

POST OFFICE RESPONSE TO WESTMINSTER HALL DEBATE

17 DECEMBER 2014

COMPLAINT AND MEDIATION SCHEME

January 2015

PURPOSE AND STRUCTURE OF THIS PAPER

1. During the WH debate on 17th December a number of statements and allegations were made by MPs, many of which were serious in nature, incorrect or did not provide the full context. This note sets out the Post Office response.
2. This paper is structured into two parts. Part A provides some background to the Complaint and Mediation Scheme (the Scheme), details of its working arrangements and some statistics which reflect its current state of play. Part B provides Post Office's response to the various statements and allegations made during the course of the debate.
3. In reading Part B, it should be noted that 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 could be successfully resolved under such circumstances.
4. Post Office has remained completely committed to its responsibilities to the Scheme and the Applicants in by adhering, rigorously, to the obligations of confidentiality agreed to by all. These are continuing obligations and it will not depart from them now.

PART A: BACKGROUND TO THE COMPLAINT REVIEW AND MEDIATION SCHEME

What were the circumstances giving rise to the Scheme's establishment ?

5. 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.

6. Post Office has been determined to ensure that Horizon, together with its associated processes, operates effectively, reliably and fairly so that Subpostmasters can have confidence in the system. It is in its own interests to do so, with 78,000 people using the system to process six million transactions for customers every working day.

7. However, a number of Subpostmasters have alleged that Horizon has failed to operate in this way, and/or supporting processes were flawed, causing them detriment.

8. To address these concerns, in June 2012, and in collaboration with the Justice for Subpostmasters Alliance (JFSA) and a group of MPs led by the Rt Hon James Arbuthnot MP, Post Office appointed independent forensic accountants, Second Sight, to investigate. Following a year's work with a number of Subpostmasters, Second Sight published an Interim Report on 13 July 2013, a copy of which may be found at:
<http://www.postoffice.co.uk/post-office-statement-horizon>

9. Post Office's response to Second Sight's report was to establish the Scheme in order to provide an avenue for any Subpostmasters with concerns to raise them directly with Post Office. The Scheme, developed jointly by Post Office, Second Sight and the JFSA as the way of continuing investigations that Second Sight had already begun into individual cases, provided any other Subpostmasters with a relevant complaint to make an application to the Scheme with a view to resolution. The Scheme was open to both serving and former Subpostmasters as well as to counter clerks employed by Post Office.

10. 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 and to make decisions on how particular cases should be managed. To ensure its impartiality, the Working Group has an independent Chair, Sir Anthony Hooper.

How the Scheme works

11. In an initial application process, Subpostmasters 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.

12. On acceptance into the Scheme proper, Applicants were given the opportunity to apply for a funding contribution of £1,500 +VAT, payable by Post Office, so that they could appoint a professional advisor to assist with setting out the detail of their complaint. Having done so, that complaint was passed to the Post Office for comprehensive investigation. It is important to bear in mind that, except in a small number of cases where an applicant had not previously raised the issue with Post Office, this further detailed examination of all the available facts follows the investigation which took place at the time of the original incident.

13. When Post Office has completed this fresh investigation, its results, together with all supporting documents, are passed to Second Sight. It is then for Second Sight to complete their own analysis and review of all the material before completing a draft report which includes a preliminary recommendation to the Working Group on that individual case's suitability for mediation.

14. The applicant is provided with the Post Office and Second Sight reports to comment on before Second Sight complete a final report which is considered by the Working Group to decide whether it should be recommended for mediation.

15. In cases where mediation is recommended , the case details are then 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.

Scheme Statistics

16. During the debate, the Minister referred to a letter from the Working Group Chair, Sir Anthony Hooper, setting out the progress of cases within the Scheme to date. This letter has subsequently been placed in the Library of the House and contains the following statistics in relation to the progress of cases as at 12 December 2014:

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

PART B: QUESTIONS RAISED DURING THE DEBATE

17. As noted in paragraphs 3 and 4 above, Post Office will not breach the obligations of confidentiality it has to Applicants in the Scheme. It is not, therefore, possible for this document to address the specific cases raised by certain Members during the debate.

