

CONFIDENTIAL & PRIVILEGED
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Post Office Limited

Initial Complaint Review and Mediation Scheme: note on ex gratia payments

Further to our note dated 22 April 2014 on settlements, Post Office Limited (the “**Post Office**”) has asked us briefly to set out our views on ex gratia payments in the context of the Initial Complaint Review and Mediation Scheme (the “**Scheme**”).

What is an ex gratia payment?

An ex gratia payment is a small, monetary sum (or other item of value) paid to another party to please or give comfort to that party after suffering some actual or perceived wrong allegedly caused by the paying party. Such payments are by their nature not necessarily paid or calculated by reference to the legal or moral merits, including any monetary amounts claimed, of the relevant situation or, indeed, any legal or other principles at all. They need not and would usually not be paid in the context of any actual or threatened legal proceedings. Ex gratia payments are paid unilaterally in the sense that the aggrieved party need not agree to the payment or that it should be tied to any particular consequences (such as the relinquishment of rights by the aggrieved party), albeit payment is usually made with the aim and hope that the aggrieved party does not pursue further their grievance with the paying party.

Accordingly, ex gratia payments are materially different to settlement payments which, unlike ex gratia payments, 1) are usually made at a more advanced stage of a dispute, when the legal merits of the dispute are clearer 2) are paid by reference to legal principles and the merits of the relevant situation, 3) are clearly linked to consequences for the aggrieved party so as to achieve a lasting conclusion to the dispute (usually the relinquishment of rights by the aggrieved party) and 4) usually bear some rational relation to the amounts claimed or at stake.

Advantages and disadvantages of ex gratia payments in the context of the Scheme

The relative materially lower quantum that we would expect ex gratia payments to have (compared with the costs of other, more involved dispute resolution processes and/or settlement payments) means the key advantages of paying them are their likely substantially lower financial burden on the Post Office, and the potential in some cases of bringing disputes with applicants to the Scheme swiftly to an end.

However, we believe there are several key disadvantages in making ex gratia payments which in our view outweigh any perceived advantage:

- making payments without any reference to the merits or principles applicable in each particular case creates a significant risk that applicants will not be satisfied by the payments, particularly in cases where the ex gratia payment is a very small proportion of the amount claimed. This will not only waste the costs of the fruitless payments, but also leave the Post Office in no better position for dealing with potentially many of the complaints in the Scheme;
- ex gratia payments could be perceived as insulting in some cases if they are all that the Post Office provides by way of redress, again, especially where more substantial amounts are claimed, and make a bad situation worse; and
- SPMRs who did not apply to the Scheme may complain that they should be entitled to an ex gratia payment, because had they known that that is the approach the Post Office was going to take before applications to the Scheme closed, regardless of their experiences with Horizon, they would have applied to the Scheme to ensure they received payment. Given the many thousands of SPMRs who have not applied to the Scheme, such additional complaints could make a bad situation considerably worse.

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