

POST OFFICE RESPONSE TO WESTMINSTER HALL DEBATE

17 DECEMBER 2014

COMPLAINT AND MEDIATION SCHEME

January 2015

1, 2, 3 During the ~~Course of the WH debate~~ on 17th December a number of ~~statements and~~
4, 5, 6 ~~allegations/statement~~s were made by ~~the MPs who participated~~, many of which were
7, 8, 9 serious in nature, ~~were~~ incorrect or did not provide ~~the~~ full context. ~~Post Office does not~~
10 ~~know all the sources of information used by the MPs who spoke but the content and tone~~
11 ~~of the debate was such that This note sets out the~~ Post Office ~~considers it necessary to set~~
~~out the its response to the criticisms levelled at it.~~

BACKGROUND TO THE COMPLAINT AND MEDIATION SCHEME

The Complaint Review and Mediation Scheme (the Scheme) was established to help resolve the concerns of Subpostmasters regarding the Horizon system and other associated issues.

Post Office has been determined to ensure that Horizon and its associated processes are fair, effective and reliable, and that Subpostmasters can have confidence in the system. It is in its interests to do so, with 78,000 people using the system to process six million transactions for customers every working day.

In some instances, however, Subpostmasters alleged that Post Office and Horizon had not met these standards. To address these concerns, Post Office appointed independent forensic accountants, Second Sight, to investigate.

In June 2012, in collaboration with the Justice for Subpostmasters Alliance (JFSA) and a group of MPs led by the Rt Hon James Arbuthnot MP, Post Office established an Inquiry into Horizon. Second Sight was appointed to lead this Inquiry and published their Interim Report on 13 July 2013, having worked with a number of Subpostmasters for over 12 months. A copy of Second Sight's interim report is available at <http://www.postoffice.co.uk/post-office-statement-horizon>

Post Office's response to Second Sight's Report was to establish the Scheme so that any individual ~~SS~~ Subpostmasters who had concerns could raise them directly with Post Office. The Scheme was developed jointly by Post Office, Second Sight and the JFSA as the way of continuing the investigation that Second Sight had started into individual cases. ~~It also and~~ allowing ~~inged~~ any ~~spmr~~s Subpostmasters with a complaint to make an application to the Scheme with a view to ~~finally~~ bringing this matter to a close.

The Scheme was open to both serving and former Subpostmasters as well as counter clerks employed by Post Office, who believed they had suffered a loss or been treated unfairly as a result of the Horizon system or any associated issues.

The Scheme is supervised by a Working Group comprising of representatives from Post Office, Second Sight and the JFSA. The Working Group's role is to ensure the Scheme is run in a fair and efficient manner. It is also to be involved in making decisions on how particular cases should be managed through the Scheme. To ensure its impartiality, the Working Group has an independent Chair, Sir Anthony Hooper.

HOW CASES PROGRESS THROUGH THE SCHEME

The starting point for the Scheme was for Subpostmasters to submit details of their case to 19 | Second Sight as part of an initial application process. The Working Group make a recommendation as to whether the case should be investigated.

On acceptance into the Scheme Applicants were given the opportunity to apply for a funding contribution of £1,500 +VAT so that they could appoint a professional advisor to assist with setting out the detail of their complaint. Having done so, their detailed complaint was passed to the Post Office for investigation.

When the Post Office has completed its investigation, it is passed, together with all supporting documents, to Second Sight to review and complete a draft report which includes a preliminary recommendation to the Working Group on suitability for mediation. The applicant is provided with the Post Office and second Sight reports to comment on before SS complete a final report which is considered by the Working Group to decide whether it should be recommended for mediation.

Cases where mediation is recommended are passed to the Centre for Effective Dispute Resolution (CEDR), the independent organisation providing mediation. It is 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 and agreed by the Working Group when it was established.

SCHEME STATISTICS

19 During the debate, the Minister referred to a letter from [the Working Group Chair](#), Sir
20 Anthony Hooper, setting out the progress of cases within the Scheme so far. This letter has subsequently been placed in the Library of the House.

