

Adrian Bailey MP
Chair
Business, Innovation and Skills Select Committee

March 2015

POST OFFICE MEDIATION SCHEME

Thank you for your letter of 17 March 2015 regarding the Business, Innovation and Skills Committee's inquiry into the Post Office mediation scheme. I am grateful to the Committee for considering this matter and am pleased to provide a response to the points the Committee has raised, attached to this letter.

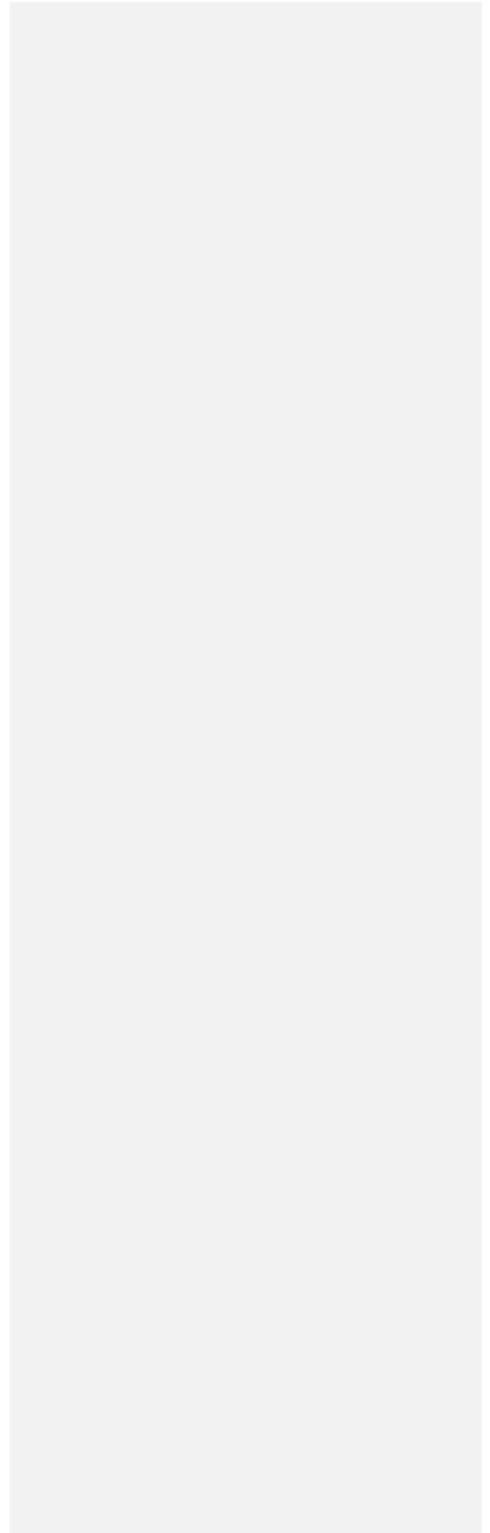
It is important to reiterate that the mediation scheme is independent of Government. Given that the cases in the scheme are disputes between independent businesspeople and Post Office, and are of course sensitive and confidential, it would not be appropriate for Government to intervene or seek to influence the outcome. It is important that independence is maintained.

Since these issues were first raised over two years ago, Post Office's Horizon system has been under considerable scrutiny and I note that it remains the case that there is no evidence of systemic problems with Horizon. That conclusion has stood firm through independent investigation by Second Sight. The vast majority of subpostmasters continue to use Horizon successfully every day in operating their branches across the country. There are fewer than 150 cases in the mediation scheme, while there have been around 500,000 users who have worked with Horizon since it was introduced, and the system processes over six million transactions every working day.

I agree that it is regrettable that, in a small number of cases, the relationship between Post Office and subpostmasters has deteriorated. That is why it is important that those current and former subpostmasters with cases remaining in the mediation scheme can progress swiftly to mediation. Post Office have committed to learning lessons from this matter, and I note that they have already taken on board several improvements, working closely with the National Federation of Subpostmasters, who are the representative body for

subpostmasters across the country. These changes will help ensure that the Post Office network is stronger for the future.

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1. Individuals with cases involving previous Court rulings

- 1.1. The Committee were concerned whether there was a contradiction between the letter from Paula Vennells to Jo Swinson MP dated 9 March 2015, and the evidence provided by Post Office to the Committee on 3 February 2015, regarding individuals who had previously been the subject of Court rulings.
- 1.2. As Post Office explained during their evidence to the Committee, individuals whose cases involved previous Court rulings were eligible to apply to the mediation scheme. This was set out in the original scheme documentation, which is available as an Annex to Post Office's recent report on the scheme.
- 1.3. Those individuals who have a case in the scheme involving a previous Court ruling have had their cases thoroughly re-investigated by Post Office. Post Office have a duty to disclose any new information which comes to light (including as part of that re-investigation) which could undermine the case for prosecution or aid the applicant in their defence. Post Office have confirmed that no such information has come to light in any of the 136 cases they have investigated.
- 1.4. As Post Office set out in their letter to Jo Swinson on 9 March, and their announcement the following day, any case remaining in the scheme which involves a previous Court ruling will be considered on a case-by-case basis. Mediation cannot overturn a Court ruling, and as such, it may not be appropriate to proceed. An exception might be if the applicant's claim for mediation does not relate to the Court ruling, in which case Post Office may mediate. It is important to note that any applicant who believes their conviction is unsafe may continue to pursue the legal avenues open to them, and will have the benefit of the re-investigation by Post Office and the independent report by Second Sight to inform them should they choose to challenge their conviction.

