



## POST OFFICE LIMITED HISTORICAL MATTERS COMMITTEE

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<b>Title:</b>	CL Guidelines and HSS/Stamp Scheme Review	<b>Meeting Date:</b>	5 <sup>th</sup> July 2023
<b>Workstream:</b>	Governance/COO	<b>Version:</b>	1.0
<b>Author:</b>	Evelyn Hocking – Programme Lead	<b>Sponsor:</b>	Nick Read – Group CEO

### Input Sought: Discussion

HRC is asked to:

- i.* discuss this report in relation to the issuance of Consequential Loss (CL) Guidelines for applicants to the Historical Shortfall Scheme (HSS) and the Stamp Scheme,
- ii.* consider if HMU are confident that everything has been done to ensure as many claimants as possible have applied to the HSS and the Stamp Scheme and that they had sufficient information available to them to make a full claim in respect of shortfalls and Consequential Losses, or if anything further should be done prior to and in conjunction with the announcement of the scheme closure date.
- iii.* discuss whether additional sampling should be undertaken at this stage.

### Previous Governance Oversight

A number of papers have been presented for discussion on CL Guidelines since 2020 with the key documents attached or summarised in the appendices to this paper.

### Executive Summary

The Historical Shortfall Scheme was launched on 1st May 2020 through a combination of physical letters sent to previous and current Postmasters, by email to those who had signed up to 'One', in numerous press and media outlets across the country over a period of weeks, and on the Post Office Corporate website. The launch on 1<sup>st</sup> May 2020 was postponed from the original launch date of 23<sup>rd</sup> March 2020, which was the day the country entered the first period of lockdown due to Covid 19.

On launch day, 7,100 current and 13,800 former PMs were contacted with a further 6,200 former PMs, who had inadvertently been missed from the original mailing, being contacted in July 2020. The letter guides PMs to a link on the POL website, does not mention Consequential Loss and there is no Post Office telephone Helpline available for PM's to call. The Application Form for HSS was not included in the letter that was sent nor were the Terms of Reference, rather PMs were directed to access the link on the website, download and complete the Application Form and review the Terms of Reference, and either email, or print and post the forms to POL. Against a background of Covid 19 and lockdown, it is difficult to say how many PM's received letters, accessed the website and were able to submit a claim.



The Consequential Loss Guidelines were approved on 16<sup>th</sup> September 2020, and it was agreed that these guidelines would be sent to all applicants to HSS and would be published on the POL website in October 2020. At this point there were 2,211 applications from claimants, meaning that approximately 25,000 Postmasters did not receive Consequential Loss Guidelines at all. In addition, c60 Shortfall only claimants (plus 146 who did apply for further losses to be considered) who applied to HSS after the Consequential Loss Guidelines were published did not retrospectively receive the Guidelines.

A paper was considered at HMC on 18<sup>th</sup> January 2023 which considered the issuance of CLG being sent in October 2020 and concluded that no uplift in applications was experienced after the mailing of the CL Guidelines. It should be noted that the CL Guidelines were only sent to actual claimants. The paper was subsequently presented to HRC who concluded that further investigation was required. **See Appendix 6.**

See **Appendix 1** for flow of different communications including applications, letters and CL Guidelines.

## Report

A review of Post GLO SteerCo documentation between February 2020 and the publication of the CLG in October 2020 shows the following:

1. Minutes of the meeting on 27<sup>th</sup> February 2020 discuss the development of HSS, Convicted Claimants Workstream, Common Issues and Ops Modernisation which are attended by amongst others, Angela Van-Den-Bogerd and Nick Beal who had previously given evidence at Bates v's Post Office an extract of which can be found at **Appendix 5**.
2. POL Board was presented with a decision paper on 10<sup>th</sup> March 2020 essentially agreeing the launch of the HSS and communications, the Application Form, Eligibility Guidelines for HSF Triage, the PM letter and Governance considerations. POL Board approved everything that had previously been proposed by the Post GLO SteerCo except for a few minor alterations to the PM letter. The Application Form did not define the types of additional losses a PM could claim for. The approved HSF Triage document **REDACTION**  
**REDACTION** but this guidance was not included in the Application Form. . Please see **Appendix 4** for excerpts of these documents.
3. On 9<sup>th</sup> April 2020 SteerCo debated how to 'frontload' the work in relation to people who had previously inquired about the scheme and also whether HSF or POL should be the 'name' behind the scheme application correspondence. It was recommended to be POL for two reasons:
  - i. *It is unlikely that HSF would ever be perceived as independent; and,*
  - ii. *A key risk of using the HSF name is that it will create a David v Goliath scenario (vis. unsophisticated individuals having to fight their cases against the might of a big city law firm). In those circumstances, pressure may be put on PO to fund the costs of legal representation for the Claimants to level the playing field. This would (a) be expensive; and (b) encourage a claims management company / no-win-no fee culture that we really want to avoid if at all possible.*



4. On 9<sup>th</sup> April 2020, a SteerCo Communications update stated:  
*Historical Shortfall Scheme Comms:*
  - Media coverage on the postponement of the Historical Shortfall Scheme was relatively limited, unsurprisingly in present circumstances, and there was no criticism of the delay, outside of very limited social media (CWU).
  - Both internal and external communications, including FAQs have been updated in readiness for a scheme launch on 1 May and will continue to be kept under review, including practical issues e.g., postal services and any impact on suppliers and/or timescales in context of impact of Covid-19.
5. On 23<sup>rd</sup> April 2020 SteerCo recommended Go Live on 1<sup>st</sup> May 2020 with appropriate advertising – for example 4 National Papers, 26 Regional papers and over 500 paid for and free local publications.
6. On 29<sup>th</sup> April 2020 SteerCo reported that a total of 148 potential claims had been received of which 63 are partially quantified and amount to £1.2m. Further review of the next steps for these claims could be undertaken to ascertain how these applicants were aware of the imminent launch of HSS. Of the partially quantified claims:
  - i. 10 are quantified at less than £1,000.
  - ii. 17 are quantified between £1,000 and £5,000.
  - iii. 23 are quantified between £5,000 and £25,000.
  - iv. 11 are quantified between £25,000 and £100,000; and
  - v. 2 are quantified in excess of £100,000.
7. The HSS launched on 1<sup>st</sup> May 2020 with letters and emails sent to former and current PM's and asked for the Application form and ToR downloaded from the website and to be emailed back if possible. Alternatively, it could be posted, but stated that postal applications may not be processed immediately given the Coronavirus situation.
8. On 27<sup>th</sup> May 2020, SteerCo debated the introduction of a de-minimis settlement category. In addition, it was discussed that:
  - i. *There has been continued correspondence with Hudgell Solicitors, who are instructed in relation to the Scheme by a number of clients. Hudgells are considering whether to advise their clients to join the Scheme. Following an initial response sent by HSF, this further correspondence has confirmed that claimants can claim consequential losses (i.e., indirect losses arising out of special circumstances of a case), the onus of proving those losses will be on the claimants and that the claimants are entitled to have legal representation at their own expense.*

Claimants represented by Hudgell therefore had the benefit of being informed that they could claim for consequential losses in May 2020. The letters referred to from Hudgell and HSF have not yet been seen. The Application Form asks if a PM has experienced any other losses that are directly related to the alleged shortfall in respect of which they would like to claim. The definition of CL in our CL Guidelines states: 'Consequential Loss means financial or non-financial loss that is not a Shortfall Loss'.
9. On 17<sup>th</sup> June 2020 SteerCo debated how to contact PM's who did not receive a Letter in the original mailing and confirmed that at this stage 560 claims had been received, 159



fully quantified (£3.9m) 263 partially quantified (£8.1m) All claimants to date have been unrepresented.