In Sir Anthony's letter he appended a table of statistics setting out how the Working Group was progressing its consideration of cases. This is set out below.

Case progress as at 12 December 2014.

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|--|-----|
| Applications to the Scheme | 150 |
| Applications rejected (ineligible) | 4 |
| Cases resolved prior to entry into the Scheme | 10 |
| Case resolved during investigation | 2 |
| Cases awaiting Working Group recommendation pending further information/review by either Post Office or Second Sight | 23 |
| Cases recommended for mediation by the Working Group | 24 |
| Cases passed to CEDR to arrange mediation | 20 |
| Cases not recommended for mediation by the Working Group | 2 |
| Cases mediated | 7 |
| Cases where Post Office declined to mediate | 2 |
| Cases resolved prior to the mediation meeting | 2 |
| Cases with CEDR awaiting mediation (of which 3 were scheduled to take place before Christmas) | 9 |
| Cases remaining in the Scheme | 110 |

QUESTIONS RAISED IN THE DEBATE

Post Office cannot and will not comment publicly on individual cases within the Scheme because applicants are assured of confidentiality under the terms of the Scheme and in any event Post Office cannot and would not make public statements which discloses personal information about individuals without their consent or attempt to subvert the Scheme through, in effect, public mediation or adjudication in the absence of full disclosure of the facts and proper process. It is hard to see how cases can be successfully resolved under such circumstances.

Post Office has remained completely committed to its responsibilities to the Scheme and all its applicants by adhering to confidentiality, including in the face of provocation when others have chosen not to do so and revealed selective information, presumably to exert pressure on the company.

21 | However, ~~Right Honourable and Honourable~~ Members made a number of comments and asked a number of questions during the debate that did not relate to specific cases. These are addressed below.

1. Post Office's Approach to the Scheme

1.1. During the debate, the scope of the Complaint and Mediation Scheme and Post Office's approach to it were called into question. The Scheme was described as a "sham" and Post Office has been accused of showing bad faith to Members of Parliament and the Scheme's applicants. Post Office rejects both entirely.

1.2. The Scheme's overall objective is to try to achieve the mutual and final resolution of individual Applicants' specific concerns about Horizon and related issues. The Scheme is wider than just the software involved. This encompasses, as recorded in Second Sight's interim report, the following:

"...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"

1.3. Post Office has gone to great lengths to establish the facts including:

- instigating an independent review of the Horizon System by Second Sight;
- subsequently establishing a complaint review and mediation scheme in collaboration with JFSA and Second Sight;
- setting up and funding a Working Group to oversee the Scheme, with an independent Chair – Sir Anthony Hooper – and JFSA as members;

- providing funding for scheme applicants to obtain professional advice in building their cases against Post Office; and
- re-investigating each and every case in full and subjecting this to external review by Second Sight.

22 1.4. To date, and after two and half years of investigation and independent [some text is missing here] we have found no evidence, nor has any been advanced by either an Applicant or Second Sight, of faults with the Horizon system. This offers welcome reassurance to everyone who works in the Post Office Network, all of our customers and our partners and the millions of people who support and depend on the Post Office.

1.5. Post Office has completed its investigation of nearly all cases within the Scheme. The remaining cases are being treated with the same rigorous approach. Each and every one is being considered on its facts. Post Office continues to act in good faith responding to the questioning of the integrity of the system which millions of people rely on every day. It has always been Post Office's position, which is why we initiated the independent review and the Scheme, that if there was a problem, we wanted to find it and be able to act on it. However, just as it would be wholly wrong to fail to respond to any evidence of flaws in Horizon, Post Office cannot be expected to ignore clear evidence that directly contradicts accusations made.

1.6. It has been suggested that the Scheme ought to encompass issues beyond those set out above, including the subpostmasters' contract. It is not, and never has been part of the scope of the Scheme and Post office cannot allow its scope to be extended
23 retrospectively in an attempt to find alternative issues simply because no evidence of flaws with the Horizon system have been found.