18. However, a number of statements, allegations and questions of a more general nature were also raised and these are addressed below.

Post Office's Approach to the Scheme

19. During the debate, the scope of the Complaint Review and Mediation Scheme and Post Office's approach to it were called into question. The Scheme was described as a "sham" and Post Office was been accused of bad faith in its dealings with Members of Parliament and Applicants to the Scheme. Post Office rejects this entirely.

20. 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"

21. In a manner consistent with its determination to establish the nature and degree of any such problems, and resolve those that emerge fairly, Post Office has:

- instigated an independent review of the Horizon System by Second Sight;
- subsequently established a complaint review and mediation scheme in collaboration with Member of Parliament, JFSA and Second Sight;
- set up and funded a Working Group to oversee the Scheme, with an independent Chair – Sir Anthony Hooper – and JFSA as members;
- provided funding for Scheme Applicants to obtain professional advice in building their complaints against Post Office; and
- exhaustively re-investigated each and every case in full and subjecting this to external review by Second Sight.

22. To date, and after two and half 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, of system-wide faults with the Horizon system causing the issues alleged. 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. Post Office has now completed its investigation of [nearly] all cases within the Scheme.

23. Post Office continues to act in good faith in responding to the sustained questioning of the reliability of the system upon which millions of people rely every day, including through the independent review it itself initiated. Put simply, if there were a problem, Post Office would want to identify it and correct it as fairly and effectively as it possibly could.

24. However, just as it would be wholly wrong for it to fail to respond to any evidence of flaws in Horizon, Post Office cannot be expected to ignore the clear evidence that shows the opposite.

Secrecy and the Scheme

25. During the debate, the suggestion was made that Post Office's approach to the Working Group, and to the mediations itself, is secretive in nature. These criticisms are unfounded.

26. 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 personal information which cannot be made public. This is in the interests of Applicants themselves. That requirement for confidentiality is, however, balanced by the fact that that Scheme and its Working Group was designed to be, and is, overseen by an independent Chair.

27. In addition, the confidentiality of cases mediated as part of this Scheme is common to all mediations, not just those in this specific Scheme. 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.

28. 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, all the parties – Post Office being only one – are required to sign a mediation agreement which binds them to confidentiality for very good reason. A letter from CEDR setting this out was also placed before the House by the Minister and is attached to this report.

29. Accordingly, it is simply wrong to suggest that Post Office is in some way being secretive in respect of mediations. Instead, it is simply respecting the obligations it has in handling individuals' sensitive personal data generally, and the agreement signed on entering mediation as required by CEDR in particular.

Exclusion of Cases from Mediation

30. During the debate, Post Office was also accused of using the Scheme and the Working Group to exclude some 90% of cases from mediation in circumstances where this had been understood would be the exception. Post Office also rejects these claims.

31. For the reasons already made clear, 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 wholly inaccurate. In fact, of the 24 cases in which the Working Group has recommended mediation to date, Post Office has declined to mediate just 2, representing a percentage figure of just 8%.

32. Despite the arguments that have been advanced by some, it was never envisaged that all cases would automatically proceed to mediation between Post Office and Applicants. Mediation is one of the possibilities that may occur at a later stage of the process. However, this would follow the re-investigation and independent external review of each and every case, discussions in the Working Group and its recommendation, or otherwise, that a case might be suitable for mediation.

33. Post Office considers every case on its merits and mediation is, by its very nature, a consensual process designed to reach resolution through compromise. In circumstances where no evidence has emerged through the process to suggest that Post Office has any responsibility for a loss in branch, the need for compromise and therefore for mediation does not arise. However, where a case does reveal a genuine element of doubt, and is therefore potentially capable of being resolved through compromise, Post Office will mediate and has already done so in a number of cases.

34. In doing, Post Office takes a positive approach to seeking a mutually agreeable resolution. What it cannot do is to ignore the facts and evidence to emerge from the various investigations in order to satisfy a pre-determined and understandably subjective view of what 'ought' to have been revealed by them.