2. Post Office's approach to mediation

- 2.1. The Committee were concerned at suggestions that Post Office had not engaged constructively in the mediation process and had adopted an overly legalistic approach to mediation.
- 2.2. Mediation is a voluntary process and requires the consent of both parties to proceed. If one party feels there is no prospect of resolution through mediation, they may choose not to take part. Post Office have however agreed to take part in mediation in the majority of cases, and indeed have announced that they will mediate in all cases not involving a Court ruling (while considering the remainder on a case-by-case basis).
- 2.3. The mediation scheme is provided by the Centre for Effective Dispute Resolution (CEDR), and the arrangements are in line with CEDR's Code of Conduct as well as the European Code of Conduct for Mediators. CEDR were appointed to ensure that mediations under the scheme are conducted in line with best practice.
- 2.4. CEDR have provided feedback on the mediations which have taken place to date, in general terms given the need for confidentiality. This feedback is included in Post Office's detailed report on the scheme, published on their website last week. In particular, the feedback from CEDR notes that "there are some indications that legal representation provides better support" and recommends that "applicants should be strongly urged to seek legal advice and if at all possible legal representation at the mediations". It is also worth noting that from the outset of the scheme Post Office have agreed to provide each applicant with funding towards the cost of a professional advisor in preparing for and attending mediation.

3. Support available to subpostmasters to report discrepancies

- 3.1. The Committee questioned whether there were sufficient support mechanisms in place for subpostmasters experiencing accounting discrepancies. As Post Office explained in their evidence to the Committee, there are helplines available to subpostmasters and their staff in dealing with Horizon. The Network Business Support Centre (NBSC) has been in operation since 1999, and its operating hours have been extended (it is now open until 11pm Monday-Saturday, for example). There is also a technical helpline, the Horizon Service

Desk (HSD), for technical issues with the system, as well as an online help service.

- 3.2. It remains the case that there is no evidence of systemic problems with the Horizon system. If a subpostmaster finds the system is showing a loss, they have the choice of whether to accept the loss (on the basis that they are responsible for it) or to dispute the loss for further investigation.
- 3.3. Post Office has committed to continuous improvement of its training and support and it will look into issues raised as part of this scheme (where it has not already done so). For example, Post Office has established a Branch User Forum which meets around six times a year and enables subpostmasters and Crown Office employees to raise issues and insights about business processes. The Branch User Forum is already making an impact on how things are done in branches, instigating a number of changes to transactions, as well as sharing and generating ideas to inform Post Office's wider business support programme.

4. Second Sight's final report

- 4.1. The Committee recommended that the Department for Business, Innovation and Skills should receive a copy of Second Sight's final thematic report.
- 4.2. As set out above, the mediation scheme is independent of Government and details of the cases involved are confidential. Second Sight's further report, which is yet to be completed, is not intended for publication but will instead be made available to applicants and their advisors involved in mediation. As such it would not be appropriate for the Government to receive a copy of the report.

5. Exchange and storage of information

- 5.1. The Committee expressed concern that there had been a lack of information provided to Second Sight, and that reasons for withholding information should be made clear. The Committee were also concerned that Second Sight would be required to destroy documentation at the end of their investigation.

- 5.2. The Government agrees that best practice in this case would be timely sharing of information from all parties involved in the scheme. Post Office have provided a considerable amount of information to Second Sight throughout the duration of the scheme. Some information has proved more difficult than others, often due to the length of time that has elapsed in some of the cases under investigation. It is also apparent that on both sides there have been instances of miscommunication around the information that was required and could be provided, which will have delayed the progress of Second Sight's investigations.
- 5.3. Regarding information which has been withheld, Post Office have explained that they are not providing legally privileged material. It is standard practice that such information is not shared with anyone else, even the Courts. Post Office has made available to Second Sight all appropriate documentation from its prosecution files – this information is also available to each applicant in the scheme as part of the re-investigation by Post Office into their case.
- 5.4. The Government recognises the importance of information relating to the scheme being preserved. All parties involved in the mediation scheme are bound by confidentiality agreements and these include the requirement to store information appropriately, and dispose of it when it is no longer needed (such as at the termination of a contract) or return it to the information owner. Post Office have confirmed repeatedly that they will not destroy documentation relating to the scheme, including information provided to (and returned by) Second Sight. Given the confidential nature of this information, it would not be appropriate for Government to also retain a copy.

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6. Outcomes of mediation

- 6.1. The Committee recommended that the House should be updated on the outcomes of the mediation scheme.
- 6.2. The Centre for Effective Dispute Resolution (CEDR), in their feedback on the mediations which have taken place to date, provide an update on outcomes. Of the 12 mediations which had been undertaken at the time of writing – a very small sample, which was

noted by CEDR – the current settlement rate was approximately 45%. “Settlement” refers to mediations where the parties have agreed a resolution to all of their differences. Mediations may also be “progressed”, which means that the differences between the parties have been narrowed, and further negotiations may or may not be undertaken. CEDR observe that in an average year across all mediations the settlement rate tends to range between 65% and 75%, with a further 10% to 15% of cases resulting in some progression.

- 6.3. CEDR note that the current settlement rate is somewhat lower than the average settlement rate. They offer a number of additional observations, which include that in a number of cases the applicant has not fully understood the nature of mediation, and has instead attended with an expectation they were going into a compensation process. In some cases, the applicant has raised claims during the mediation which had not previously been disclosed, and that this can often lead to an unsuccessful mediation or a more difficult process. All applicants are provided with information about mediation from CEDR prior to starting their mediation, details of which are contained in Post Office’s detailed scheme report. However, CEDR and Post Office will consider whether additional information or guidance could be made available to applicants to help them better understand mediation and what they can expect.
- 6.4. CEDR has ~~also agreed with the parties involved~~ that it will provide information relating to the number of mediations conducted, and the number of claims settled, progressed and not settled, at key milestones throughout the process. The Government encourages Post Office to share this information as appropriate, recognising the interest in this matter from applicants and from Parliament.