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**The Secretariat  
Post Office Mediation  
Complaint Review Working Group**



10<sup>th</sup> September 2014

Dear Sir/Madam

**POST Office Mediation Complaint Review and Mediation Scheme**

I write further to recent discussions regarding the data that CEDR is able to provide to the Scheme Working Group.

Mediations are conducted on the basis of having a confidential and without prejudice status and that is the expectation of the parties. The specific terms of that status are detailed in paragraphs 4 and 5 of the mediation agreement currently being used for the scheme.

Specifically, the agreement states:

*Every person involved in the Mediation:*

*4.1. will keep confidential all information arising out of or in connection with the Mediation, including the fact and terms of any resolution, but not including the fact that the Mediation is to take place or has taken place or where disclosure is required by law to implement or to enforce terms of resolution or to notify their insurers, insurance brokers and/or accountants; and*

*4.2. acknowledges that all such information passing between the Parties, the Mediator and/or CEDR, however communicated, is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.*

*4.3. CEDR is, however, authorised to communicate the following data to the Scheme Working Group from time to time: number of mediations conducted per month, disputes resolved, disputes progressed (progress has been made towards resolution), disputes not resolved. CEDR will not provide the Working Group with the names of the parties, any information related to how the mediation process itself was conducted or any details related to the nature of any resolution.*



*5. Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.*

### **Providing data**

CEDR is a contractual party to all the mediations we undertake but the Working Group does not have that status and as a consequence, could not be given any information about the mediations by CEDR in normal circumstances. In order to address the need to provide some information to the Working Group paragraph 4.3 of the agreement (above) was added which gives CEDR explicit consent from the parties to pass on the data indicated.

Reference to reporting to the Working Group is also made in the process guidance note which is provided to the parties as follows:

*Based on our experience with the Court of Appeal, CEDR will provide the Working Group with information on the following:*

- 1. Number of mediations conducted*
- 2. Claims settled*
- 3. Claims progressed (Progress has been made towards settlement)*
- 4. Not Settled*

*CEDR will not provide the Working Group with any case specific information or any information on the size of settlement's reached.*

For clarity the three classifications detailed above can be described as follows:

Claims settled:	The parties agree a resolution to all of their differences.
Claims progressed:	The differences have been significantly narrowed. Further negotiations may or may not be undertaken.
Not Settled:	No significant progress in terms of a resolution was achieved.

The first report is scheduled to be provided after 25 mediations and then again after 50, 75 and 100 mediations. These milestones were chosen in order to provide enough data to reach useful conclusions and to protect the confidentiality of the parties.

My understanding is that the Working Group has requested that more detailed information about each mediation be provided. However, the mediation agreement is very clear on what data the parties are agreeing will be passed onto the Working Group. If CEDR were to provide any additional information above and beyond the provision of P.4.3 we would be in contractual breach of the agreement with the parties, CEDR's own Code of Conduct and European Code of



Conduct for Mediators which the Civil Mediation Council requires all UK providers to observe in order to maintain accreditation.

Obviously for the reasons detailed above we are not in a position to provide any information outside the remit of P4.3 to the Working Group or indeed any other third party.

We do understand the Working Group has a remit to oversee the process but the only way that would allow CEDR to provide more specific information would be to expand the remit of P.4.3. and therefore release information by agreement of the parties.

I would, however, advise caution in considering how far to extend the remit of P.4.3 because of party sensitivities to publicity of what is meant to be, a private process. Consideration should also be given to the potential for some applicants to be dissuaded from using the scheme at all if the outcome of any mediation process is to be disclosed to a third party outside their control as they may wish, or be advised, to reserve their own position for subsequent legal proceedings.

Yours sincerely

**GRO**

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