



Department for
Business & Trade

Horizon Compensation Advisory Board

Report of seventh meeting held on 5 September 2023

Members present: Prof. Christopher Hodges (Chair); Lord Arbuthnot; Kevan Jones MP; Prof. Richard Moorhead.

Also present: Carl Creswell; Rob Brightwell (both DBT).

Compensation for postmasters with overturned convictions

1. The meeting was joined for this item by Simon Recaldin, Neil McDaid and Nick Lowman of the Post Office and Alan Watts of Herbert Smith Freehills.
2. The Post Office team described the evolution of the system for compensating former postmasters whose convictions have been overturned. All these people had been encouraged to seek legal representation, with such costs being paid by the Post Office. Postmasters whose convictions had been overturned (other than those whose appeal had been allowed on the grounds that a retrial would not be in the public interest) had also been offered substantial interim payments (initially £100,000, now increased to £163,000). These had been paid promptly.
3. Full and final settlements in two lead cases had been negotiated bilaterally with claimants' lawyers. Pecuniary losses (e.g. loss of earnings) had been considered separately from non-pecuniary ones such as personal injury or damage to reputation. The former Supreme Court judge Lord Dyson had been commissioned jointly by the Post Office and lawyers representing a number of claimants to undertake an "Early Neutral Evaluation" (ENE) of a sample of non-pecuniary claims. On the basis of this evaluation he had recommended ranges for the non-pecuniary heads of loss to be applied across all former postmasters with overturned convictions, with the offers for each individual being within the range and which were sensitive to the facts of each case. As a result, 59 of the 83 eligible postmasters had agreed settlements of their non-pecuniary losses. Eight were considering offers, with three further claims being assessed. Another 13 postmasters had not yet submitted claims.
4. The Post Office was now seeking to make similar progress with pecuniary losses by establishing a process which was transparently fair, consistent and claimant oriented, drawing on learning from the ENE. It had consulted claimants' lawyers on principles for assessing such losses and a process for delivering consistent and fair assessments against those principles. That process had three key elements to ensure fair outcomes:
 - Independent legal advice to the postmaster throughout the process, with reasonable costs met by the Post Office;
 - An independent assessor who was being appointed to provide an independent appeal route should claimants disagree with an offer made by Post Office. Claimants' solicitors had been invited to reach consensus on the individual(s) who should perform this role and were currently considering candidates. The person chosen as Chair was likely to have judicial experience.
 - Retention by postmasters of the right to have their compensation determined by the Courts – but the purpose and aim of the new process was to ensure that fair settlements could be reached without needing to take such a step.
5. After several rounds of discussion with claimants' lawyers, the Post Office were now close to finalising the principles and agreeing the process. Further comments from claimants' representatives had been requested by 15 September.

6. The Board welcomed the promulgation of principles and a timetable for agreeing them and the final process. They wanted the new arrangements to come into force as quickly as possible. They encouraged Post Office to document and communicate the approach thoroughly so that it was fully understood by postmasters. They urged claimants' lawyers to reach early agreement on the identity of the independent assessor and to submit remaining claims as quickly as possible.
7. The Board also expressed concern that claiming that the 'retention of litigation rights' was restating a right claimants had in any event and should not be presented as a benefit of the scheme.
8. The scheme should if operated well on both sides avoid litigation. To aid this, and especially for reasons of consistency and oversight across all the schemes the Board took the view that the reviewer proposed by the Board under the HSS scheme should be the same person as the Reviewer under the GLO scheme. The Department could consider asking him to play a similar role for the compensation for those with overturned convictions, in addition to the assessor.
9. The Board noted that the Chair has written
 - a. to the CCRC asking for more information about cases, their process, and the status of cases, and
 - b. a generic letter to the Non-Post Office Prosecuting Authorities, including the DWP, and authorities in Scotland and Northern Ireland, asking for more details of their procedures, number of cases, and status of cases.
10. Copies of these letters are being placed on the Board's web-page.

