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# Project Sparrow

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August 2015

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## Executive Summary

- Postmasters are agents for PO. They owe fiduciary and contractual duties to PO. Funds held in branch are public monies which belong to PO. Postmasters are contractually responsible for losses caused through *"negligence, carelessness or error, and also for losses of all kinds caused by his assistants"*
- PO has established processes for investigating accounting anomalies. Consequence is usually a requirement to make good losses. In certain cases suspension, dismissal or prosecution may also be appropriate depending on the facts – particularly if postmaster has sought to conceal problems. Prior to 2012, there were approximately 40 prosecutions each year
- During 2012 concerns were raised in relation to a small number of cases relating to the reliability of Horizon – the in branch point of sale system
- Second Sight appointed. Investigations followed. Scheme established in 2013 under the overview of the Working Group – chaired by Sir Anthony Hooper. Objective of Scheme was to articulate then investigate individual claims about Horizon and facilitate mediation as a way of addressing concerns. It is not a criminal case review or compensation scheme, although very substantial claims for compensation have been made in some cases
- All cases in scheme investigated by PO, investigations reviewed by Second Sight. Reports made available to applicants for the purposes of mediation
- Following criticisms of Scheme, PO stated it would make a presumption of mediation in all cases where there was no court ruling. All others considered on a case by case basis. Investigations and Second Sight review continued as per previous process. Working Group no longer necessary and disbanded in March 2015
- More than 40 applicants have now advised PO that they do not wish to participate in mediation pending the outcome of a government enquiry
- **No evidence found of system wide/systemic problems with the Horizon software.** Issues related mainly to training and support. Horizon is subject to annual audit reviews to industry standards
- Despite significant adverse publicity, no further cases have been notified to PO. No new information has been produced by any of the journalists
- Of 136 cases in the Scheme, 43 involve criminal prosecutions. At least 10 law firms have been engaged, representing between them approximately 45% of applicants. To date, none of the convictions have been appealed, and no civil litigation has been brought against PO
- PO continues to offer to mediate with applicants and to engage with MPs. PO continues to observe the confidentiality undertakings it has given applicants
- The Post Office has always been willing to discuss these matters. This has not been widely taken up. We have continued to make very full and public responses to allegations made, providing as much detail as we possibly can without breaching the confidentiality of the people involved
- Second Sight has not identified any transaction caused by a technical fault in Horizon which resulted in a postmaster wrongly being held responsible for a loss. There is no evidence to support any of the broad allegations about Horizon. There is overwhelming evidence that the losses complained of were caused by user actions, including deliberate dishonest conduct

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## Background

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- Post Office & Subpostmaster Relationship
- Horizon
- Timeline of Events



## PO/SPM Relationship

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- Not employees but B2B agency relationship
- As an agent a SPM has a fiduciary duty to PO and is contractually *"responsible for all losses caused through his own negligence, carelessness or error, and also for losses of all kinds caused by their assistants"*.
- SPMs act as custodians of public money

## Horizon

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- Helps monitor cash levels in branches. Post Office handles £70 billion cash and £636 million coin every year
- Used successfully by 78,000 people to process six million transactions every working day in communities throughout the UK, across 11,500 branches and by 8,000 agents
- 500,000 users since it was introduced in 1995, serving millions of customers
- Constantly monitored and managed, with numerous checks and independent audits:
  - Ernst & Young produce an annual ISAE3402 service auditor report over the Horizon processing environment;
  - each year Bureau Veritas perform ISO27001 certification – this is the industry standard security accreditation;
  - Information Risk Management (IRM) accredit Horizon to Payment Card Industry Data Security Standards on an annual basis;
  - Fujitsu undertake regular industry standard testing on the system; and
  - the Post Office audit team perform risk based reviews.