10. On 24<sup>th</sup> June 2020 SteerCo reported that 617 claims had been received and all claimants were unrepresented. Also, it was noted that approximately 7 times more former PM's had applied than current PM's.
11. On 1<sup>st</sup> July 2020 comms update said an internal 'Reminder' Comms was sent to current PMs on 25<sup>th</sup> June 2020, and that repeat media advertising would commence over a two-week period from 13<sup>th</sup> July 2020 and there would also be a press release 'reminder'.
12. On 8<sup>th</sup> July 2020 SteerCo states:

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13. On 15<sup>th</sup> July 2020 SteerCo confirms data extracts are underway to mail the additional 6,200 who had been missed from the original mailing on 20<sup>th</sup> July 2020 – later confirmed to be sent on 22<sup>nd</sup> July 2020.
14. On 22<sup>nd</sup> July 2020 Steerco confirms that the de-minimis limit has not yet been agreed, and that the tax treatment of components in HSS is to be discussed with HMRC following consultation between HSF and POL Head of Tax Andy Jamieson.
15. On 30<sup>th</sup> July 2020 SteerCo presented an HSS Applications Analysis by Branch/Geographical Region. It was also confirmed that the deadline for the additional cohort to apply to the scheme would be 23<sup>rd</sup> October 2020. Additionally, the recommendation on how to set up the Stamp Scheme was agreed. One of the disadvantages of the stamp scheme coming under HSS was listed as:
  - i. *Potentially a backdoor for consequential loss claims to be considered in the scheme.*
16. On 4<sup>th</sup> August 2020 SteerCo revisits some decisions regarding the Stamp Scheme launch and in particular recommends that 'POL takes a narrower approach in publicising the stamp scheme (compared to the HSS) to ensure the advertising approach is proportionate to the issue.
17. On 19<sup>th</sup> August 2020 SteerCo reports a marked increase in the number of HSS claims being submitted towards the end of the application window on 14<sup>th</sup> August 2020, with 6 claims now submitted from claimants with Legal representation. The CL Principles for the scheme are being finalised with input from Rory Phillips QC

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18. On 26<sup>th</sup> August 2020 A Judicial Review Claim was issued in the Administrative Court by Mr C S specifically challenging PO's decision:
  - i. not to extend the time allowed for candidates for the Scheme to decide whether or not to join the Scheme.
  - ii. not to supply candidates with "sufficient information with which to make a fully informed decision" as to whether or not to join the Scheme; and
  - iii. to require candidates to surrender civil rights when joining the Scheme without first having supplied them with sufficient information with which (and with adequate time thereafter) to make a fully formed decision.
19. Mr Justice Holgate opined on 11<sup>th</sup> March 2021, that the application for permission to apply for judicial review was refused.
20. On 10<sup>th</sup> September 2020 2,208 claims had been received. At this SteerCo the HSS proposed ToR and CL Principles and Guidance were presented and approved.
21. On 23<sup>rd</sup> September 2020 SteerCo presented the outline of the Stamp Scheme that was due to go-live on 23<sup>rd</sup> September 2020, with a decision required on CL. Two proposals were put forward as detailed below. Consequential Loss Guidelines were not sent to claimants in the Stamp Scheme.

Office	Proposal(s)	Pros	Cons	Recommendation / Next Step
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22. On 24<sup>th</sup> September 2020 Board decided that the HSS de-minimis amount should not be set at £20,000 as recommended by HMU but should be at £8,000 with a compound interest rate of 3.26% to be applied.
23. 21<sup>st</sup> October 2020 SteerCo confirmed that the Consequential Loss Principles were emailed to Claimants in the scheme on 2<sup>nd</sup> October 2020 and posted to applicants on 14<sup>th</sup> October 2020 (2,291 applicants). At this point there were 2,291 claimants who received CL Guidelines. Those who had been invited into the scheme but who had not made a claim did not receive CL Guidelines – and have not since received them. The actual letter is in **Appendix 2** and Consequential Loss Principles and Guidance can be found in **Appendix 3**. The letter says if a claimant no longer wishes to progress their claim, they can withdraw it at any time.





24. The Stamp Scheme closed on 27<sup>th</sup> November 2020 with 204 claims. The report states:
- i. Of the 197 remaining:
  - ii. 59 claims are fully quantified stamp losses (with 3 also claiming consequential loss)
  - iii. 32 of these are  $\leq$  £2,000, totalling £24,787
  - iv. Of the 32, three have a claim with HSS but none mention stamps (the Stamp claims are £150, £574.56 and £1,940)
  - v. Only one of the 32 claims has a request for consequential loss (which we'll decline)

25.

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26.

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27. On 1<sup>st</sup> October 2021 HRC were advised that the principles for CL cases were being updated by HSF.
28. On 19<sup>th</sup> October 2021, HRC debated the progress being made in HSS and in relation to the completion of the CL principles. HSF advised REDACTION
- REDACTION
- REDACTION
- REDACTION
29. On 20<sup>th</sup> January 2022 HRC debated the drop in performance within HSS and concluded that one reason was that the CL principles had not been decided which constrained 56 cases from flowing through to the Panel.

## Additional Analysis and Financial Impact

### Consequential Loss Guidelines

30. When the CL Guidelines were published in October 2020, these were only sent to claimants, not to the population of potential claimants. Also, as in Appendix 1 there was a cohort of 60 Shortfall only claimants who did not receive CL Guidelines
31. Additional information and review by the HSS team, states that a review of Relativity shows the following:



- i. Applications submitted before 1<sup>st</sup> October 2020 had a shortfall only/Consequential Loss claim split of 42%/58% (929 claims/1282 claims)
  - ii. Applications submitted after 1<sup>st</sup> October 2020 had a shortfall only/Consequential Loss split of 29%/71% (60 claims / 146 claims) – however no CL Guidelines have been sent to the 60 shortfall only claimants.
32. Late Applications submitted after the CL Guidelines had been published had a shortfall only/ Consequential Loss claim split of 20%/80% (39 claims / 159 claims)

### Legal Representation

33. Additional information and review by the HSS team, states that a review of Relativity shows the undernoted information. A fuller review of Legal Representation is in course and will be presented in a separate paper.
- i. Overall, for the 2417 original claims, the average initial Offer is £92.6k for those claims represented and £35k for those unrepresented. Lower DM claims were proportionately less represented than non-de-minimis claims.
  - ii. Shortfall only claims with representation have an average offer of £17.7k
  - iii. Shortfall only claims *without* representation have an average Offer of £9.6k
  - iv. CL claims with representation have an average Offer of £101k
  - v. CL claims *without* representation have an average Offer of £55.4k

### Request for Further Information

34. An RFI is an opportunity for information to be submitted to help with the assessment of a previously submitted claim. CL Guidelines are not sent with the RFI to assist with additional losses a claimant may wish to make, rather it asks for information on HoL's already submitted. One RFI reviewed where there were 3 HoL's asked the claimant c75 questions and asked for scanned documents in support to be sent back. When an RFI is sent, further information is only requested on the HoL's already applied for, CL Guidelines are not re-sent. Further analysis of 5 claims where an RFI was requested have been analysed and summarised below:

Claim Ref	Claim Type	Offer issued	SF Losses	D&I	Total Offer (Net)	Paid?	App Form - Claimant asked for CL?	RFI - Claimant asked about CL?	Additional Comments
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35. The financial implications of any decisions taken as a result of these discussions will be undertaken in due course. For the time being, it is important that the correct decisions are taken in respect of Postmasters and the financial implications will be subject to a further piece of work dependent on the outcome of discussions.

#### Legal Review by Counsel

36. This paper was reviewed by the Inquiry counsel team, Sam Jones and Kate Gallafent KC and feedback provided on 26 June 2023. REDACTION

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37. HM Legal's view REDACTION

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38. REDACTION

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**Input / Reviewed By:**

Name	Role	Comments	Version	Date
Evelyn Hocking	Author	Initial Version Drafted	0.01	
Andrew Mortimer	Programme Manager	Version 0.01 and feedback provided, incorporated into version 0.02	0.02	
Caroline Whitehall	Legal *	Legal Review section added	0.02	

