

**IN THE POST OFFICE HORIZON IT INQUIRY**

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**HOWE + CO SUBMISSIONS ON THE  
HORIZON SHORTFALL SCHEME APPEALS PROCESS**

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1. Howe + Co are grateful for the opportunity to put forward submissions on the HSS Appeals process on behalf of Core Participants in the Inquiry. We act for Core Participants who have sought redress through the HSS Scheme. It should also be noted that Howe + Co also acts for many former subpostmasters under the HSS Scheme, who are not Core Participants in the Inquiry.

**Inadequacy of HSS**

2. The Horizon Shortfall Scheme remains inadequate for the following reasons:
  - (i) It was (and remains) administered by Post Office Limited despite the Business and Trade Committee's ("the Report") recommendation that the "Post Office should be removed from delivering redress to claimants through the HSS"<sup>1</sup>. SPMs are and remain anxious about dealing directly with the institution which had destroyed their careers and reputations.
  - (ii) Funding for legal representation and expert reports only became available after an initial "Panel" offer had been made. In many cases applicants received derisory offers but, being without any expert assessment/ expert reporting, so felt unable to challenge those offers. The Report

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<sup>1</sup> P.4 "Post Office and Horizon Scandal redress: Unfinished Business" (RLIT0000582)

recommended (p.4) that Claimants should have “up-front legal advice, paid for by the scheme’s administrators”.

- (iii) The average delay between submitting applications and receiving an offer presently is in the region of 18 months. We have instances of delay far exceeding this.

### **Advantages of HSSA**

3. Howe + Co was involved in the roundtable discussions that led to the introduction of the Horizon Shortfall Scheme Appeals (HSSA) in September 2024 (Implemented late April 2025//May 2025). It is clear that the HSSA signalled a recognition that the initial HSS process did not have adequately address the needs of all claimants.
4. The HSSA now provides an independent route for those who have already received an offer from the HSS to appeal that settlement offer. The HSSA will particularly benefit individuals who accepted an initial offer without the benefit of legal advice and subsequently felt that the process had been unfair.
5. The HSSA represents a significant improvement on the HSS process for the following reasons:
  - (i) Independent Review: The HSSA is managed by the Department for Business and Trade (DBT), ensuring a level of independence from the Post Office in the appeals process. This provides a more impartial assessment of whether the original HSS settlement was fair.
  - (ii) Tax Exemption: Any compensation received through the HSSA is exempt from Income Tax, Capital Gains Tax, National Insurance contributions, and Inheritance Tax. This ensures that the full value of any additional compensation reaches the claimant.
  - (iii) "Best Offer" Guarantee: Claimants who appeal through the HSSA have received assurances that will not receive less in total than the amount they were originally offered under the HSS. The outcome of the appeal can only result in the same settlement or a higher one.

- (iv) Specified timeframes as to HSSA offers. Invitation letters received by our clients have stated that: *In 90% of cases, within 40 working days of submission of a substantially complete appeal (or full response to any request for further information), DBT aims to either send your client an increased offer (if this is appropriate) or confirm agreement with the most recent offer made to them by the Post Office. If DBT cannot agree an amount of redress with your client bilaterally then the case will be reviewed by an independent panel.* This largely accords with the practices adopted by DBT within the GLO scheme and represents a significant improvement on the delay-ridden HSS.

#### **Drawbacks of HSSA and proposals on behalf of Core Participants**

- 6. However, notwithstanding the improved position that HSSA now represents, it is clear that HSSA suffers from a number of drawbacks. We set out below what those drawbacks are and our proposals for how they should be addressed.
  - (i) Recipients of fixed-sum awards under HSS are excluded under HSSA. Those who opted for the quicker £75,000 fixed sum under the HSS (in many cases without the benefit of legal advice or expert reports) feel they missed out on a chance for a larger, tax-free settlement, if their losses were substantial. We submit that such claimants are permitted to access the HSSA should they wish to do so.
  - (ii) The barrier of the £75,000 acceptance to a claimant's entry into the HSSA must be removed.
  - (iii) Claimants entering the HSS scheme must have immediate access to "up-front" legal advice from competent and experienced solicitors, paid for by the scheme and not the CAB or other such model that is being proposed.

- (iv) Claimants entering the HSS Scheme must be entitled to obtain expert reports paid for by the scheme, if so advised, to ensure that settlements are fair.
- (v) Time limits: There are specific deadlines for applying to the HSSA, which some eligible postmasters might miss. These are generally stated in the guidance as 9 months from the HSS Dispute Resolution process outcome or 9 months from May 2025, whichever is later. The guidance states: *Making a late appeal. Unfortunately, DBT will not be able to accept any HSSA appeals made after these timescales.* We submit that the scheme should incorporate a clear discretion to extend time, where fair and appropriate.
- (vi) Preliminary issues: There is no provision in HSSA for resolution of preliminary issues (such as the extent of causation). Howe + Co has made representations on preliminary issues in cases under the GLO Scheme, which has proved a beneficial process to claimants. We submit that such a process should be written in to the HSSA.
- (vii) Notwithstanding the 40 working day commitment for an initial offer, there remains the prospect for delays – especially where a claimant does not accept the initial offer and requires an assessment from the Independent Panel and then the Independent Reviewer. We submit that timescales for these appeal stages should be built into the HSSA.
- (viii) The Independent Panel process is unreasonably rigid. The guidance states: *If your claim is referred to the Independent Panel, you will have the option to make an oral statement, limited to one hour, to the Independent Panel before it makes its decision. The Independent Panel may ask you further questions in relation to your claim during the oral statement session.* The imposition of an arbitrary 1-hour guillotine on what might involve complex argument should be removed.