## Timeline of Events

- **Early 2012:** Having been approached by a small number of mainly former Postmasters (under the banner of the JFSA), a group of Members of Parliament, led by the then Rt Hon James Arbuthnot MP, raise a number of concerns with the Post Office over the reliability of Horizon
- **July 2012:** Second Sight is appointed to carry out an independent review of Post Office's Horizon computer system
- **July 2013:** Second Sight produce an 'Interim Report' of their findings to date. Conclusions include "***We have so far found no evidence of system wide (systemic) problems with the Horizon software***" but that in some individual cases, PO might have been more supportive of SPMs
- **July 2013:** Post Office announced three initiatives to deal with the issues raised:
  1. to set up a working Group to complete the review of cases
  2. that an independent figure will chair a review
  3. that a new branch user forum will be established to provide a channel for sub-postmasters and others to raise concerns and insights around business processes, training and support
- **August 2013:** Post Office announces the Complaint Review & Mediation Scheme to provide an avenue for any Postmasters to raise their specific concerns directly with the Post Office on an individual basis.
- **December 2014:** Westminster Hall debate
- **February 2015:** BIS Select Committee
- **March 2015:** In light of criticism as to delays and lack of support for process, Post Office closes the Working Group and announces presumption of mediation. Cases involving in a court ruling are to be considered on a case by case basis
- **May 2015:** JFSA recommends Applicants withdraw from the Scheme, pending a Government enquiry
- **June 2015:** Adjournment debate
- **July 2015:** Second Sight finishes Case Reviews

## The Scheme

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- The Complaint Review & Mediation Scheme
- How the Scheme Worked
- Scheme Numbers
- Complaints
- Options Evaluated
- Response and Policy Stance Post March 2015

## The Complaint Review & Mediation Scheme

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- The Scheme was set up in consultation with Members of Parliament (MPs), the Justice for Subpostmasters Alliance (JFSA) and Second Sight and overseen by a Working Group chaired by Sir Anthony Hooper, a former Court of Appeal Judge

*"I am very pleased indeed with the WGs proposed processes. To my mind, it represents the very best chance all parties – individual Subpostmasters and mistresses, and the PO have of ensuring the best outcome for everyone. It is fair, thorough and independent". James Arbuthnot, 27/08/2013*

- Commitments – a comprehensive re-investigation of complaints, an independent review of each case, and mediation if appropriate
- Applications were invited via the Post Office's internal communications channels as well as through the JFSA website from 27 August through to 18 November 2013. 150 applications were received, of which 43 involved a criminal conviction
- No further applications have been made to or shared with Post Office
- Transparency – progress visible to applicants, independent professional advisers, Working Group and MPs

## How the Scheme worked (pre March 10 2015)

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- SPMs with a complaint were invited to submit details of their case to Second Sight. The Working Group's role at this juncture was to make a recommendation as to whether or not the case should be investigated. Of the 150 applicants, 4 were rejected as they were ineligible according to the Scheme's entry criteria and 10 were resolved prior to entry to the Scheme
- On acceptance into the Scheme, that complaint was passed to Post Office for comprehensive re-investigation. This represented a further detailed examination of all the available facts including a review of the investigation which took place at the time of the original incident
- When Post Office completed this fresh investigation, its results, together with all supporting documents, were passed to Second Sight. It was then for Second Sight to complete their own review and analysis of all the material before completing a draft report which included a preliminary recommendation to the Working Group on that individual case's suitability for mediation
- The applicant was then provided with the Post Office and Second Sight reports to comment on before Second Sight completed a final report which was considered by the Working Group to decide whether it should be recommended for mediation
- In cases where the Working Group recommended mediation, the case details were then passed to the Centre for Effective Dispute Resolution (CEDR), the independent organisation administering the mediations. Mediation is a voluntary process, so it was then a matter for the parties to decide whether they wish to mediate. This is consistent with the process set out in the original documentation which explained the Scheme and was agreed to by the Working Group
- From almost **50** cases recommended as suitable for mediation by the WG (prior to March 2015), Post Office only found **6** unsuitable as mediation was unable to provide a means for resolution of these complaints

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## Scheme Numbers

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- 150 – number of applications
- 4 – number of applications deemed ineligible by the Working Group according to the Scheme's entry criteria
- 10 – number of cases resolved prior to Scheme entry
- 136 – number of cases accepted into the Scheme (43 involve a criminal conviction, including 37 against SPMs)
- 87 – number of cases PO is / has been willing to mediate
- 21 – number of cases mediated to date
- 9 – number of cases resolved at mediation to date
- 11 – number of cases unresolved at mediation (1 is not yet concluded)
- 59 – number of cases with CEDR awaiting mediation to be scheduled or take place. Of which 43 have formally suspended / withdrawn their case

