

OFFICIAL SENSITIVE: COMMERCIAL

**To:** Jo Swinson

**From:** Laura Thompson GRO

**Date:** 25 February 2015

**Subject:** Post Office Ltd (POL) mediation scheme: update

**Purpose:** To update you on the current state of the Post Office's mediation scheme dealing with complaints about the Horizon system, and seek your agreement to POL's proposed approach in light of likely next steps. <sup>T1</sup> <sup>R2</sup>

**Recommendation:** That you:

- a) Note the current state of the scheme and the cases within it;
- b) Note the possible events of the next month or so; and
- c) Agree to POL's proposed approach, recognising that they will need to adapt it to react to specific circumstances. (and they are still working through specifics)

**Timing:** Uncertain, but POL need to be ready to react to expected events in the coming week or so, so your response this week would be helpful.

**Current state of scheme**

1. As you are aware, the mediation scheme was set up to look into the complaints made by current and former subpostmasters about possible issues in the Horizon system causing accounting discrepancies. It remains the case that there is no evidence of systemic issues with the Horizon system that could cause these discrepancies. Rather, in most cases that have been investigated, the discrepancies appear to have been caused by human error.
2. In total there were 146 applications to the mediation scheme during the three month window for applications. The latest figures available from the independent Chair of the scheme's working group are attached at X, correct as of [DATE]. There are X cases outstanding i.e. awaiting mediation. Post Office have completed their investigations for all cases remaining in the scheme. The remaining cases will be awaiting:
  - a) The completion of the Second Sight report into the case (on the basis of the POL investigation);
  - b) A decision by the working group on whether to mediate the case; and/or
  - c) The mediation itself (led by CEDR)
3. The BIS Select Committee heard evidence on the scheme on 3 February from POL, Second Sight, JFSA, NFSP and CWU. The Committee may publish a report, although they will need to do so before Parliament is dissolved. Following the evidence session, POL have submitted supplementary evidence addressing some of the accusations made during the hearings.
- 2 | 4. While the scheme continues to operate, JFSA and MPs are increasingly critical of POL's approach, despite this not having changed since the scheme began. MPs supporting JFSA, including James Arbuthnot, have withdrawn their support for the

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- T1** CHECK: are we seeking her agreement?  
*Thompson Laura (ShEx), 19/02/2015 03:07 PM*
- R2** Probably not at this stage. Think this is more of a sighting submission, and if she objects she would no doubt say. And its not her scheme.  
*Callard Richard (ShEx), 19/02/2015 03:07 PM*



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- 3 | scheme. Mike Wood MP has declined to meet with POL to discuss the scheme or  
specific cases of his constituents,<sup>[R3]</sup> saying instead that legal action seemed the most  
likely outcome.
- 4 | 5. On this basis, POL consider (and ShEx agree) that a revised approach is required to  
ensure the remaining cases in the scheme can be heard and the scheme closed in a  
more efficient and accelerated manner [or something like that]. In particular, POL  
question the independence of Second Sight, who are growing increasingly critical of  
POL both in their evidence and on social media.<sup>[R4]</sup> Furthermore, attempts by Second  
Sight and JFSA to continually broaden the scope of the scheme are causing delay to  
the resolution of the cases remaining in the scheme.

**POL's proposed approach**

6. POL propose to:
- 5 | a) Mediate all non-criminal cases remaining in the scheme (except in exceptional  
circumstances e.g. where Second Sight do not recommend mediation or where  
mediation did not relate to the conviction itself)<sup>[R5]</sup>
- b) Release Second Sight from their engagement with POL, but provide funding for any  
applicants who wish to have Second Sight produce a report on their case before  
mediation. POL will continue to engage with Second Sight on individual cases as  
appropriate
- c) Publish an "end of term" report on the scheme (including facts and figures)
7. For cases which involve a criminal conviction, POL intend to make clear that they do  
not intend to mediate except in exceptional cases.
8. POL believe this approach will enable them to meet their commitment to applicants  
made at the outset. Even through this accelerated process, POL will still need to  
commit significant resources to the scheme if they are to meet the commitment made  
to the Committee that cases would be mediated by the end of this year.
9. The advantages of this approach are that it renders the role of the working group  
redundant (which is helpful as JFSA increasingly refuse to take part), and it reduces  
the scope for Second Sight or JFSA to continue to broaden the scope of the scheme.  
However, it will need careful handling with both participants and the media to avoid  
the implication that POL are seeking to "hide the truth" or "gag" Second Sight.
- 6 | 10. Subject to working through some of the detail, ShEx's recommendation is that this is  
the best approach in terms of allowing the remaining cases to be progressed while  
reducing the significant management time and resources dedicated to the scheme, as  
well as the risk of reputational damage to the Post Office. We have considered the  
commitments you made to Parliament on the scheme and assess that this approach  
is in line with what you have promised – the Working Group which established the  
7 | scheme has had an independent Chair and the full involvement of Second Sight for  
18 months and JFSA, and Second Sight will continue to be involved in all remaining  
cases in the scheme going to mediation.
- 8 | We therefore recommend supporting POL's proposed approach but it might get  
9 | choppy. But its going to get choppy anyway as noted below. (Insert Annex of what  
she said in Parliament so she can judge, or perhaps summarise undertakings she