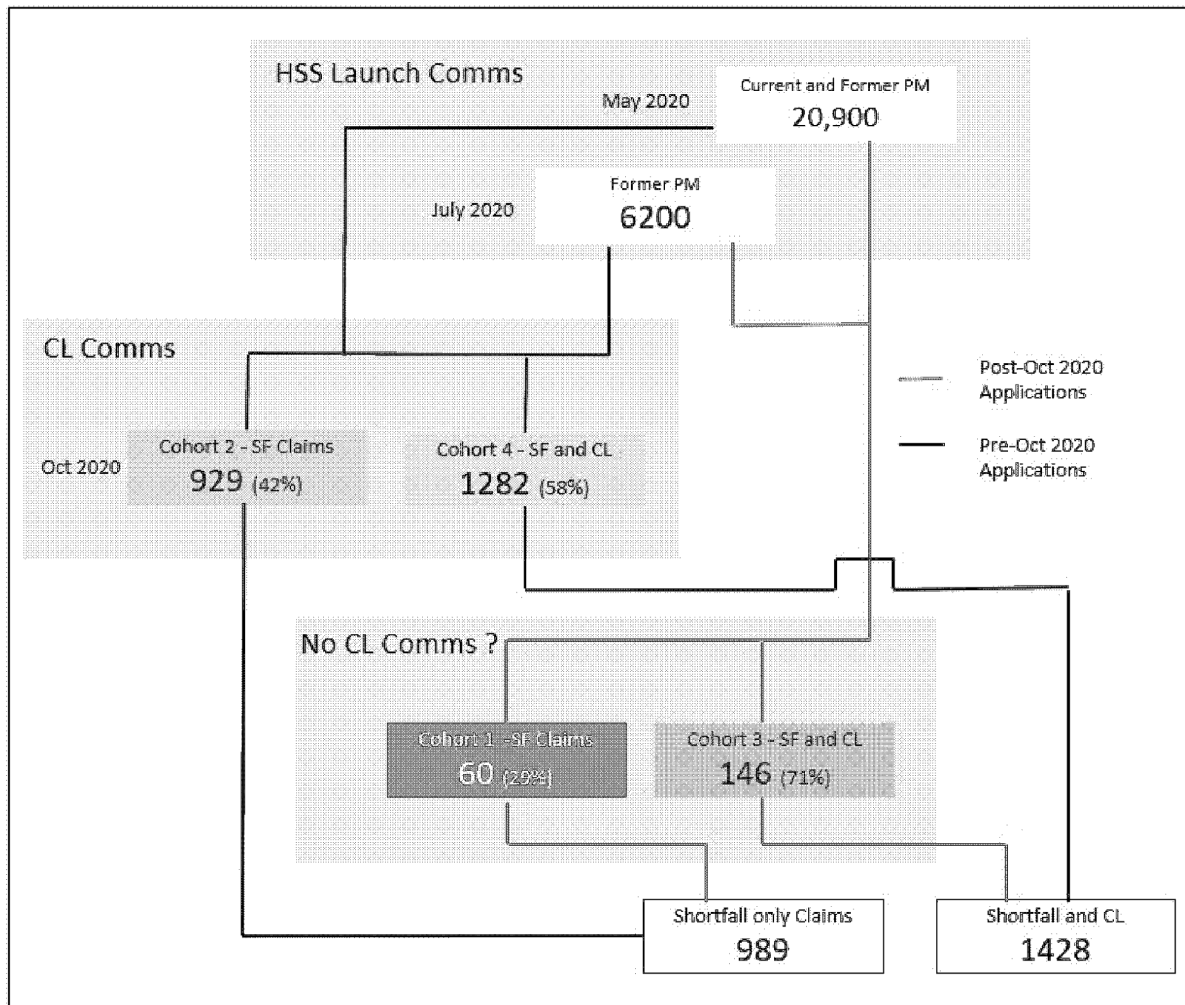
\*Mandatory Review Required \*\* If Applicable

**Appendices:**

- Appendix 1 – Communications Flowchart
- Appendix 2 – HSS ToR Letter
- Appendix 3 – CL Principles and Guidance
- Appendix 4 – Guidance for Triage Team / Application Form for potential Claimants
- Appendix 5 – Extract from Bates vs Post Office
- Appendix 6 – HSS Application and CL Inquiry Observations



## Appendix 1 – Communications Flowchart





## Appendix 2 – HSS ToR Letter

	<p>Post Office Historical Shortfall Scheme PO Box 76882 London E1W 9RR</p>		
<p> </p> <p>[Name of postmaster]</p> <p>[insert postal address]</p>			
<p>13 October 2020</p>			
<p>Dear Applicant,</p>			
<p><b>Historical Shortfall Scheme: Terms of Reference for the independent advisory panel and consequential loss principles</b></p>			
<p>Thank you for your application to the Historical Shortfall Scheme.</p>			
<p>We are now pleased to announce the publication of the Terms of Reference for the independent advisory panel that will assess eligible applications and also the consequential loss principles for the scheme. We enclose copies of these documents with this letter.</p>			
<p>The contents have been agreed with the independent advisory panel and confirm the key principles that apply in the assessment of applications. Please read the documents carefully.</p>			
<p>We hope you will welcome the principles set out in these documents. If, however, you no longer wish to progress your application for any reason, you may withdraw it at any point up until you receive an outcome confirmation from the scheme, but we hope that you will want to remain in the scheme.</p>			
<p>We will keep you updated on progress with your application. In the meantime, if you have any <u>questions</u> please contact <a href="mailto:historicalshortfallscheme@postoffice.co.uk">historicalshortfallscheme@postoffice.co.uk</a>.</p>			
<p>Yours faithfully,</p>			
<table border="0" style="width: 100%;"> <tr> <td style="width: 60%;"> <p>Historical Shortfall Scheme <a href="mailto:historicalshortfallscheme@postoffice.co.uk">historicalshortfallscheme@postoffice.co.uk</a></p> </td> <td style="width: 40%; text-align: center;"> <div style="border: 1px dashed black; padding: 2px 10px; display: inline-block;">GRO</div> </td> </tr> </table>		<p>Historical Shortfall Scheme <a href="mailto:historicalshortfallscheme@postoffice.co.uk">historicalshortfallscheme@postoffice.co.uk</a></p>	<div style="border: 1px dashed black; padding: 2px 10px; display: inline-block;">GRO</div>
<p>Historical Shortfall Scheme <a href="mailto:historicalshortfallscheme@postoffice.co.uk">historicalshortfallscheme@postoffice.co.uk</a></p>	<div style="border: 1px dashed black; padding: 2px 10px; display: inline-block;">GRO</div>		

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**Independent advisory panel Terms of Reference and consequential loss principles – explanatory notes**

Post Office has published details of the independent advisory panel Terms of Reference and Consequential Loss Principles for the Historical Shortfall Scheme which have been agreed with the independent advisory panel.

These documents confirm the key principles that will be applied in the assessment of applications and include a number of provisions designed to benefit postmasters. In particular:

- Although many of the shortfalls described by applicants occurred many years ago, the Historical Shortfall Scheme will not allow the laws of time-bar or limitation to have an adverse effect on offers made to scheme applicants
- The panel has the power to recommend that offers be made if, guided by broad considerations of fairness, they consider that doing so would produce a fair result, in all the circumstances of the case.

These terms of reference and principles are a significant step in the Post Office's wider efforts to ensure we put past issues right where we got things wrong. By making the Historical Shortfall Scheme available, Post Office wanted to ensure that all current and former postmasters who consider they were adversely affected by shortfalls which might have been caused by previous versions of Horizon are able to access fair offers of compensation without the need for protracted and costly legal proceedings.

Post Office hopes that the principles set out in these documents will be well received by applicants. However, if any postmaster does not wish to progress their application for any reason, they can withdraw from the scheme at any point up until they receive an outcome confirmation, but we hope that applicants will want to remain in the scheme.



## Appendix 3 – CL Principles and Guidance

# Historical Shortfall Scheme

## Consequential Loss Principles and Guidance

### 1. Scope and Background

- 1.1. Post Office launched the Historical Shortfall Scheme (the “Scheme”) on 1 May 2020 with the objective of resolving past issues for current and former postmasters who believe they have experienced shortfalls related to previous versions of Horizon.
- 1.2. The application form for the Scheme asks postmasters to identify any alleged Shortfall Losses as well as any other losses that are caused by a Horizon Shortfall, namely Consequential Losses. This document sets out the underlying principles that will govern the assessment of any claims for Consequential Loss under the Scheme.
- 1.3. A claim for Consequential Loss will only be considered for Eligible Claims where the shortfall underlying the Consequential Loss is found by the Scheme to be a Horizon Shortfall. Where several shortfalls are alleged and not all of these are found to be Horizon Shortfalls, claims for Consequential Loss will only be considered if they are caused by a Horizon Shortfall.
- 1.4. In the interests of ensuring that the process operates as swiftly as possible and is accessible for all postmasters, the Scheme process will be of a summary nature. This means that, while the process will involve the consideration of documentary evidence held by Post Office and provided by the postmaster, there will be no requirement for detailed written arguments from postmasters or oral evidence.

