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CEDR's Dispute Resolution Service

**Post Office Mediation**

6 March 2015

Dear Mrs MacLeod

**Post Office Complaint Review and Mediation Scheme**

I am writing to provide initial feedback and recommendations regarding the mediation element of the Post Office Mediation Complaint Review Scheme. This includes some feedback on how our experience with this scheme compares with the wider commercial and employment related mediation that CEDR conducts to provide some context.

As you know, since July 2014, CEDR has been referred 31 cases for mediation under the scheme. So far 12 mediations have been taken up by parties, using six different mediators, and 2 are currently being scheduled for mediation this month. With the other cases CEDR is awaiting further instruction to proceed to mediation (for a number of reasons that are not within CEDR's control).

Obviously this is a very small sample of cases to go on so one can only speculate on how the outcomes will measure up once a larger number of cases have been undertaken. The current settlement rate of approximately 45% is somewhat lower than the average settlement rate that we see across all the mediations that CEDR conducts (although with a couple of cases still outstanding this might increase slightly). In an average year the settlement rate tends to range between 65% and 75% with a further 10% to 15% of cases resulting in some progression i.e. where the parties have not reached a resolution but progress has been made in crystallising the position of the respective parties.

**Process Observations**

There are a number of process observations and recommendations I would like to share which might be helpful:

***Subpostmasters' expectations***

On a number of the mediations that have taken place so far the subpostmaster has not fully comprehended the nature of mediation as a process. They have attended with the expectation that they are 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 and explanation. It would appear that some applicants and/or their representatives consider the approval for mediation does in some way indicate an acceptance of liability by the Post Office, which is not the case. It has been noted that, where a contractual relationship is still in effect, and where both parties would like it to continue, the mediation process has been more effective.

***Clarity of Issues***

Mediator reports have indicated that on at least two occasions the subpostmaster and/or their representatives raised claims that had not been disclosed before the mediation. Having spoken to all of the mediators used so far there is a consensus that perhaps some of the cases referred to

mediation under the Scheme would not have made it to that stage within a litigation process given the uncertainty over the issues. It is, of course, understood that this Scheme has been set up to address specific circumstances.

In more 'routine' mediation work we see the parties have established the scope of their differences well before the mediation day is fixed and both parties know exactly what they are in dispute about. In our experience new or previously unarticulated claims aired at the mediation for the first time invariably lead to an unsuccessful mediation or at best a much more difficult process.

#### ***Representation***

There are some indications that legal representation provides better support. On a number of mediations it would appear that the professionals engaged to represent the subpostmaster who are not themselves legally qualified have not fully understood the mediation process and were not able to argue legal principles well.

#### **Recommendations**

Below are recommendations to consider to address the above points. Again, I would stress that our views are currently based on a small sample so cannot be an indication of definite trends. But potentially helpful measures you might consider include:

1. More information provided to the subpostmaster prior to the mediation day in order assist them with understanding the nature of the mediation stage. CEDR can draft a one page sheet of key facts that can be added to the information already provided if that is considered helpful.
2. Applicants and their professional advisors to be advised to clearly set out their claim in advance of mediation.
3. Applicants should be strongly urged to seek legal advice and if at all possible legal representation at the mediations. Where subpostmasters chose not to have representation a cooling off period could be implemented for them to determine if they wished to confirm a provisional settlement. This should assist the applicant in understanding the reality of the legal position, crystallise realistic expectations and give them the opportunity to consider any offer without the pressure of a mediation day timeline which can be very stressful.

I hope this information is useful to you and please let me know if you would like to discuss further.

Yours sincerely



**GRO**

John Munton

Director of Dispute Resolution Services