# Complaints

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- **Timing** – process taking too long & Post Office is "... objecting to around 90% of cases going forward to mediation" James Arbuthnot
- **Investigations/Reviews:** Minuted WG concerns over SS reports style and quality. WG agrees on 07/03/2014 Second Sight reports should "*ensure conclusions are reasoned and supported by evidence*".
- What constitutes '**evidence**'?
- Scheme and Second Sight's **scope and purpose**:

*"Issues relating to Post Office's prosecution policy, and the conduct of any prosecution, fall outside our terms of reference."* Second Sight, M039 Final CRR Para 5.9

*"Post Office has stated that this subject [prosecution policy] is outside the scope of our investigation. We strongly disagree with this view."* Second Sight, Part 2 Report Paragraphs 25.21– 25.24

*"Some people have been jailed when it is obvious a complex computer system is at fault....Ministers must act to ensure victims get compensation".* Alan Bates Daily Mirror 16/8/2013

*"The whole point of the scheme-it is not purely the software that we are talking about. Everyone seems to homing in on the computer system. It is about the support package that works with it. It is the training and the lack of investigation".* Alan Bates BIS Select Committee 03/02/2015



## Options evaluated

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- Dissatisfaction with the Scheme laid bare (BBC media coverage, MPs withdrawing support, Westminster Hall Debate, JFSA refusing to take any meaningful part in the WG, BIS Select Committee, CCRC etc) a discussion about the relative merits of a number of options for the future of the mediation Scheme before coming to a view on the best course of action to take, taking all equities into account. These included:
  - Mediate all cases or all cases apart from criminal cases
  - Payout or pay-to-litigate
  - End the Scheme, mediate cases with merit, defend remaining claims as business-as-usual
  - Seek to maintain the status quo

## Response and Policy Stance Post 10 March 2015

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- Post Office announces a presumption in favour of mediation. This brings an end the role of the Working Group which previously recommended whether a case is suitable to go to mediation or not
- Confirms cases involving a previous court ruling (e.g. a conviction) looked at on a case by case basis
- Accelerates process and admits bulk of cases to mediation
- May 2015: JFSA recommends Applicants withdraw from the Scheme, pending a Government enquiry

# Investigations

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- Role of Second Sight
- What the Post Office has done
- Feedback

## Role of Second Sight

- The basis of Second Sight's initial engagement in **2012** was reflected in a document for SPMs entitled 'Raising Concerns with Horizon', and included the requirement to "*Consider and advise on whether there were any systemic issues and/or concerns with the Horizon system including training and support processes, giving evidence and reasons for the conclusions reached.*" This scope of work expressly did not extend to investigating or commenting on any individual concerns raised.
- The purpose of Second Sight's engagement by Post Office changed fundamentally following the establishment of the Scheme in **2013**. Whereas Second Sight had previously been concerned with reporting to Post Office about the workings of Horizon as a system (and not individual concerns), its remit was now to focus on the individual complaints about Horizon in the Scheme. In doing so, they were to investigate, as forensic accountants, the specific issues raised by each Applicant concerning Horizon or associated issues, and report on these to Post Office and the Applicant for the purposes of mediation. Second Sight were engaged "*to act with the skill and care expected of qualified and experienced accountants; it is acknowledged that matters relating to criminal law and procedure are outside Second Sight's scope of expertise and accordingly shall not be required to give an opinion in relation to such matters*". Second Sight Engagement Letter, 1 July 2013
- **March 2015:** the Working Group is closed and Second Sight is given notice. Second Sight is re-engaged to enable them to complete their review of the remaining cases. Again Second Sight is to "*restrict its comments to those topics on which it has sufficient knowledge, experience and expertise... matters such as the standard Subpostmasters contract and prosecution issues are outside of Second Sight's expertise*". Second Sight Engagement Letter, 10 March 2015
- **July 2015:** SS submits its last CRR to PO and its engagement ends.

