

POST OFFICE OVERTURNED CONVICTIONS SCHEME

JOINT NOTE

10th September 2024

1. We are writing this Note jointly for your assistance. It covers matters beyond the Overturned Convictions Scheme but, nonetheless, touches upon issues that we believe are of importance. In our view, to date, insufficient attention has been given to the differences in the compensation arrangements, and eligibility criteria for these, across the (now) four schemes. This has important consequences for victims/claimants for compensation that are a matter of concern.
2. We are writing this Note to bring the circumstances to your attention, as Chair of the Independent Assessment Panel for the Overturned Convictions scheme, not because it directly engages with this scheme, but because of the manifest desirability, indeed the requirement in justice and fairness, for consistency in the application of eligibility criteria for victims of compensation across the four schemes. Inconsistency, that is both obvious and unfair, is the product of the schemes having been established on an *ad hoc* basis without unitary oversight – or coordination. (We are of course conscious of the Horizon Compensation Advisory Board’s Role. Were the compensation schemes subject to unitary oversight, we would address our concerns accordingly, but there is none.)
3. Government ministers have repeatedly stated, when commenting on compensation arrangements for the Post Office’s victims, that all claimants should be treated in the same way under whatever scheme their claim has been brought. There are currently four

different compensation schemes in place, each created at a different time and in an *ad hoc* way, as new classes/categories of Post Office victims have been revealed/identified. The four schemes are (chronologically): (i) the Historic Shortfall Scheme (HSS), (ii) the Overturned Convictions (OC) scheme, (iii) the Group Litigation Order (GLO) scheme and, most recently, (iv) the scheme now being set-up to compensate postmasters whose convictions are quashed by the **Post Office (Horizon System) Offences Act 2024**.

4. At paragraph 11 of the report of Part II of its fourth meeting, held on 21st April 2023, the **Horizon Compensation Advisory Board** welcomed the fact that its terms of reference were being expanded to cover the Department for Business and Trade's oversight of other compensation schemes being delivered by the Post Office. The report provided:

"Controls to assure fairness between schemes

The Board noted the arrangements which DBT had in place to ensure that claimants were treated in a similar way no matter which scheme applied to them. These included a new Programme Board of officials focussed on ensuring fairness across schemes."

5. Despite those assurances, there are obvious serious inconsistencies in the way in which different claimants for compensation are treated under the different schemes. That results, in our view, in disparity of treatment and in unfairness. That should be a matter of concern. In particular, the rules for eligibility criteria for compensation are different, or are differently applied, across the different schemes.

Postmasters acting through a company

6. We have a client whose claim for compensation under the HSS scheme has been rejected by the Post Office on the basis that her late husband, a postmaster, operated his business through a company, rather than as an individual. We have explained that in ordinary personal injury and fatal accident litigation, the fact that a claimant acted through a limited company, rather than as an individual, (even a limited company which has

subsequently been dissolved) does not prevent them bringing a successful claim for damages, including damages for loss of earnings; it merely requires them to show that the losses claimed are their losses as an individual, not those of the company - to the extent that there is any difference between the two.

7. The approach taken by the Post Office in the HSS scheme is strikingly and inexplicably at odds with the approach taken of the Post Office in the GLO scheme that expressly provides in paragraph 2.1.5 of its **Guidance and Principles** for directors of companies which have ceased to exist, but were parties to the GLO, to make claims as linked individuals. This is further explained in a relevant Q&A, in the latest updated Q&As for the GLO Compensation Scheme (June 2024), that state:

“Q. I was the director of a company which was part of the GLO. Can I apply to the Scheme?”

Yes.

Q. The company is now in liquidation/administration – can I still apply?

Yes. If the company or a partnership has ceased to exist, it will not be necessary to restore it except in a limited number of circumstances, for example, when the company is set out as a community interest company. If appropriate, an offer of an *ex gratia* payment will be made to you and any other shareholders and directors of the company or partners of the partnership, which may have a legitimate interest in that payment. It is your responsibility to seek an agreement with them as to who will be the recipient of the payment and how it should be split between yourselves.”

Deceased postmasters

8. We have a client who is the widow of a deceased postmaster who in 2020 made a claim under the HSS scheme. Her claim, in 2023, was rejected by the Post Office, despite the fact that she would have a claim under the **Fatal Accidents Act 1976** in her own right, because

her husband committed suicide as a result of the Post Office's wrongful investigation and their suspension (in breach, inter alia, of the PO's duty of good faith (**Bates v. Post Office (No. 3: Common Issues)** [2019] EWHC 606)).

9. The PO's approach is at odds with the eligibility criteria under the GLO Guidance and Principles, paragraph 2.1.4 that provides: 'You may apply on behalf of a deceased GLO postmaster.'