Board priorities

11. The Board discussed the development a structure against which it could assess its priorities. The Secretariat was asked to develop a draft structure and circulate it for comments in correspondence in the light of Board members' comments on the following issues:
 - The role of the GLO scheme Reviewer. Board members wanted to be sure that this role would provide postmasters and others with confidence in the fairness of the system. The current Guidance and Principles envisaged that the criterion for the Reviewer's involvement would be manifest error or procedural irregularity. In the Board's view, something wider was needed along the lines of a summary assessment of the substance of the case. Given that the scheme involved independent advice and an independent Panel, the expectation might be that the Reviewer would not need to re-open issues of substance unless they appeared to be unfair. A sub-group of the Board was to meet the Reviewer, Sir Ross Cranston, later in the day. (See record of meeting below.) In the light of their discussion, the Secretariat would provide further advice to the Board.
 - The GLO Scheme Reviewer needed to be properly resourced in terms of legal and administrative support.
 - As noted above, the GLO Scheme Reviewer should have the same role in relation to all schemes.
 - The Williams Inquiry's suggestion – discussed at the Board's previous meeting – that the Board should review the fairness of settlements. The Board agreed that any such review should focus on sampling areas (heads of loss, categories of claimants etc) where possible concerns have been identified. They also agreed that they did not themselves have the necessary backgrounds or capacity to do this work. It would therefore be necessary for a third party to do it under their auspices. They asked the Secretariat to develop some thinking about how this might be done. Referring such cases to GLO Reviewer was one obvious option; he would be well placed to consider matters of "fairness", which might otherwise need to be defined.

- The Board would benefit from sight of anonymised decision letters and data on claims and awards which was held by the PO/DBT teams to assist thinking on which areas should be sampled; the scale of such samples; how this might link to the role of the GLO scheme's Reviewer and the further HSS appeal approach recommended by the Board at previous meetings; and what sort of organisation, if it were not to be the GLO Scheme Reviewer, might be able to do the work.
- Possible differences between the principles applying to the various schemes, beyond those necessary to accommodate the different circumstances of the affected postmasters. DBT noted that Government and the Post Office were under strong incentives to minimise such differences.
- Compensation for those postmasters whose convictions had been overturned by the Crown Courts because the Post Office had concluded that a retrial would not have been in the public interest. The Board noted that it should also be remembered that such re-trials would not be in the interest of the Post Office, given their expense, publicity, and likely failure. The Post Office Team had indicated that these "public interest" cases had received lower compensation offers because the Post Office's view was there had been no malicious prosecution to be compensated. The Board thought that view vulnerable on the evidence emerging in the Inquiry, but regardless of that, they indicated the approach failed to put these victims of overturned convictions in the position which they would have been had they not been prosecuted; that the rationales for treating them differently in effect re-victimised them; and it was also contrary to the stated intention, as indicated in the Post Office team's presentation to the Board's previous meeting, not to run schemes on too legalistic a basis. The Minister should be advised that the Board's view was that the approach to this kind of case was in their view unfair and that they thought that all claimants in the OC scheme should be compensated on the same basis, not influenced by claimed differences around malicious prosecution.
- The Board asked for more information about
 - the descriptions, possible categorisation, and numbers, of convictions, with a view to whether it was possible to determine if greater speed, or different approaches, might apply to different categories; and
 - the number and status of cases that were initially brought in magistrates' courts, as opposed to Crown Courts.
- Compensation for other postmasters whose convictions were not currently being overturned by the courts for the variety of reasons discussed at the Board's previous meeting. The Board noted that the Williams Inquiry was expected to take evidence on these issues during the remainder of 2023 and that the Law Commission was doing work on relevant issues.

Williams Inquiry interim report

12. DBT described the response which they intended to give to the recommendations made in the Williams Inquiry's report on compensation. The Board welcomed the planned response.

Meeting between Board members and Sir Ross Cranston, GLO Scheme Reviewer

13. Prof. Christopher Hodges, Prof. Richard Moorhead and Kevan Jones MP met Sir Ross Cranston after the Board meeting reported above. Sir Ross has been appointed as the Reviewer for the GLO scheme. They discussed:

- The landscape of different schemes and procedures, and the need to ensure full and fair compensation across them.
- The desirability of having the GLO Reviewer also act in a similar way on all the Schemes to ensure consistency and quality in the schemes is assessed through a mechanism of real independence.
- The need for the GLO Reviewer to have sufficient legal, administrative and other support to discharge his role in a timely and effective manner as well as effective administrative arrangements.
- The potential to direct samples of cases to be reviewed by the GLO Reviewer and his team to meet the need identified by Sir Wynn for assurance of scheme consistency and fairness as set out in his interim report.
- The need for an effective relationship between the Board and Scheme Reviewer to raise issues of concern, and to review progress.