35. Lastly, Post Office completely rejects all accusations that it seeks to 'bully' Applicants at mediation: every mediation is conducted by an experienced and entirely independent mediator appointed by CEDR.

Exclusion of Cases involving Criminal Convictions

36. The accusation has also been made that Post Office is seeking to exclude all cases involving criminal convictions. In fact, the reality is that Post Office is considering every case on its merits. All and any information which Post Office has as a result of these fresh investigations is shared with Applicants. Moreover, it is under a positive duty immediately to disclose any information that would assist a convicted Subpostmaster or undermine a previous prosecution.

37. However, and as was made absolutely clear at outset of the Scheme, mediation is not a process capable of overturning a conviction. Convictions can only be overturned through established Court processes, as recognised by JFSA who advised their members involved in the Scheme that:

"Did you have a court finding against you? – If yes, and although this Scheme will consider that to some degree (READ THE PACK) [sic], 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. "

38. To date no evidence has been identified by Post Office as part of its reinvestigation of each and every case, nor advanced by Second Sight or an individual Applicant, to suggest that the conviction of any Applicant to the Scheme is unsafe.

39. As noted above, had any such evidence come to light, Post Office would be under a duty to disclose it immediately. Post Office takes these responsibilities very seriously. Post Office 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 so that it can be acted on. To date no-one has provided that evidence. It is irresponsible for critics of Post Office or of the Scheme to make statements of this nature without providing Post Office with any evidence to support those serious allegations.

40. Post Office wishes to correct media reports suggesting that all Applicants to the Scheme have a criminal conviction: this is not the case and these gross inaccuracies in reporting do the majority of Applicants a considerable disservice.

Extension of the Scheme beyond Horizon

41. Suggestions have been made that the Scheme ought now to encompass issues beyond those for which it was established. Post Office cannot allow its scope to be extended retrospectively in an attempt to find alternative issues simply because no evidence of flaws with the Horizon system has been found.

42. In this regard, a degree of focus was placed on the contractual arrangements between Post Office and its network of [DN: NEED A NUMBER] Subpostmasters, with one Member suggesting during the course of the debate that Second Sight had told him that:

“...in [his] view, a person would have to be an economic and legal illiterate to be willing to sign [the contract]”.

43. Leaving aside the fact that Second Sight are engaged to provide impartial advice to the Working Group and have neither the mandate nor expertise to make such an assessment, such a suggestion does a huge disservice to the thousands of hardworking and diligent people working as Subpostmasters. To paint these people, who operate perfectly successfully within the terms of the contract offering vital services within the Communities they serve, as being economically or legally ‘illiterate’ is of highly questionable judgment.

44. The terms of the Subpostmasters’ contract are broadly similar to those used in franchising arrangements by other organisations across the UK and reflect well established legal principles. This is the basis on which Post Office and thousands of Subpostmasters have successfully conducted business for decades. The terms of the Subpostmaster contract are drawn up jointly by the Post Office and the National Federation of Subpostmasters, which represents the majority – 80% - of our independent agents. Subpostmasters are independent business people, with a similar position to franchisees, and may therefore obtain legal advice as they see fit on any aspect of running their business, including self-evidently in respect of the decision to enter into a contractual relationship with Post Office itself.

Remote and Malicious Access to Branch Accounts

45. During the debate it was suggested that Subpostmasters' accounts can be amended remotely, in Horizon, without their or their staff's knowledge. 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 recorded transaction data.

46. 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.

47. There also is no evidence of malicious remote tampering and the suggestion made during the Debate that a secretive team at a Post Office location is engaged in this sort of activity is, naturally, flatly denied.

Post Office's Approach to Prosecutions

48. When confronted by criminal conduct within its network, Post Office can exercise the statutory right to bring a private prosecution open to all persons in England and Wales under the Prosecution of Offences Act 1985, or by supplying evidence to the national prosecutors in Scotland and Northern Ireland (where a private prosecution cannot be brought). This is the same as for any other individual or organisation. We take these responsibilities very seriously.