### 2. Definitions

- 2.1. **Consequential Loss** means financial or non-financial loss that is not a Shortfall Loss.
- 2.2. **Eligible Claim** means an application that has been determined to be eligible for the Scheme in line with the Scheme’s eligibility criteria<sup>1</sup> and is identified to the postmaster as such in an eligibility letter.
- 2.3. **Horizon Shortfall** means a shortfall in stock or cash at a postmaster’s branch compared with the amount of stock or cash indicated on Horizon for that branch, where the shortfall may have been caused by previous versions of Horizon or a breach of duty related to such a shortfall by Post Office.
- 2.4. **Shortfall Loss** means the amount of a Horizon Shortfall that the postmaster has repaid or is regarded by Post Office as still owing.
- 2.5. **Common Issues Judgment** means the judgment handed down by Fraser J in *Bates v Post Office Ltd* (No.3: Common Issues) [2019] EWHC 606 (QB).
- 2.6. **Horizon Issues Judgment** means the judgment handed down by Fraser J in *Bates v Post Office Ltd* (No.6: Horizon Issues) [2019] EWHC 3408 (QB).

### 3. Key Principles

- 3.1. **Burden of proof in relation to proof of Consequential Loss**
  - 3.1.1. The burden of proof is on the postmaster to provide sufficient evidence in support of their claim to demonstrate that on the balance of probabilities (i.e. a greater than 50% likelihood) (a) such losses have been suffered and (b) as a consequence of a Horizon Shortfall (as such are found in the Common Issues

<sup>1</sup>[https://www.postoffice.co.uk/about/post/2020/05/01/historical-shortfall-scheme\\_eligibility\\_criteria.pdf](https://www.postoffice.co.uk/about/post/2020/05/01/historical-shortfall-scheme_eligibility_criteria.pdf)

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Judgment in the Horizon Issues Judgment). This means evidencing the fact that a loss was incurred, the amount of that loss and that the cause of the loss was due to a Horizon Shortfall.

- 3.12. Where the postmaster is unable to satisfy the burden of proof in relation to their claim, their claim may nonetheless be accepted in whole or in part if the Scheme considers it to be fair in all the circumstances.

### 3.2. Evidence

- 3.2.1. Claims which are supported by evidence are more likely to be successful. Guidance on how best to evidence any potential claims for Consequential Loss is set out further below.
- 3.2.2. Greater weight will be attached to:
- a) contemporaneous evidence; and
  - b) factual evidence that is undisputed and/or verifiable.
- 3.2.3. The need to provide evidence is particularly important where a postmaster's claim relates to matters which are known only to the postmaster. While the burden is on postmasters to provide sufficient evidence to demonstrate their claim for Consequential Loss, the Scheme will also consider any relevant evidence Post Office holds when assessing the claim. Any key supporting documentation relied upon will be shared with postmasters when they receive the outcome of their claims to enable them to consider whether they wish to accept the offers made to them.

### 3.3. Established legal principles

- 3.3.1. In considering a claim for Consequential Loss, the Scheme will apply the findings in the Common Issues Judgment and the Horizon Issues Judgment relevant to the claim and any relevant legal and accounting principles applicable to the assessment of damages for breach of a legal duty when determining whether, on a balance of probabilities, the loss claimed is attributable to a Horizon Shortfall. In making that assessment the Scheme will consider:

#### a) Causation

The Horizon Shortfall must have caused the Consequential Loss (i.e. the Consequential Loss would not have happened but for the Horizon Shortfall).

If the postmaster would have found themselves in the same position in any event, irrespective of the Horizon Shortfall, the Scheme will not be able to conclude that the Horizon Shortfall caused the Consequential Losses the postmaster may have suffered.

#### b) Remoteness

The Consequential Loss must not be too remote (i.e. the Consequential Loss must have been reasonably foreseeable at the time of the Horizon Shortfall).

#### c) Mitigation

Assuming that causation is established (and the Consequential Loss is not too remote), the Scheme will consider the extent to which the Consequential Loss was or could reasonably have been mitigated by the postmaster, or conversely was aggravated by reasonable attempts by the postmaster to avoid or reduce the Consequential Loss.

#### d) Quantum

The object of the assessment will be, so far as the award of a sum of money can do so, to put the postmaster into the position that the postmaster would have been in but for the Horizon Shortfall.

- 3.3.2. Please note that the above is intended as a guide only; it is not an exhaustive list of the legal principles that may be applicable to any particular claim for Consequential Loss. The application of the above principles will be fact-specific and will depend on the circumstances of the postmaster bringing the Consequential Loss claim.

### 3.4. Limitation

- 3.4.1. Many Eligible Claims will relate to Shortfall Losses and Consequential Losses suffered a significant number of years ago. In order to draw a line under the issues caused by previous versions of Horizon and treat postmasters who have been affected fairly, the Scheme will not apply the laws of limitation or time-bar in its assessment of the Shortfall Losses or Consequential Losses.





3.4.2. Post Office's rights to rely on the laws of limitation or time bar, outside the Scheme (including in any subsequent court or arbitration proceedings under the Scheme's Dispute Resolution Process) are, however, strictly reserved.

3.4.3. Given the large number of applicants to the Scheme, claims may take some time to investigate and assess. Post Office is therefore willing to agree, in respect of each applicant, that time will not run for limitation purposes from the date the applicant joined the Scheme to the date on which the applicant receives their offer letter.

### 3.5. Presentation of the Consequential Loss outcome

3.5.1. The Scheme will present its Consequential Loss outcome to the postmaster in a clear, succinct manner, setting out information sufficient to allow the postmaster to understand the basis for the conclusion reached by the Scheme in respect of each type of loss comprising the Consequential Loss claim. It will also provide copies of the key supporting documentation relied upon.

## 4. The High Level Process

### 4.1. Submission of a Consequential Loss claim

4.1.1. It is for the postmaster to present any Consequential Loss claim, which involves sending all relevant information and evidence to the Scheme either at the same time as submitting their application form or following a request from Post Office setting out in detail the evidence required for each head of loss.

4.1.2. What is capable of being claimed as a Consequential Loss, along with the level of evidence required to meet the applicable legal tests, will depend on the facts of each case. The postmaster should explain in as much detail as possible:

- a) the particular loss being claimed;
- b) the specific amount of loss being claimed;
- c) how this loss was caused by a Horizon Shortfall; and
- d) the reasonable steps the postmaster took to reduce this loss, and the impact these steps had.

### 4.2. Assessment of a Consequential Loss claim

4.2.1. Consequential Loss claims will be assessed against the established legal principles set out at paragraph 3.3.

4.2.2. In addition to the application of these principles the Panel will also consider what is fair in all the circumstances.

4.2.3. If the Scheme considers that information may be available to the postmaster which would help the assessment of their claim for Consequential Loss, the Scheme will proactively contact the postmaster and request that this information be provided within 28 days.

4.2.4. Where new documentation relevant to a claim cannot be obtained without a fee, for example where current property valuations or forensic accountancy analysis is required, the postmaster may request that Post Office reimburse the reasonable costs of the postmaster obtaining that new documentation. Post Office will not reimburse costs that are not pre-approved.

4.2.5. Where the Panel considers that it requires expert assistance in order to make a recommendation, the Panel may recommend to Post Office that an expert be appointed as contemplated by the Panel Terms of Reference.

### 4.3. Dispute Resolution Process

4.3.1. If postmasters are dissatisfied with the outcome of their claims following the assessment process, the Scheme's Dispute Resolution Process shall apply, as set out in the Scheme's Terms of Reference<sup>3</sup>.

## 5. Types of Loss

5.1. There is no exhaustive list of the types of loss that can be claimed as Consequential Loss (assuming they meet the applicable legal tests and noting that additional losses claimed must be clearly linked back to a Horizon Shortfall); however, certain examples are detailed below along with examples of the types of evidence that postmasters should provide to support their claims for Consequential Loss.



## 5.2. Loss of earnings

- 5.2.1. This may relate to loss of earnings during a period when the postmaster was suspended or where the postmaster's contract with Post Office was wrongfully terminated because of a Horizon Shortfall.
- 5.2.2. This will require evidence, preferably contemporaneous, that the postmaster was suspended or had their contract terminated without sufficient notice because of a Horizon Shortfall. Post Office will take reasonable steps to identify any relevant information from its own records but the postmaster should provide any documentation they hold evidencing their suspension or termination related losses, for example:
- a) suspension letter;
  - b) reinstatement letter;
  - c) termination letter;
  - d) remuneration information for the period of suspension and the period before/after the suspension;
  - e) contemporaneous correspondence between the postmaster and Post Office;
  - f) an explanation or other evidence as to why the postmaster's contract was wrongfully terminated and that otherwise they would have continued as a postmaster;
  - g) in respect of termination, an explanation as to why the notice given to the postmaster by Post Office was insufficient;
  - h) average monthly expenses in running the Post Office branch for the period before the suspension or termination; and
  - i) if the postmaster was subsequently re-engaged or obtained employment or otherwise earned an income following their suspension and/or termination, confirmation of the date on which the postmaster was re-engaged or obtained employment and details of the remuneration received or income earned thereafter.