## What the Post Office has done

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- Consistent with its determination to establish the nature and degree of any such problems, and resolve those that emerged fairly, Post Office:
  - instigated an independent review of the Horizon System by Second Sight
  - subsequently established the Scheme in collaboration with JFSA and Second Sight
  - set up and funded a Working Group to oversee the Scheme, with an independent Chair – Sir Anthony Hooper – and JFSA and Second Sight as members
  - provided funding for Scheme Applicants to obtain professional advice in articulating their complaints against Post Office
  - established a 20 strong team dedicated to re-investigate every case in full
  - produced over 130 investigation reports on individual cases in the Scheme and
  - provided Second Sight with tens of thousands of pages of information to inform their investigation over the past 3 years.
- After 3 years of investigation and independent review, the facts are that Post Office has found no evidence, nor has any been advanced by either an Applicant or Second Sight, which suggests that Horizon does not accurately record and store branch transaction data or that it is not working as it should.

*"Our investigations have shown that the majority of branch losses were caused by errors made at the counter"*  
Second Sight, Part 2 Report 09/04/2015

## Feedback

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- All cases comprehensively re-investigated by Post Office and reviewed by Second Sight

*"The Post Office has done a very thorough job of investigation"* Kay Linnel, BIS Select Committee 03/02/2015

*"We wish to place on record our appreciation for the hard work and professionalism of Post Office's in-house team of investigators, working for Angela Van Den Bogerd, Post Office's Head of Partnerships. Our work would have been much harder and taken much longer without the high quality work carried out by this team. We have also received excellent support from the administrative team set up by Post Office to support the Working Group"* Second Sight, Part 2 Report 09/04/2015

## Mediation

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- CEDR
- JFSA Newsletter and CEDR
- Monetary Claims

## CEDR

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- The Centre for Effective Dispute Resolution (CEDR) was engaged to provide independent mediation services for the Scheme. The arrangements put in place by CEDR, and agreed by the Working Group, are in line with CEDR's own Code of Conduct and the European Code of Conduct for Mediators which the Civil Mediation Council requires all UK providers to observe in order to maintain accreditation
- The reason independent, well established and reputable mediation experts were appointed to conduct the mediations was specifically to ensure that mediations are undertaken in line with best practice

*"Mediation is a process generally conducted by parties in dispute with assistance of an independent skilled neutral, with the aim of reaching a negotiated binding resolution of a dispute, if terms of settlement can be found that are acceptable to the parties to the dispute. Acceptability will turn on what each party thinks are their interests, and in the context of a potential legal case will also turn on parties' perceptions of their rights, as well as their sense of the other process and outcome options available if no settlement can be reached. Entry to the process can be on an ad hoc individual basis, by court direction, by contract, or under the terms of an industry or group scheme as in this Scheme. Most mediations take place within a day, after summaries of the case have been submitted in advance to the independent mediator. CEDR's general caseload covers a wide range of civil and commercial disputes from commercial contractual claims through to administering the Court of Appeal mediation scheme*

*Mediation differs from arbitration or adjudication in that the mediator works with parties to help them find an acceptable agreement. The neutral does not make an award based on the arguments and evidence provided. Mediation can be more flexible than binding determination methods, both in how the process is run, and in terms of the remedies that may be available by agreement as against awards made under principles of law or evidence. (It is important here to note, that in situations of contested evidence such as exists in relation to the Scheme, adjudication or arbitration of individual cases may not be particularly consistent across cases nor satisfactory to at least one of the parties.)" John Munton, Director of Dispute Resolution Services, CEDR Report 31/07/2015*



## JFSA Newsletter & CEDR

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*"JFSA is recommending that all Applicants should now defer attending any mediation meetings until such time as a true and honest scheme is in operation, and no longer an exercise in highly paid lawyers dancing on the head of a pin". JFSA May 2015 Newsletter*

*"Of those few mediation meetings that we are aware of taking place, we are being told by Applicants that these meetings are worse than disastrous as Post Office does not understand what a mediation meeting is all about, and is treating it as an opportunity to blame individuals, pointing out it is all their fault (where have you heard that before?)". JFSA May 2015 Newsletter*

*"In terms of the mediations themselves it is clear from the reports that the Post Office has a willingness to explore the options, express empathy and have constructive dialogue with the subpostmasters. However, the Post Office have also made clear that their approach to mediation requires applicants to bring 'credible' specific claims or information of special personal circumstances justifying a negotiated resolution, rather than negotiations premised on alleged general problems of the Horizon system or of the Post Office contractual arrangement as such". CEDR Report 31/08/2015*

## Monetary Claims

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- c.£1.28m - Total losses across all branches in Scheme
- >£65m – Total compensation claimed by Applicants (where it is quantified)
- £13m – Single largest individual claim
- 20% - involve claims for compensation in excess of £1m (where it is quantified)
- 26 cases have, to date, been resolved either through mediation or other routes (e.g. mid scheme, prior to mediation etc.). Of these cases, 14 have involved ex gratia payments, totalling £131,000. The range of payments made is £461 to £50,000.