1.7. It was also suggested in debate that Second Sight had told an MP that "...in its view, a person would have to be an economic and legal illiterate to be willing to sign it[the contract]". Aside from the fact that Second Sight are engaged to provide impartial advice to the Working Group and have neither the mandate or expertise to make such a judgement, such a suggestion does a huge disservice to the thousands of hardworking diligent subpostmasters who are the lifeblood of the network and are synonymous with what makes the Post Office so vital to communities and who operate successfully within the terms of the contract.

1.8. The terms of the subpostmasters' contract are broadly similar to those used in
25 franchising arrangements by other organisations across the UK and reflect the basis on which Post Office and thousands of sub-postmasters have successfully conducted business for decades. The terms of the sub-postmaster contract are drawn up jointly by the Post Office and the National Federation of Sub-postmasters, which represents the

majority – 80% - of our independent agents. Sub-postmasters are independent business people, with a similar position to franchisees and therefore may obtain legal advice as they see fit on any aspect of running their business, including prior to entering into a contract with Post Office.

- 1.9. The Subpostmasters' contracts do not make them responsible for all losses at their branches. The terms of the contract are broadly similar to those used in franchising arrangements across the UK and reflect the basis on which Post Office and thousands of subpostmasters have successfully conducted business for decades. The contract provides for subpostmasters to retain any surpluses. Their responsibility for losses is limited to circumstances in which correct procedures have not been followed or that involve carelessness, negligence or criminal action by them or their staff.

2. Post Office is Operating in Secret

26, 27 | 2.1. During the debate there was criticism ~~was expressed~~ of Post Office's approach to the Working Group, operating in secret. There has also been criticism of Post Office's approach to mediation itself. Post Office believes that these criticisms are unfounded and based on a false premise.

2.2. From the outset the Scheme and the work of the Working Group was intended to be confidential. The Scheme documentation made clear to applicants that they and Post Office must endeavour to keep details of their case confidential and that all matters discussed in the actual mediation will be strictly confidential. This is because the cases involve sensitive and personal information and, to maintain subpostmasters' privacy, that cannot be discussed or made public. However, that confidentiality is balanced by the fact that that Scheme was designed to be overseen by Working Group with an independent Chair.

2.3. In addition, the confidentiality of cases mediated as part of this Scheme is common to all mediations, not just this Scheme. The Centre for Effective Dispute Resolution (CEDR) is providing the mediation for the Scheme. The arrangements 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 for appointing an independent and reputable firm of mediation experts was specifically to ensure that the mediations are undertaken in line with best practice. As part of the mediation process, offered by CEDR and accepted by the Working Group the parties – Post Office being one – are required to sign a mediation agreement which binds them to confidentiality for very good reason. The letter from CEDR setting this out was also tabled.

2.4. Therefore it is wrong to suggest that Post Office is in some way being secretive in respect of mediations. It is simply respecting the agreement signed on entering mediation as required by CEDR.

3. Post Office is Using the Working Group to Exclude Cases from Mediation

3.1. During the debate, Post Office was also accused of using the Working Group to exclude cases from mediation and that exclusion from mediation was to be an exception. Post Office rejects both claims.

3.2. For the reasons set out above, Post Office is limited in the details that it can share on the Working Group's discussions. However, the statistics on page [X] of this document demonstrate that suggestions that Post office is seeking to exclude 90% of cases from mediation are wildly inaccurate. In fact, of the 24 cases where the Working Group has recommended mediation so far, Post Office has declined to mediate just 2 (8%).

3.3. It was never envisaged nor stated that all cases would automatically pass to mediation. Mediation is the potential second part of the process – the first being re-investigation and independent external review of each and every case. Post Office considers every case on its merits. Mediation is a consensual process and designed to get agreement and compromise. It would be wrong, for example, for Post Office to mediate where no evidence has been found to suggest that Post Office has any responsibility for a loss in branch. That is not a matter for compromise.