## 5.3. Loss of profits

- 5.3.1. This may relate to loss of profits from the Post Office branch or any retail shop owned by the postmaster associated with the Post Office branch.
- 5.3.2. This will require evidence, preferably contemporaneous, to show how the profits of the business were impacted by the Horizon Shortfall. The postmaster should provide all documentation they hold demonstrating the profits made by the business prior to and following the Horizon Shortfall, taking into account the cost of any additional measures that had to be put in place because of the Horizon Shortfall, for example:
- a) bank statements;
  - b) accounts;
  - c) tax returns;
  - d) cash flows (historical and forecast);
  - e) business plans (historical and forecast);
  - f) management information (historical and forecast); and
  - g) relevant correspondence.
- 5.3.3. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

## 5.4. Loss of property

- 5.4.1. If, as the result of a Horizon Shortfall, the postmaster is forced to dispose of an asset (e.g. a property) at a loss which they otherwise would have retained, a claim for Consequential Loss may be available.
- 5.4.2. In order for such a claim to be successful, the postmaster will need to provide evidence, preferably contemporaneous, that the Horizon Shortfall (as opposed to other factors) caused the disposal, as well as evidence of the value of the loss suffered as a result, for example:
- a) an explanation as to why the asset was sold;
  - b) relevant correspondence and documents relating to the purchase and sale of the asset.

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- c) evidence of the value of the asset (historic and current); and
- d) any relevant accounting documentation.

5.4.3. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

#### 5.5. Loss of opportunity/loss of chance

- 5.5.1. The loss of an opportunity to pursue a course of action that could have resulted in financial gain, such as expanding the business, which the postmaster would have pursued if not for the Horizon Shortfall may be claimed as a Consequential Loss.
- 5.5.2. For these claims, it will be necessary to submit evidence to demonstrate a specific opportunity or course of action that the postmaster was aware of at the time and had intended to pursue but was prevented from doing so due to the Horizon Shortfall.
- 5.5.3. This will require evidence, preferably contemporaneous, that the postmaster was aware of the opportunity at the time it arose, and intended to pursue it. Claims that speculate (without supporting evidence) how money put towards repaying a Horizon Shortfall could have been invested or what may have been done but for the Horizon Shortfall are unlikely to succeed. Any claims should therefore be accompanied by evidence such as the following:
  - a) evidence that an opportunity to invest existed;
  - b) evidence that the investment opportunity was being actively considered and was likely to be pursued;
  - c) evidence demonstrating that the inability to invest was caused by the Horizon Shortfall (rather than by other intervening events or the fact that they would not have had the funds to avail themselves of the opportunity);
  - d) evidence of what the postmaster's financial position would have been but for the Horizon Shortfall;
  - e) expected costs and timeframe for investment; and
  - f) evidence of progress (if any) on the investment.

5.5.4. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

#### 5.6. Penalties/general or increased costs of financing

- 5.6.1. Penalties or general/increased costs of financing, as a result of the Horizon Shortfall, may be recoverable (e.g. additional interest or loan arrangement fees) if the postmaster can provide evidence to show that the Horizon Shortfall caused the penalty or increased cost of financing.
- 5.6.2. This will require evidence, preferably contemporaneous, of the purpose of the financing and what the postmaster's financial position would have been but for the Horizon Shortfall. If the postmaster alleges that the finance was taken out at less advantageous rates than it would otherwise have been as a result of the Horizon Shortfall they will need to provide evidence of when the finance was taken out and that they had been turned down for other products at more favourable rates.
- 5.6.3. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

#### 5.7. Bankruptcy/insolvency

- 5.7.1. Losses suffered if the postmaster underwent bankruptcy or insolvency proceedings as a result of a Horizon Shortfall may be claimed as a Consequential Loss.
- 5.7.2. For such a claim to be successful the postmaster will have to provide evidence, preferably contemporaneous, that they were bankrupted/declared insolvent (as appropriate), the value of the loss claimed and that the bankruptcy/insolvency was due to the Horizon Shortfall (rather than other intervening events/general financial hardship/other factors).
- 5.7.3. The types of document that the postmaster should provide with their claim is as follows:
  - a) copy of bankruptcy order or IVA documentation;
  - b) copy of notice of bankruptcy in appropriate newspaper;
  - c) financial/accounting evidence to demonstrate that the Horizon Shortfall was the reason for the bankruptcy/insolvency e.g.:
    - i) bank statements;



- ii. accounts;
  - iii. cash flows (historical and forecast);
  - iv. business plans (historical and forecast);
  - v. management information (historical and forecast); and
  - vi. details of all creditors at the time of bankruptcy/insolvency; and
- d) if the bankruptcy/insolvency process has concluded, details of payments made to creditors.

5.7.4. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

#### 5.8. Legal and professional fees

5.8.1. Fees incurred in relation to dealing with a Horizon Shortfall at the time (e.g. the cost of defending legal proceedings or professional advice about restructuring the postmaster's business) may be recoverable. Please note that this is separate to any legal and professional fees incurred by a postmaster in bringing an application to the Scheme.

5.8.2. In order to claim these fees postmasters should provide evidence, preferably contemporaneous, of the following:

- a) why and when the professional was engaged (noting that postmasters should avoid providing any legal advice they have received unless they confirm they are happy to waive privilege over that legal advice);
- b) details of the engagement (including whether the engagement was by the postmaster or a third party); and
- c) the professional's fees being incurred and paid by the postmaster (e.g. invoice/receipt).

5.8.3. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

#### 5.9. Stigma/damage to reputation

5.9.1. Where a postmaster has incurred a financial loss as a result of damage to their reputation as a result of a Horizon Shortfall, they may be able to claim Consequential Loss.

5.9.2. The postmaster would need to explain what action taken by Post Office in light of the Horizon Shortfall damaged their reputation, how those matters became known to others and why the damage to the postmaster's reputation caused financial loss.

5.9.3. The types of financial loss caused by damage to reputation could include:

- a) evidence that prospective employers would not hire the postmaster as a result of the Horizon Shortfall; and
- b) evidence that customers stopped supporting the postmaster's business as a result of the Horizon Shortfall.

5.9.4. If the postmaster claims that their business suffered a downturn in revenue as a result of the damage to their reputation, they should provide copies of business accounts before and after the Horizon Shortfall became known to others in the community.

5.9.5. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

#### 5.10. Personal injury/harassment

5.10.1. Postmasters who themselves held a direct contract with Post Office (rather than through a company) may be able to claim Consequential Losses for personal injury or harassment they have suffered as a result of a Horizon Shortfall. Personal injury can include physical injuries as well as psychiatric harm.

5.10.2. This will require evidence, preferably contemporaneous, that the personal injury/harassment was caused by the Horizon Shortfall. Postmasters should provide the following information when making a claim for personal injury/harassment:

- a) a detailed description of their injury including (i) the symptoms they have experienced; (ii) medical treatment they have received; (iii) any expenses/financial losses they have suffered; and (iv) the effect of their injury.



