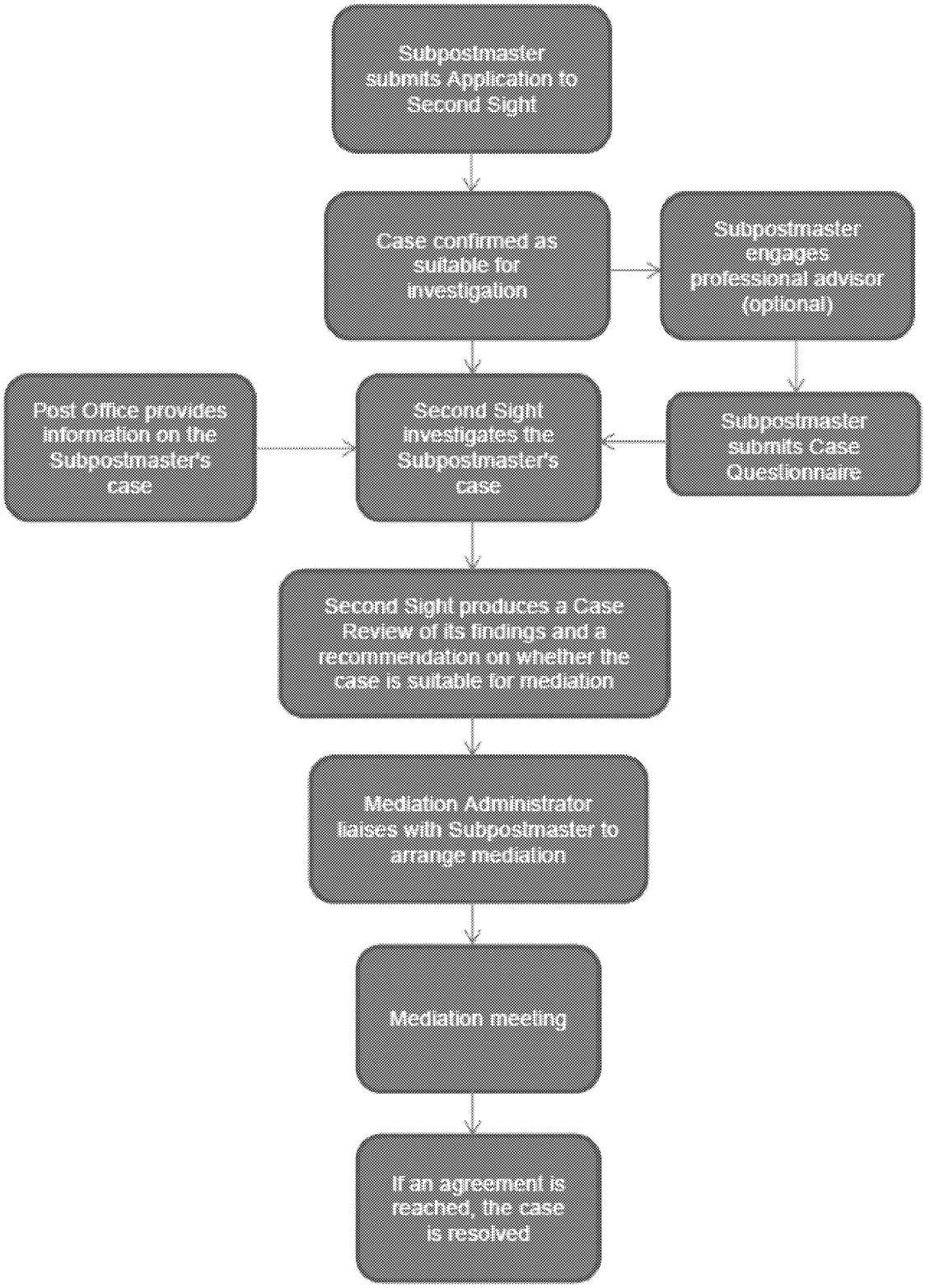
Annex E – Scheme process map



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Annex F – Letter from Sir Anthony Hooper

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Annex G – Postal Regulation and Postal Competition Lines