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Initial Complaint Review and Mediation Scheme

Briefing to Post Office Attendees

This document has been put together for Post Office representatives who will attend mediations held under the Initial Complaint Review and Mediation Scheme (the "Scheme") to provide them with an overview of the Scheme and their role within it. Further information will be provided to attendees during a presentation (date to be confirmed)

What is the Initial Complaint Review and Mediation Scheme?

The Scheme has been established to help resolve the concerns of subpostmasters regarding Horizon and other associated issues.

The Scheme has been developed by Post Office, Second Sight (independent accountants) and the Justice for Subpostmasters Alliance (**JFSA**) to provide subpostmasters with an opportunity to raise their concerns about Horizon directly with Post Office.

The Scheme involves 2 stages: an investigation into each subpostmaster's complaint and then a subsequent mediation between the parties to try to resolve that complaint (see further below).

The Scheme applies to both current and former subpostmasters and was open to any subpostmaster who believed they had suffered a loss and/or had been treated unfairly as a result of Horizon or any associated issues. Some of the applicants to the Scheme have been criminally prosecuted by Post Office and/or subject to civil claims. The Scheme is now closed to new applications and the 147 applications which have been accepted are now proceeding through the Scheme.

The Scheme is supervised by the Working Group comprising of representatives from Post Office, Second Sight, the JFSA and chaired by Sir Anthony Hooper (a former Lord Justice of Appeal). Its role is ensure that the Scheme is run in a fair and efficient manner. The Working Group is involved in making decisions about how particular cases should be managed through the Scheme and deciding whether a case should be referred to mediation. However, the Working Group will have no involvement in the actual mediation of a case – that is strictly between Post Office and the applicant.

What is the structure of the Scheme?

In order to be accepted onto the Scheme, applicants submitted details of their case to Second Sight, after which Second Sight, in collaboration with the Working Group, recommended whether the case should be investigated.

Once an application was accepted onto the Scheme, the applicant was asked to produce a Case Questionnaire Response (**CQR**) setting out their claim and the losses suffered in further detail. Post Office, based on the information contained in the CQR, investigates the applicant's complaint and produces its own report.

Second Sight will consider and investigate the applicant's claim, reviewing the CQR and Post Office's report and requesting further information as necessary. Once its investigation is complete, Second Sight produces a Case Review summarising its findings and making a recommendation as to whether the case is suitable for mediation.

The Working Group decides whether the case should be mediated, with Post Office having a right of refusal if it does not want to mediate.

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What is mediation?

In essence, mediation is a face-to-face discussion between two parties which gives each side the opportunity to explain their position. The discussion is chaired by a neutral and independent mediator. Unlike a judge or arbitrator, the mediator will not decide the case on its merits or impose a solution. The mediator is completely impartial and will work to facilitate settlement of the dispute between the parties. A settlement is only binding on the parties where they both agree to that solution and that agreement is captured in writing and signed by both parties.

Mediation is a confidential process expressed to be on a "without prejudice" basis which means that the parties cannot rely on anything that is said during the mediation process in any future court proceedings or discuss it publicly. This allows the parties to exchange views and positions without any fear of come back.

The Centre of Effective Dispute Resolution (**CEDR**) has been selected to organise and arrange the mediations. CEDR will convene a panel of mediators and the parties will choose which mediator to use from that panel.

It has been agreed that mediations held under the Scheme will last for either ½ day or 1 day.

What happens during a mediation?

During the mediation, the mediator meets privately with each party to discuss the issues confidentially. This allows each party to be frank with the mediator and have a realistic look at their case in private, without fear that any weaknesses discussed will be communicated to the other party.

A mediation will usually consist of the following (though this may vary):

- The mediator welcomes the parties and provides an opening statement outlining the process for the day, the mediator's role and the ground rules of the mediation.
- The parties may be asked to provide brief opening statements setting out their view of the dispute and highlight any issues of particular concern.
- After opening statements the parties usually retreat into their own private rooms. The mediator will then move between the rooms to have confidential discussions with each of the parties. The mediator will not share what the other party has communicated unless that party agrees it can be shared.
- The mediator may suggest that the parties reconvene to have a joint discussion or that particular representatives from each party meet to discuss particular issues.
- At some point, one party will deem it appropriate to make a settlement offer. Typically, this is then followed by a sequence of offers and counter-offers.
- In the event that a settlement is reached the mediator will assist the parties in agreeing the terms of a settlement.
- If the parties cannot agree a settlement by the end of the session, the mediation will close.

Your Role

You have been asked to attend mediations on behalf of Post Office, along with a case solicitor from Bond Dickinson. As described above, the aim of the mediation is to try and reach a settlement, although this will not be possible in all cases.

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Prior to attending the mediation the case solicitor will discuss the case with you and the potential value of any settlement as assessed against Post Office's Settlement Policy (discussed further below). You will be provided with the applicant's CQR, Post Office's report and Second Sight's report to read.

In limited circumstances it may be appropriate for you to contact the applicant directly before the mediation, but direction and advice will be provided beforehand. In a number of cases, there are expected to be opportunities to settle cases without the need for a full mediation, again if your input is required direction and advice will be provided.

On the day itself you may need to assist in defending Post Office's position by, for example, engaging in discussions with the mediator and the applicant about matters such as Post Office processes and procedures. A Bond Dickinson case solicitor will address all legal matters and is on hand to provide any assistance you may need.

It will be your role to negotiate with the applicant and to make appropriate settlement offers. If a settlement is reached you will be asked to sign the settlement agreement on behalf of Post Office, this may include agreeing a statement with the applicant which can be publicised. Other remedies may also be agreed such as issuing an apology.

In some cases, it may be that Post Office is not prepared to make any concessions because it does not believe it is at fault. In that circumstance, it will be your role to try to explain the position to the applicant with a view to bringing the matter to closure without a settlement.

Following the mediation, you may be asked to report back on:

- The outcome of the mediation.
- Any difficulties encountered at mediation.
- Any new issues raised at mediation.

Post Office Settlement Policy

Post Office has prepared a confidential and legally privileged Settlement Policy. Under no circumstances should the Settlement Policy or the fact that POL has a settlement policy be disclosed to the applicant or the mediator.

The amounts claimed by Applicants vary considerably, from only seeking recovery of any shortfalls repaid to Post Office, to claiming for loss of property and retail business. Post Office has taken the view that it will not pay out for certain types of losses (as detailed in the Settlement Policy) such as loss of retail business, but it will pay out for others i.e. pain and suffering.

Each case will be assessed against the Settlement Policy to determine what offers in settlement Post Office should be making during the mediation. The assessment is made by Bond Dickinson and others at Post Office before the mediation. This assessment will form a pre-approved Settlement Mandate that will set the upper limits for any settlement.

Any settlement reached at mediation should be done so in line with the Settlement Policy and Settlement Mandate unless Post Office has given instructions to deviate from this. This case solicitor will be fully briefed on the Settlement Policy and can advise you accordingly.

At the mediation the aim is to seek to settle the case for an amount up to the maximum amount in the Settlement Mandate. However, settlement may not be achieved in all cases.