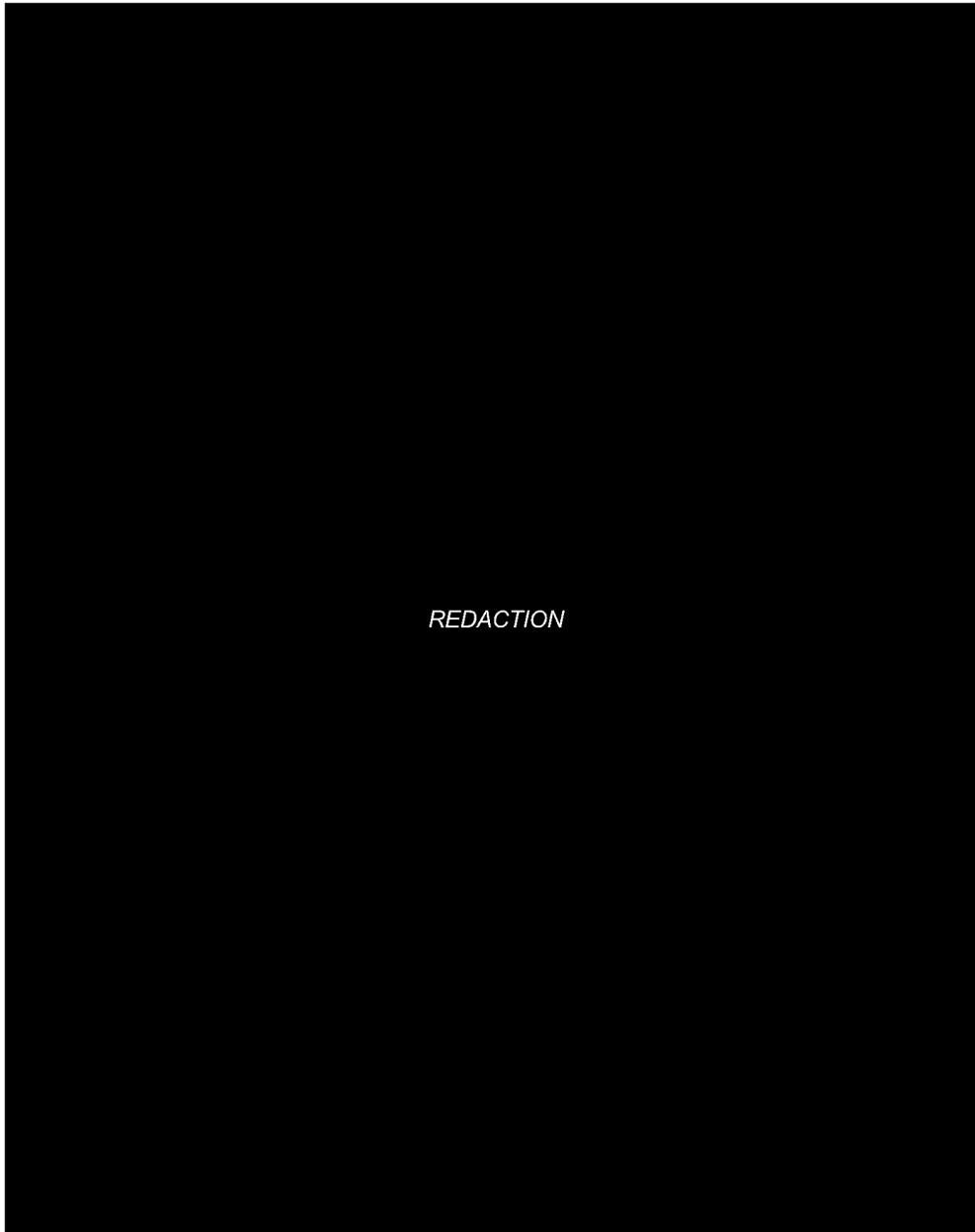
- b) a letter from their GP (or from another medical professional who has treated them) setting out details of matters including the nature and potential cause(s) of the injury;
- c) medical notes and records including copies of the notes and records kept by the postmaster's GP, any other medical professional who has treated them and any hospital to which they have been admitted. Postmasters should only provide the records that are relevant to the injury for which they are bringing a claim;
- d) evidence of the harassment, how often it occurred and what constituted the harassment; and
- e) other relevant information, for example where the postmaster is seeking to recover for financial losses (e.g. medical expenses and/or loss of earnings) the postmaster should include documents in support of those claims.

5.10.3. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.



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## Appendix 4 – Guidance for Triage Team







Appendix 4 – Application Form for potential Claimants

23	<p>Have you experienced any other losses that are directly related to the alleged shortfall(s) in respect of which you would like to claim? If yes, please provide the following details for each alleged loss:</p> <ul style="list-style-type: none"><li>• The nature of the alleged loss;</li><li>• The dates of the alleged loss;</li><li>• How the loss arose as a result of the alleged shortfall; and</li><li>• The value/size of the loss.</li></ul>		



## Appendix 5 – Extract from Bates vs Post Office

545. The problem with the Post Office witnesses generally is they have become so entrenched over the years, that they appear absolutely convinced that there is simply nothing wrong with the Horizon system at all, and the explanation for all of the many problems experienced by the different Claimants is either the dishonesty or wholesale incompetence of the SPMs. This entrenchment is particularly telling in the Post Office witnesses who occupy the more senior posts. When even a Post Office auditor, Mr Longbottom, attempts to go beneath this veneer, properly to investigate an unexplained shortfall, and finds that he is not provided with the documents he considers necessary, very considerable doubts arise about the approach adopted at the Post Office to its overall control of information.

548. Unless I state to the contrary, I would only accept the evidence of Mrs Van den Bogerd and Mr Beal in controversial areas of fact in issue in this Common Issue trial if these are clearly and uncontrovertibly corroborated by contemporaneous documents.



## Appendix 6 – HSS Application and CL Inquiry Observations



### POST OFFICE LIMITED HISTORICAL MATTERS COMMITTEE

<b>Title:</b>	HSS Application & Consequential Loss Guidance – Q24 Inquiry Observation	<b>Meeting Date:</b>	16/02/23
<b>Workstream:</b>	HSS	<b>Version:</b>	1.01
<b>Author:</b>	Simon Atkins	<b>Sponsor:</b>	Ben Foat – Group Legal Counsel

#### Input Sought: Decision

**Background:** In light of Sir Wyn identifying a potential issue regarding the HSS application process, HRC is asked to:

- consider the analysis conducted on HSS applications and the potential actions POL could take prior to Phase 5 of the Inquiry where this will be revisited;
- agree the recommendation to not take any action in response to Sir Wyn's comments that early HSS applicants were disadvantaged by not having sight of the Consequential Loss Principles until Oct 2020 before applying.

#### Previous Governance Oversight

16/09/20 POL HMC approved the CLG, as part of that sign off it was agreed to communicate the CLG to existing applicants. To mitigate the risk that claimants may not have been clear on claiming CL in addition to Shortfalls, this was publicised via the HM website so visible for new claimants and also sent both by email and post during October 2020 to those applicants who had already submitted a claim at that point.

#### Executive Summary

- In the August 2022 Interim Report Sir Wyn commented on the process of applying to the HSS, noting that the Scheme application form was 'unclear' regarding consequential losses and that POL's guidance (the Consequential Loss Guidelines ('CLG')), was published in Oct 2020 (4-5 months after the Scheme was launched, after its original closure date and only c.2 months prior to its extended closure point) meaning that 'very many/ applications had already been made' without that assistance. Sir Wyn commented 'in my view, that was a flaw', and therefore was not 'user friendly'.
  - At the 8/12/22 Inquiry hearing 'Compensation Issues Hearing', core participants (Hudgell and Howe & Co) made specific reference to a small number of example offers challenged by them to include additional HoLs and which were subsequently increased, highlighting this issue.
- Sir Wyn stated he intended to examine that issue in Phase 5, which is not due until a tbc date in 2023, (and only Phase 3 up to 10/3/23 currently has a confirmed timetable, Phases 4 and 5 are tbc at the time of writing). Whether this timetable is accelerated as a result of recent hearings and submissions is currently unknown.
- This paper summarises POL's application process in the context of the CLG and the further opportunities throughout the HSS e2e process to mitigate Sir Wyn's concerns that it was flawed. It also considers both the narrative which explains that approach and the MI available to date to support that.



- [The MI does not suggest that Sir Wyn's concerns are of significant detrimental impact to HSS claimants to the point where POL should consider any additional mitigations in advance of the Inquiry Stage 5, where Sir Wyn has highlighted he intends to revisit this issue.
- **The recommendation** is that no pre-emptive action is required, as there doesn't appear to be any significant evidence this has adversely impacted claimants when the whole e2e process is taken into account, and the consequences of any action in this regard would be a significantly undermining threat to the credibility of the Scheme at this late stage), but that this paper is revisited in late Q1 2023 to refresh the analysis (with the benefit of HSS being further advanced and Late Applications also in progress) in order to provide a substantial Inquiry submission to counter Sir Wyn's concern.

## Report

1. POL launched the HSS in May 2020 – the first application was received on 6/5/20.
2. The HSS Application Form contains a structured list of questions including Q24 '*Have you experienced any other losses that are directly related to the alleged shortfall(s) in respect of which you would like to claim?*' which was intended to prompt applicants to also claim for non-Shortfall losses, i.e. consequential losses. The criticism in the Aug 22 Inquiry report, noting '*reservations about how Question 24 would have been understood in the absence of guidance as to its meaning*' implies that this will have impacted what was claimed (and further, potentially, accepted).
3. POL published its CLG on 1/10/20 and also wrote to all claimants who had already applied at that time with the Panel JQR and CLG.
4. There are three parts to how POL could respond on this issue:
  - a. the **narrative** of POL's approach
  - b. the **outcome analysis** seen on the HSS to date – considering that 91% of Claimants' applications were received *prior* to the CLG being made available but equally now >90% of offers have been made
  - c. **actions that POL could take** – with careful consideration to their non-trivial consequences.