Relevance of Horizon "shortfalls" to original investigation/conviction

10. The Post Office, for reasons that are impossible to ascertain or justify, requires a very different level of relevance of 'Horizon shortfall' evidence as a test of eligibility across the different schemes.
11. The HSS scheme TOR stipulate that: *"The purpose of the Scheme is to resolve past issues with current and past postmasters who, in good faith, believe they may have been affected by shortfalls which relate to previous versions of Horizon."*
12. The GLO scheme requires only a much looser connection, set out under paragraphs 2.1.2 and 2.1.3 of the **GLO Guidance and Principles**. These stipulate that two criteria must be satisfied:
 - a. "You must have been a claimant in the action **Alan Bates and Others v. Post Office Ltd** pursued under the GLO and a party to the settlement agreement dated 10th December 2019 with Post Office Limited" and
 - b. "Your application and time with Post Office must not involve or relate to any criminal conviction(s)."
13. The criteria for eligibility for convictions to be quashed under the **Post Office (Horizon System) Offences Act 2024** are even looser: namely, that the postmaster must have been

convicted of an offence of theft, fraud, false accounting or similar, while carrying on a post office business between 1996 and 2018 “at a time when the Horizon system was being used for the purposes of the post office business”.

14. In other words, there is no requirement for the postmaster to prove that Horizon system evidence was in any way responsible at all for their conviction.
15. It is now clear, from evidence given to the Post Office Inquiry, that other Post Office data/money processing systems were also seriously flawed during the same period, notably its ATM system (Detica/Second Sight), so that the 2024 Act will allow convictions based on evidence from systems other than the Horizon system, such as from ATM/FOREX systems, to be quashed.
16. As a matter of fairness, other claimants for compensation who were not themselves subject to a criminal conviction but who were (for example) wrongly accused of being liable for a shortfall (say from an ATM machine at branch) should be eligible for inclusion in the applicable compensation scheme. Otherwise, those postmasters whose convictions are quashed under the 2024 Act will be treated more favourably/generously than other claimants for compensation. A central attribute of fairness is equality of/consistency in treatment of claims.

Excluded claimants

17. Under the present arrangements, the Government is not achieving its stated objective of compensating all victims of the Post Office scandal. For example, the existing schemes inconsistently allow claims to be brought by the following types of victim:
 - a. widows of postmasters, who committed suicide as a result of wrongful conduct by the Post Office towards them in connection with the investigation of alleged shortfalls (the HSS scheme is said to exclude such claims – the GLO scheme allows them);

- b. postmasters whose convictions were caused by flaws in accounting systems, other than Horizon, for example, caused by the presence of an ATM in branch (only the 2024 Act allows for compensation for such claims – GLO scheme claims are *ex hypothesi* Horizon claims);
- c. children or other close relatives of postmasters who were wrongly convicted and whose relatives have suffered recognizable mental illness as a result of a postmaster's conviction/prosecution (including civil proceedings)/other wrongful acts (no scheme expressly allows for such claims, which is to deny the reality that such claimants exist and have been, in some cases, grievously injured by the Post Office's actions).

Different funding arrangements

- 18. Lastly, though tangentially to the main burden of this Note, the Government has insisted under both the GLO and more recent 2024 Act schemes on imposing a tariff of fixed limited costs upon lawyers who act for claimants and who are willing to agree the tariffs (in the expectation of being 'approved' firms/recommended to Post Office victims). We have declined to agree to tariffs, because these do not allow for the proper investigation of complicated claims, or for the provision of adequate supporting evidence for claims, whether from accountants, employment consultants and, where appropriate, medical experts. (See generally, the evidence given to the Committee for Business and Trade, Report 7 March 2024 *Post Office Horizon redress: Instruction to Deliver*.)
- 19. We have experience of cases that have initially been conducted by one of the chosen firms, subject to tariffs, in which claims appear to have been wrongly rejected by the Post Office because of inadequate preparation/examination of evidence. As ought to be self-evident, these complex cases require individual assessment and preparation and are at risk of being under-settled by lawyers constrained to work on far too-tight a budget, that assumes that only issues of quantification require serious investigation, whereas the more

complex cases involve both the investigation of issues of causation and possible career paths ('counterfactuals') of claimants for compensation, as well as other issues that are familiar in complex personal injury litigation.

20. The Post Office has agreed to more reasonable/realistic costs arrangements for victims' lawyers in the case of OC cases – in effect High Court 'standard basis' of assessment, that is to say, costs that are both reasonable in amount and reasonably incurred. But this results in anomalies across the schemes (for example, accountants fees being allowed in full in connection with a claim in the OC scheme but being discounted in connection with an award in claim of similar complexity and similar amount of recovery, in the GLO scheme). That is unsatisfactory, and standard costs (reasonable in amount and reasonably incurred) should extend to all cases of recognized complexity.

PAUL MARSHALL
Cornerstone Barristers, Gray's Inn

ANDREW YOUNG
3 Hare Court, Temple

10th September 2024