49. All cases of potentially criminal conduct are thoroughly investigated and decisions about appropriate courses of action are taken on the basis of the available facts and evidence. The serious decision to prosecute a Subpostmaster or employee, in the very small number of instances where this in fact occurs, is always taken following numerous checks and balances and Post Office is confident that its approach is fair, proportionate and fully compliant with legal requirements. When Post Office decides to prosecute a case, its conduct of the prosecution is scrutinised by defence lawyers and ultimately by the Courts themselves.

50. In deciding whether a case is suitable for prosecution, Post Office considers (among other factors) whether it meets the tests set out in the Code for Crown Prosecutors. That Code is issued by the Director of Public Prosecutions and followed by Crown Prosecutors. Post Office does not have to inform the CPS that a private prosecution has commenced, but the CPS can take over a private prosecution if circumstances warrant. Like the CPS, Post Office keeps cases under continuous review all the way up to and during any trial, and can effectively stop a prosecution by “offering no evidence” where appropriate.

51. Once a decision has been made to prosecute, the Post Office has a duty to disclose the evidence against the suspect. Post Office completely refutes the allegation that it has put pressure on Defendants to plead guilty, sometimes to lesser offences. This is completely untrue. Any decision by a defendant to plead guilty is made after he has had the opportunity to take legal advice and consider all the evidence against him.

Statute of Limitation

52. Limitation periods for bringing legal actions are a long and firmly established part of the law. The periods, currently established by the Limitation Act 1980, balance the interests of the claimant (who may need time to bring a claim) and the defendant (who must be protected from stale claims, e.g. because relevant materials are no longer available).

53. The limitation defence is available to all defendants, no matter how strong the claim they are asked to answer. Post Office, uniquely among defendants, should not be prevented from exercising this legal right.

54. The Scheme does not affect postmasters’ legal rights, including the right to start Court proceedings if they believe their case has merit. Many of the complaints in the Scheme are very old, with the typical 6 year limitation period expiring well before the Scheme was established. Many postmasters received advice on their complaints before the limitation period expired, and Post Office has paid for postmasters in the Scheme to receive support from professional advisors who can help with any limitation issues. [DN: Is this last sentence problematic ?]

Training and Support for Subpostmasters

55. Post Office disagrees with the contention made during the debate that the training, help and support provided to Applicants was inadequate. Thousands of Subpostmasters, in receipt of the same training and support as Applicants to the Scheme, have been operating the Horizon system successfully for years. Post Office provides comprehensive training, both in the classroom and onsite, and follow-up support and visits are also offered to those who may benefit from them or who request them. 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.

56. Like any other responsible organisation, Post Office always strives to improve its training and support and has 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, and by, Post Office.

57. In addition, making better use of technology will enable Post Office to enhance the effectiveness of the support it offers in a value for money way. The training of new Subpostmasters is an area that Post Office has recently reviewed and identified that by using modern technology a proportion of the existing classroom training could be delivered on-line.

58. As a result new Subpostmasters and their staff will be able to access on-line training at a time and from a location that is convenient for them. The duration of the on-site training remains unchanged. An added benefit is that this on-line training will be accessible to the whole network not just new Subpostmasters. Technology has also been used to reduce 'paperwork' and administration time within the support team. The overall impact of these changes means that less people are needed to deliver an enhanced level of support to the network.

Options for Subpostmasters in the event of an accounting discrepancy

59. Post Office rejects entirely the suggestion that Subpostmasters have ever been instructed to adopt behaviours and practices that would go against company policy and could even potentially constitute criminal activity. Post Office wishes to make it clear that there are no circumstances capable of justifying the criminal offence of rendering a false account.

60. If Subpostmasters face accounting losses, they have a clear choice to accept these on the basis that they are responsible for them or, instead, dispute them for further investigation. This does not affect their ability to continue trading and thousands are operating successfully on this basis. It is categorically untrue to suggest, as it was during the debate, that any Subpostmaster must commit a crime in order to continue trading.

Treatment of Cases Outside the Scheme

61. During the debate the issue of late applications and the potential for new cases was raised. 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.

62. While the Scheme is closed to new Applicants, Subpostmasters and/or their Members of Parliament may, of course, raise any concerns direct with Post Office at any time which will investigate 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.