It could be argued that 4a and 4b represent a reasonable position to take in response to this criticism, without the need for further action.

5. There are 4 opportunities for claimants to claim for non-Shortfall losses:
  - At the application stage – *all claimants*
  - To supplement the application prior to POL assessing it / at any time pre-Panel (particularly in the context of the CLG being published and communicated to claimants who'd already applied) – *all claimants*
  - In reply to POL's RFI – 83.5% of non-IDM claimants (who applied pre-CLG publication) were sent an RFI
  - In response to POL's offer – *all claimants*

## 6. POL's approach:

### 6.1 Narrative:

- a) **Application Form** - The HSS application form asked a very direct question '*Have you experienced any other losses that are directly related to the alleged shortfall(s) in respect of which you would like to claim?*' to invite claims for CL other than shortfalls.
- b) **Communication of CLG** - Despite publishing the CLG after most claims were already submitted, POL did send the CLG to claimants who had already submitted an application as soon as it was published – anyone belatedly understanding they could also claim for CL or who then had a better understanding what types of CL were relevant could have supplemented their claim at any point prior to offer and this information would have been used to assess the claim



- c) **RFIs** - POL has sent requests for information (RFIs) to claimants prior to assessing their claims, particularly where claims were unquantified, unclear or where the information provided invited further clarification or detail
- d) **Panel** - when the claim is assessed by the Independent Assessment Panel (IAP) prior to recommending an offer, they have a discretion to ask for further information if appropriate, which they have done on occasion
- e) **DRP** - when the offer is made, Claimants are able to dispute the offer if they don't agree with it. This includes the opportunity to provide further clarity on HoLs already claimed, but also introduce new HoLs not previously submitted. The Dispute Resolution Process (DRP) makes provision for this, and for claims to be re-assessed against the IAP Claim Assessment Principles (CAP), including being returned to the IAP for re-assessment if appropriate - something that happens specifically if a new CL HoL is introduced.  
POL's approach to the DRP, (specifically, Post Offer Principles, Principle 3.5) does cater for the exceptional circumstances under which POL would consider re-assessing a claim, one of which is 'the claimant was unaware Heads of Loss could be claimed (e.g. the application was submitted prior to scheme website being updated)'. Also noting that in practice, POL hasn't made any distinction with offers re-assessed regardless of whether the applications fell before or after that point in time, none have been refused the opportunity for reconsideration on this basis. This process was not defined or active at the time the CLG were published, but the DRPs provision to accommodate additional information (including further HoL not originally claimed) is a further mitigation against claimants potentially not clear on the scope of HSS claims at the time of their original application having a backstop opportunity to add further CL if not already taken prior to an offer being made.
- f) **E2E Opportunities** - so, while the initial application process could be criticised for the timing and chronology of the guidance provided, there are numerous steps in the HSS e2e process where the claimant could have supplemented their claim if they were unaware or unable to understand the opportunity to claim for CL at the outset
- g) **Late Applications**- mindful of the comments made, when POL announced that it was taking late applications in Oct 22, it amended the appropriate section of the application form sent to all those who had expressed an interest in applying, to further signpost the CLG ('Before completing this question, for further guidance please refer to Appendix 1 ('Consequential loss principles and guidance)').

Counter arguments that may undermine the above:

- h) **DM Approach:** Due to POL taking a de minimis approach, SFO claims under the DM threshold would have had a shorter window to proactively send POL more details and were typically not contacted for RFIs. However, the same opportunities exist for the DRP process to accommodate this.
- i) **HSS Design / Legal Support:** The HSS was 'designed to be simple and user-friendly to avoid the need to incur costs of legal representation' (HSS Q&A) and therefore (pre-offer in particular) no provision was made for claimants to incur professional legal assistance to make out their claim. For claimants who were unsure about CL (and Sir Wyn does highlight the need for HSS to be 'user friendly') it could be argued that this assumption and the lack of legal support, while consistent, could have been a disadvantage to some claimants, exacerbated by the lack of CLG. This has been mitigated by a number of opportunities throughout to elaborate claims. While legal assistance has been extended at offer stage and in DPR ('reasonable' legal fees), this has only applied from Q3 2022 onwards past the point where the majority of HSS offers had been made and accepted.

## 6.2 Outcome Analysis:

As at 4/11/22 POL had 2419 claims in the HSS - 91.5% of these were received prior to 1/10/20 when the CLG were published.

### a) Application Profiles Pre/Post CLG Publication receipt dates



POST  
OFFICE

	Vol	%	
PRE	2213	91.5	Claims received date pre 1/10/20
POST	206	8.5	Claims received date post 1/10/20

There is a difference in the number of claims where Claimants added any other Head of Loss (HoL) pre and post 1/10/20:

PRE	2213	%	DM vs Non-DM
	691	31.2	% of DM claims
	1522	68.8	% of Non-DM / CL claims

POST	206	%	DM vs Non-DM
	34	16.5	% of DM claims
	172	83.5	% of Non-DM / CL claims

The gap between claims including CL received pre/post CLG two looks stark at face value (31% vs 17%) – but is distorted by the fact that 92% of all DM claims were received in the first 4 months (92% by August 21) so the receipt of DM claims had also already tailed off significantly 1 month prior to CLG guidelines being published – only 10 (or 1.3% of DM claims) were received in Sept 20 for example. In other words, a very similar picture would exist if the lines were drawn a month prior to the CLG being published.

## b) RFIs

PRE	2213	%	DM vs Non-DM	RFI's Sent	% of RFI's sent	RFI's Returned	% of RFI's returned
	691	31.2	% of DM claims	43	6.2	42	6.1
	1522	68.8	% of DM / CL claims	1235	62.5	1008	68.5
POST	206	%	DM vs Non-DM	RFI's Sent	% of RFI's sent	RFI's Returned	% of RFI's returned
	34	16.5	% of DM claims	2	5.9	1	2.9
	172	83.5	% of DM / CL claims *	126	73.3	101	58.7

The RFI rates between pre- and post-publication of the CLG are slightly different, but not dramatically so.

\*Some recent claims (split claims belatedly created as clarity on the claim substance was established, plus some dissolved claims where eligibility status recently changed) are still in the pipeline and so RFI rates for 'post' CLG publication claims may rise slightly. It could be argued that the lower number sent/received for those claims post CLG is a result of those claimants making fuller/more complete claims with the benefit of the CLG guidance, but equally the lower % of returns vs sent (both cohorts) also suggests that claimants have provided all the information they have available at the outset anyway.

## c) Offer Outcomes

For those claims offered, the table below compares and traces the reject and acceptance rates and shows minimal differences:

		Total Offered		Ineligible		1296									
PRE	2213	%	DM vs Non-DM	No Offer Ratio	No Offer %	Accepted Offers	Subsequent Withdrawal	Accepted Offers	Subsequent Withdrawal	Offer Quoted	% Accepted/Quoted	Offer Ratio	Replies	% No Reply	
	691	31.2	% of DM claims	0	0	640	61.0	11	1.7	4	0	0	0	1.1	
	1522	68.8	% of Non-DM / CL claims	248	16.2	846	51.1	140	11.3	20	1.5	100	12.5		





Total Offered (non-DM)														
116														
POST	206	%	Pre-CLG Non-DM	No Offer Yet	No Offer %	Accepted	Not Accepted (rejection)	Rejected	% Rejected	Offer Status	% Admin DM	Offer No	Reply	% No Reply
14	14	6.8	% of 206 claims	0	0	34	240.4	0	0.0	0	0	0	0	0.0
152	152	83.5	% of Non-DM/CL claims	36	12.8	27	66.4	17	14.7	1	0.9	21	16.2	5.8

The % reject rate for claims including CL received post CLG is marginally higher (14.7% vs 11.8%) but not dramatically so.

The % accept rate (for those offered) is marginally lower (74% vs 66%) but the post-CLG claims also have more offers yet to receive a reply which could balance that out once the lag time for later/more recently communicated offers is taken into account.