3.4. Where a case is capable of agreement or compromise, Post Office will mediate and has already done so in a number of cases.. In doing, Post Office takes a positive approach to seeking a mutually agreeable resolution. Post Office completely rejects all accusations of "legal bullying" – the mediation meetings are facilitated by an experienced CEDR mediator.

3.5. It has also been suggested that Post Office is seeking to exclude all cases involving a criminal conviction, including where an individual has pleaded guilty whereas the reality is that Post Office is considering every case on its merits.

3.6. It was made very clear at the start of the scheme that mediation cannot overturn a conviction. Convictions can only be overturned through court process and indeed JFSA's; website advised "Did you have a court finding against you? – If yes, and although this Scheme will consider that to some degree (READ THE PACK), we, JFSA also recommend that you should enter a parallel scheme with a firm of criminal lawyers who will look into your case with a view to consider using the appeals court to overturn the findings against you."

3.7. To date no evidence has been identified by Post Office as part of its reinvestigation or advanced by Second Sight or applicants to suggest that the convictions of any applicants in the Scheme are unsafe. If that were to be the case, Post Office would be under a duty to disclose it. Post Office takes these responsibilities very seriously. Post Office and indeed has written to everyone who has suggested that they have or have seen evidence that a conviction is unsafe and asked them to disclose that evidence ~~to Post Office~~ so that it can be acted on. To date no-one has provided that evidence. ~~It is unfortunate to say the least that some are making public comments that there is evidence of unsafe convictions and miscarriages of justice whilst providing Post Office with no evidence to investigate.~~ It is unacceptable for critics of Post Office and/or the Scheme to make such allegations without providing Post Office with an opportunity to investigate the alleged evidence claimed to support those accusations.

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3.8. It should be noted that some media reports have suggested that all applicants in the Scheme have a criminal conviction. This is not the case and such suggestions do the majority of applicants a considerable disservice.

4. Training and Support for Subpostmasters

4.1. During the debate it was suggested that the training, help and support provided to subpostmasters was inadequate. Post Office does not agree.

4.2. Thousands of subpostmasters have been operating the Horizon System successfully for years having received training from Post Office. We provide comprehensive training which includes classroom and on-site sessions. Follow-up support and visits are also offered to those who may benefit from them.

4.3. In addition, our helpline is available to support subpostmasters in addressing any queries, alongside providing a service for technical enquiries. If these are not resolved quickly, further expertise is available, including visits to Post Offices as necessary.

4.4. It has been alleged that the helpline has advised individuals to adopt certain behaviours and practices that would go against company policy and even constitute potentially criminal activity, such as false accounting. There is no evidence to support these extremely serious allegations – that Post Office has told people to commit a criminal offence - and Post Office rejects them entirely.

4.5. There are no circumstances capable of justifying committing the criminal offence of rendering a false account. It is simply not true to suggest, as has been alleged, that any subpostmaster needed to do this to continue trading. Post Office requires a subpostmaster, at the end of each month, to physically count the cash in their branch

and record that figure in the branch accounts. So long as this is done the branch may continue to trade while any discrepancies are investigated. If a subpostmaster or employee deliberately puts false figures into Horizon this hides the true position from Post Office. Subpostmasters have control and choice when dealing with discrepancies, either losses or surpluses, including disputing them.

4.6. We always strive to improve our training and support and have undertaken further initiatives since the publication of Second Sight's report in 2013. Post Office created a new Branch User Forum as a way for subpostmasters and others to raise issues and insights around business processes, training and support, to feed directly into the organisation's thinking at the highest level. One of the tasks for this forum is to review support processes and training to ensure they meet the standards expected of the Post Office.

5. Post Office's approach to prosecution

5.1. During the debate Post Office's role as prosecutor was questioned. Post Office has no special powers of prosecution. It has the same rights as every citizen or organisation. Post Office is responsible for 11,500 branches, providing vital services, for people in communities everywhere, some of whom are vulnerable. We take these responsibilities very seriously.