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- R3** Think the broad theme here as is in the board paper, its “look, its not achieving what was hoped and so why should we continue. It hasn’t found the smoking gun that applicants and the MPs had hoped, and ultimately reinforced the point that there was nothing wrong with horizon – 11500 other spms cant be wrong. So time for a change of tack.  
*Callard Richard (ShEx), 19/02/2015 03:07 PM*
- R4** Would be good to quote some tweets!  
*Callard Richard (ShEx), 19/02/2015 03:07 PM*
- R5** e.g. in one case they are mediating with the SPM as it was his son that got convicted.  
*Callard Richard (ShEx), 19/02/2015 03:07 PM*



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9, 10 | gave??] Do you agree? Should we perhaps ask her to agree that her undertakings have indeed been met, which then frees us of having to worry about them – just a thought.

**Next steps**

11. There are two potential events in the near term, which POL will need to manage but which will also be opportunities to implement the revised approach to the scheme.
12. The first will be Second Sight's draft final report<sup>[R6]</sup>, which they expect to share with the Working Group by the end of this month (February). This report will be confidential to members of the Working Group; however, based on precedent it is extremely likely that this report will be leaked. Second Sight have said (including in their evidence to the Committee) that the report will cover around 17 "thematic issues" arising from their investigations. We can expect the report to be critical of POL, and in all likelihood will discuss issues outside the remit of the scheme and Second Sight's contract.
13. The second would be the publication of the BIS Select Committee's report into the mediation scheme. We do not know for certain if the Committee will publish a report – they may choose to focus their time and effort on their other live investigations. If they do publish a report, it will likely be next month, and we consider there is a reasonable chance the Committee will call for Government to intervene in or take over the mediation scheme, which we would seek to rebut.
14. Whether leaked or not, the Second Sight final report will give POL a hook to determine that it is time to amend the terms of Second Sight's engagement and limit their involvement to reviewing the specific individual cases remaining in the scheme. POL are considering optimal timing (including a pre-emptive strike?).
15. If BISCOM choose to publish a report, we will need to consider how to respond. We will provide separate advice on that as appropriate, but we recommend that we hold the line that the scheme is independent of Government and should remain so, and that the main objective is to give applicants a chance to have their cases mediated. We should hold firm against pressure for Government to intervene in the scheme.

**Annexes:**

A. **Status of mediation scheme cases**

**Copied to:** TBC

**Advice received from:**

Finance	SpAds	Press	Legal	Analysts
No	No	No	No	No

**Have devolution issues / impacts been considered?**

Devolution Issues	Equality Analysis	'Impact on Families'
N/A	N/A	N/A

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**R6** Not sure it's a final report. Think its about the themes found.  
*Callard Richard (ShEx), 19/02/2015 03:07 PM*

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## Track Changes

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1	Insert	<i>Callard Richard (ShEx), 19/02/2015 02:48 PM</i>
2	Insert	<i>Callard Richard (ShEx), 19/02/2015 02:50 PM</i>
3	Insert	<i>Callard Richard (ShEx), 19/02/2015 02:50 PM</i>
4	Insert	<i>Callard Richard (ShEx), 19/02/2015 02:58 PM</i>
5	Insert	<i>Callard Richard (ShEx), 19/02/2015 02:59 PM</i>
6	Insert	<i>Callard Richard (ShEx), 19/02/2015 03:01 PM</i>
7	Insert	<i>Callard Richard (ShEx), 19/02/2015 03:03 PM</i>
8	Insert	<i>Callard Richard (ShEx), 19/02/2015 03:02 PM</i>
9	Insert	<i>Callard Richard (ShEx), 19/02/2015 03:02 PM</i>
10	Change	<i>Callard Richard (ShEx), 19/02/2015 03:01 PM</i>
11	Insert	<i>Callard Richard (ShEx), 19/02/2015 03:05 PM</i>
12	Insert	<i>Callard Richard (ShEx), 19/02/2015 03:06 PM</i>