For those rejected offers vs RFIs, again there is no significant difference for claims where the offer has been rejected, even after the claimant was asked to provide further information:

Pre-CLG: of those rejected 130/150 had an RFI: 87%

Post-CLG: of those rejected 16/17 had an RFI: 94%

#### Non-DM Claims without additional HoL

Of the Non-DM/CL claims, some are SFO claims – 443 in total. However of those offered the reject rates are lower than the overall population. Pre 1/10/20: 373 claims made were SFO, but above DM threshold. Only 22 of those offers were rejected – a reject rate of <5%, which is only slightly lower than the reject rate for DM claims. That doesn't suggest claimants making more substantial SFO claims but not including other consequential losses were unhappy with the outcome of the process.

#### d) Quantum & Quantification of Claims

	Vol	%		UQ	PQ	FQ	Average PQ Claim	Average FQ Claim
PRE	3213	91.5	Claims received date pre 1/10/20	282	1532	399	162.4k	29.8k
			%	12.7	69.2	18.8		
POST	206	8.5	Claims received date post 1/10/20	42	131	33	149.2k	29.5k
			%	20.4	63.6	16.0		

The average PQ claim value post CLG is less than those prior, the average FQ claim is almost identical.

There is nothing in these numbers to suggest that further/more significant claims were triggered by the publication and communication of the CLG.

#### e) Rejected/DRP claims – and additional/new CL HoLs

As of 4/11/22 37 claims in the DRP had added a new HoL and typically these then are re-submitted to Panel for re-assessment.

Of those that have completed that cycle, all have been offered an increased settlement amount – ranging from an extra £1k to an extra £65k once the additional CL claim is taken into account.

As at 4/11/22, 12/37 had completed that process and the remainder were being reviewed/awaiting IAP reconsideration.

This shows that – for whatever the reason – the HSS is able to accommodate additional claims for further HoLs that may not have been made at the initial application. Whether or not the claimant was



unaware/not clear on what or how to claim for consequential loss at the outset, that is not a barrier to their claim being adjusted later in the HSS e2e process.

A small number of examples falling into this group were quoted at the Inquiry by Hudgells and Howe & Co, highlighting the potential for claims to change significantly as a result of challenges to the offer/disputes introducing new information.

### 6.3 Actions that POL could take:

#### a) No further action & submit a response to Inquiry at S5 setting out POL's position

Whilst Sir Wyn's observation is not an unreasonable logical hypothesis, there is a strong narrative response (supported by data from within HSS) that doesn't suggest any strong evidence supporting Sir Wyn's observation.

Also noting that for the launch of the Late Applications cohort, the relevant application form question contained further signposting to the CLG guidance to ensure claimants were aware to make reference to that in making out their claim – in essence, what Sir Wyn suggested should have happened on HSS.

#### b) Consider treating pre-CLG publication claims differently

Those claimants applying pre-CLG publication were sent a communication and the CLG guidelines when published. All claims have followed the same process, and all claimants have been treated equally depending on their characteristics – the only difference is the point in time they were made aware of/received the CLG guidelines.

### What could POL do differently?

6.4 Potential Actions for POL to consider	Considerations
a) Re-confirm somehow that the >90% of claims made pre CLG publication don't want to reconsider their claim?	As per the above, the approach POL has taken has meant that claimants have already had multiple opportunities post application to supplement their claim.
b) Consider re-visiting claims made pre-CLG publication without any CL element (i.e. all DM claims, all non-DM SFO claims, which would represent c.950 claims)?	Acceptance rates at c.97% for DM claims and up to c.74% for non-DM to date (lowered by lag time of offers still being considered) do not immediately suggest there is any reason to do that- especially taking into account the backstop of the DRP process allowing further CL HoLs to be added.  Additionally, the consequences of POL taking any course of action to undermine the full and final settlements awaiting acceptance/resolution and those already made (and settled) would represent a significant potential to undermine the credibility and integrity of the HSS as a whole.

### Financial Impact

Of each of the above options:

#### a) No further action – no financial impact



- b) **Consider treating pre CLG publication claims differently** –this is not quantified at this stage, but potentially would be of significant materiality.

### Risk Assessment, Mitigations & Legal Implications

1. Assuming Sir Wyn doesn't change his intention to revisit this topic prior to S5 (likely to be Q2 2023 at the earliest) there is no immediate risk to consider or mitigate at present if the recommended approach is favoured. At the 8/12 Inquiry hearing, core participants encouraged Sir Wyn to produce another interim report and recommendations (not specific to this issue but if adopted would assume this issue may be included) so it may be that this issue is addressed by the Inquiry process earlier than planned.
2. Assuming Sir Wyn does re-visit at S5 there is a risk POL is criticised and asked to consider remedial or supplementary actions. However, he also notes he will need to hear evidence to form a clear view: [15/8 Report Ref 145. "Whether the failure to issue the Guidance at the proper time had the effect of causing applicants to omit legitimate heads of claim can only be determined after hearing evidence. No doubt that issue can be examined in Phase 5 together with any other evidence tending to show that applicants failed to present all their legitimate claims for whatever reasons"], so it's not going to be possible to gain a clearer sense of how this might play out until Stage 5. The mitigation of that is in essence, the main consideration for this paper. The recommendation is to do nothing, but there is a risk to be accepted that at S5 POL may be encouraged or worse, instructed, to take action. However, there is no clear evidence, as set out above, that POL should consider second guessing this and taking any action over and above the stages in the e2e process that already mitigate all CL's not being raised at the initial application stage.
3. Connection to the issue of Legal Representation pre-Offer & 'Inequality of Arms' criticism – both Hudgell and Howe and Co make the connection to the fact that the potential lack of understanding at the application stage leading to heads of loss not being claimed is due to two issues: i) the lack of clarity and timing of the CLG publication; ii) but also that claimants were not represented legally at this stage and they were disadvantaged by that. This is a separate criticism, but the two are presented as connected. At this point in the progress of the HSS, POL's approach to legal support post-offer enables SPMs to be legally supported to challenge the offers (as per the examples quoted at the 8/12 inquiry hearing), but this is in effect retrospective support only. The associated risk that POL only enabled further legal support towards the end of HSS is one that POL has accepted already as part of that decision making process – some claimants now benefit from reasonable legal fees post offer/dispute, some earlier claimants did not.
4. A supplementary risk was raised at HMC in discussing this paper (not directly relevant to Q24) regarding the DM approach and if there are any potential issues about fairness and potential for underpayments in particular. The inherent risk associated with a DM approach is that claimants may 'win/lose' in terms of settlements – a risk accepted as part of the decision-making process for DM in 2020. NB. HMC approved DM at £20k originally, but this was revised down to £8k following POL Board oversight. The DM approach means that SFA is not undertaken for DM-eligible claims – the only way to get certainty on the risk that DM claimants may have been disadvantaged is to conduct SFA to validate the claim/the way the claim has been quantified using HSS SF DM principles – however this is not recommended as POL/HM will then be in possession of a documented and possibly alternative view to the DM settlement offer. This could be sampled but the same issue would remain. Additionally, it would distract from the SFA efforts required to process the HSS Late Applications and OHC claims. The HSS acceptance rates for DM offers do not suggest that claimants consider POL's DM approach (albeit not publicised) has been unfair.

### Stakeholder Implications



5. Given the progress the HSS has now made (>95% of offers sent), any actions other than a continuation of the existing approach taken will likely need to trigger engagement and negotiation across all internal and external stakeholder groups (HSF, UKGI, BEIS, HMT)

### Next Steps & Timelines

6. Confirm HMC/HRC are comfortable with the 'no action' approach (No further action & submit a response to Inquiry at S5 setting out POL's position) – if so, revisit and refresh this analysis in Q1 2023 where it should be possible to re-assess the numbers from a 'complete' HSS offer position and also compare any differences to the composition and progress of the HSS Late Applications cohort.

Input / Reviewed By:

Name	Role	Comments	Version	Date
Simon Atkins	Author	Initial draft 0.01 [SA]	0.01	30/11/22
		Incorporated comments from CC	0.02	02/12/22
		Incorporated feedback from GH	0.03	07/12/22
		Amends post Inquiry Hearing 8/12	0.04	13/12/22
		Amends to incorporate POL Legal review	0.05	14/12/22
		Post HMC amends	1.01	07/02/23
Aaron Davey	Legal *	Amends to v0.04	0.04	13/12/22
Victor Turner	Finance **	Recommendation and approach have no financial impact	N/A	
Graham Hemingway	Programme Lead	Review comments and feedback	0.02	

\*Mandatory Review Required \*\* If Applicable

Governance:

Committee	Version	Decision	Date
Historical Matters Committee	V01.00	Approved for HRC w/amends	18/01/23
Historical Remediation Committee	V02.00		16/02/23