5.2. All cases of potentially criminal conduct are thoroughly investigated and decisions about appropriate courses of action are taken on the facts. Decisions whether or not to prosecute are taken on a case by case basis. There are numerous checks and balances before and during the very small number of prosecutions amongst subpostmasters and employees. Post Office is confident its approach is fair, proportionate and compliant with legal requirements and it is of course tested in the Courts through cases themselves.

5.3. In deciding whether a case should proceed to criminal prosecution the Post Office must be satisfied that it meets both of the two stages of the test set out in The Code for Crown Prosecutors. The first is whether there is sufficient evidence to justify a prosecution and the second is whether the prosecution would be in the public interest. A criminal prosecution will only be pursued by the Post Office if both stages are satisfied.

5.4. Once a decision has been made to prosecute, the Post Office has a duty to disclose the evidence against the suspect. It has been alleged that Post Office has put pressure on defendants to plead guilty, sometimes to lesser offences. This is completely untrue.

Any decision by a defendant to plead guilty would be made after he/she has had the opportunity to take legal advice and consider the evidence against him/her.

6. Horizon and Remote Access

32b | **6.1.** During the debate it was suggested that subpostmasters' accounts can be amended remotely, in Horizon, without their or their staff's knowledge.

33, 34 | **6.2.** The Horizon System is operated successfully by thousands of subpostmasters. There are currently more than 78,000 users of the system and six million transactions are processed by subpostmasters and Post Office Staff every working day. Investigation and independent review of the System has continued for two and half years and no evidence has been found to suggest that Horizon is working anything other than correctly.

32a | **6.3.** During the debate it was suggested that subpostmasters' accounts can be amended in Horizon without their or their staff's knowledge.

35 | **6.4.** This is not possible. There is no functionality in Horizon for either a branch, Post Office or Fujitsu (suppliers of the Horizon system) to edit, manipulate or remove a transaction once it has been recorded in a branch's accounts. It is possible for Fujitsu to **view** branch data in order to provide support and conduct maintenance but this does not allow access to any functionality that could be used to edit branch data. There also is no evidence of malicious remote tampering. It is not possible to alter transactions conducted in branch which is why there is simply no evidence that it has ever happened.

6.5. Post Office can send transaction acknowledgements (**TA**) or transaction corrections (**TC**) to branches. TAs are used to record transactions that have been processed in branch through other systems (e.g. the sale of Lottery products on the Camelot terminal) and TCs to correct errors made by branches. Both TAs and TCs need to be accepted by a user logged into the branch Horizon terminal before they are recorded in the branch accounts. They are therefore fully visible to each branch.

6.6. It is possible for Fujitsu (but not Post Office) to inject a new transaction manually into a branch's accounts using the Balancing Transaction Process. This process is used in the event of an accounting error that cannot be corrected by use of a TA or TC. It is in accordance with good industry practice to have functionality of this nature in a system like Horizon. However, its use is very rare and is strictly controlled by Post Office. When the Balancing Transaction Process is used, it leaves clear and identifiable audit trail and is done so with full knowledge and consent of the Subpostmaster of the affected branch.

7. Treatment of Cases Outside the Scheme

- 7.1. During the debate the issue of late applications and the potential for new cases was raised.
- 7.2. The Scheme opened to applications on 27th August 2013 and closed on 18th November 2013 in line with the process designed and agreed with JFSA. The Scheme was advertised within the Post Office Network and on JFSA's website.
- 7.3. The Scheme is closed to new Applicants but subpostmasters and / or their Member of Parliament may raise any concerns direct with Post Office at any time and Post Office will look into the issues raised as part of its normal business. There have been a very small number of cases raised with Post Office since the Scheme closed. In each case, Post Office has offered to investigate the individual's concerns and this has been generally welcomed.

Track Changes

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