## Options Available to Applicants

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- Choices
- Legal Approaches
- Edwin Coe LLP
- Meetings with MPs
- Costs
- Media

## Choices for Applicants

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- Those with a conviction can seek leave to appeal or refer cases to the Criminal Cases Review Commission. 16 Scheme applicants and 4 non Scheme Applicants have applied to the CCRC and PO is co-operating fully
- In cases which have not been subject to a court ruling, Applicants have been invited to mediate with Post Office, independently facilitated by CEDR
- If they do not wish to do so, or remain unsatisfied having done so, litigation is available (funding and limitation period issues can be overcome)

## Legal Approaches

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- Shoosmiths
- Edwin Coe LLP
- Coomber Rich Solicitors

*"We are now beginning the process of considering whether there can be any appeals against conviction which would obviously be on a case by case basis". Coomber Rich Solicitors , 2013*

- Of 136 cases in the Scheme, 43 involve criminal prosecutions. At least 10 law firms have been engaged, representing between them approximately 45% of applicants. To date, none of the convictions have been appealed, and no civil litigation has been brought against PO.

## Edwin Coe LLP Press Release

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9 December 2014

### **Subpostmasters go to law**

Justice for Subpostmasters Alliance which is fighting for the rights of Subpostmasters who have been accused of false accounting and sometimes prosecuted for fraud have turned to David Greene of Edwin Coe LLP, the UK's leading class action firm, to pursue their rights against the Post Office. The move follows the announcement today that the MPs, who have been backing a mediation scheme to resolve the issues, have lost faith in the mediation scheme run by Post Office Ltd.

David Greene, senior partner of Edwin Coe LLP said:

*"The Alliance backed the mediation scheme in good faith but it has failed them. As stated by James Arbuthnot, leader of the group of over 140 MPs, it has ended up mired in legal wrangling, with the Post Office objecting to most of the cases even going into the mediation that the scheme was designed to provide. A mediation process requires two to tango but the Alliance feels that the Post Office is not joining the dance."*

*"Subpostmasters want to resolve their complaints. With great hesitation they conclude that if the mediation process is not going to work they will have to resort to the court. They have sought to avoid this but it now appears inevitable. Many of the Subpostmasters have lost everything. We are now exploring their options to bring this to a speedy conclusion and achieve the justice the Subpostmasters deserve."*

**END**

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## Meetings with MPs

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- Standing offer to meet any MP with a constituency case
- Several have taken place – including Daniel Kawczynsky, Matt Warman, Jonathan Djanogly, Andrew Griffiths (all Conservative); Albert Owen (Labour)
- And some have not – Andrew Bridgen, Ranil Jayawardena (both Conservative)

## Costs

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*"... and someone had to pay for it. I wasn't going to, the Government wouldn't have forked out money from somewhere else to do so, and the Post Office offered to do so despite the risk involved to their reputation. That does contrast (well, IMHO) with the cover ups we've seen elsewhere in the public sector". James Arbuthnot, 2013*

- To date, Post Office has spent c.£8.4m in relation to these complaints
- On acceptance into the Scheme proper, Applicants were given the opportunity to apply for a funding contribution of £1,500 +VAT and expenses, payable by Post Office, so that they could appoint a professional advisor to assist with setting out the detail of their complaint. Post Office further agreed to provide each Applicant up to £1,250 + VAT and expenses towards costs of a professional advisor in preparing for and attending mediations. To date, Post Office has spent c.£350k on providing funding for independent professional advice to applicants.



## Media

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- BBC The One Show
- Today Programme and BBC Local Radio
- Panorama
- Print and specialist press including Computer Weekly