- (ix) The HSSA guidance contains an exception to the best offer principle in relation to awards made by the Independent Panel. The guidance states: *The Independent Panel may make an award which is less than any earlier offer made by DBT for your appeal. DBT will be bound by the Independent Panel's decision and once the Independent Panel has made its final decision on the offer, you will not be able to return to this earlier offer. However, you will never receive any less than your HSS or DRP offer.* This is unacceptable and should be removed. We have taken instructions from our client Christopher Head OBE, who has expressed a significant concern in relation to this provision, which we detail below.
- (x) Burden of proof in appeals: The HSSA does not resolve the concerns of claimants as to the burden of proof in appeals. Essentially, in all of the schemes it remains incumbent on claimants to articulate why their initial settlement was unfair. This will prove more challenging where a claimant transfers from HSS to HSSA after having received only one HSS offer (and therefore without the benefit of expert evidence). We submit that HSSA should take account of (i) the findings in the Group Litigation as to the presence of bugs, errors and defects within the Horizon system and (ii) the toxic culture at POL towards SPMs and apply a 'benefit of the doubt' approach where a claimant is not able to prove every aspect of his/her claim to the requisite civil standard. A further reason why the benefit of the doubt should be afforded to claimant is that where a claimant might need to demonstrate why his initial settlement was insufficient, such a process which might require him to revisit painful memories and gather evidence that may be difficult to obtain.
- (xi) Judicial oversight: There is no provision for active case management by a Judge. Howe + Co understands that Sir Gary Hickinbottom has provided guidance and direction within the OC1 scheme, by way of case management, when requested to do so. Given the scope and extent of

this scheme we submit that there is a clear role for a senior Judge which should be written into the HSSA.

### The position of our clients

7. We have taken instructions from core participants who are also claimants under the HSS. The main concern that our clients have expressed has been the unreasonable amount of time that the HSS has taken and continues to take.
8. The Inquiry will be aware that its first witness was Mr Baljit Singh Sethi; he gave evidence on 14 February 2022. The following exchange from that day is relevant:

*MR BEER: So under the HSS, as we are calling it?*

*MR SETHI: Yes, sir.*

*Q. When did you make the application?*

*A. Two years back, sir, in February 2020.*

*Q. February 2020?*

*A. Yes, sir.*

*Q. When did you receive a reply of substance from the Post Office?*

*A. Unfortunately, sir, I have not received a single substantial reply. Every three months, I write to my MP. She writes to the Post Office and they come with a stereotype statement "Mr and Mrs Sethi, we got 2,500 applications, so you're not the only one, please have patience and we will come back to you". This is the only reply I've received in the last two years. (INQ00001044: Transcript 14 February 2022, page 75, line 23 onwards)*

9. The situation has not improved since the Inquiry commenced and Mr Sethi's concerns over delays within the HSS scheme are not unusual.
10. The Inquiry will recall Mrs Maureen McKelvey (an Inquiry case study), who was prosecuted by the Post Office, and found not guilty in 2006. Mrs McKelvey first applied under HSS on 13 August 2020. She received an offer from HSS in 2024. That offer was derisory and she has now decided to transfer to HSSA and is in the process of doing

so. She states: *"I feel a lot better about dealing with DBT – but they have to prove themselves to me. They need to show us in the next 40 days that we are actually getting somewhere. It has been a nightmare."*

11. Similarly, we have taken instructions from Fiona Elliott, who applied under HSS on 4 August 2020. After a delay of two years, she received an offer of settlement from HSS, which represented circa 5% of her pleaded claim. Her HSS claim remains unresolved after almost 5 years.
12. Mrs Elliot has registered to transfer to HSSA and hopes that she will receive better treatment. She currently awaits confirmation of her eligibility. However, she remains cautious because HSSA is very much a recent and unproven version of a long-standing flawed scheme.
13. Christopher Head OBE has expressed a particular concern in relation to the exception to the best offer principle in relation to the Independent Panel process. He states that claimants within the HSSA:

*.... cannot have an appeal to the final reviewer without going through the Independent Panel stage, but their loss has already now materialised, and they have no guarantee of it being restored. Why are claimants being put in these impossible situations, after all the trauma they have already been through?*

*The right and fairest way for this to operate, is based upon the 'best offer' principle, that no matter what dispute mechanism you go through a claimant always has access to that best offer, so they aren't put under duress and faced with a gun to the head scenario. I fear claimants will be further traumatised by this cruel process, the risks they face and therefore will never get closure from this ordeal. They will sit day after day, thinking why did I take that risk, or what if I had just challenged the offer. All claimants want is to be able to say that they had a fair hearing without having to make an impossible decision and further financial risk, after everything they have already been through.*

14. We submit that the views of our clients are important and should be given significant weight by the Inquiry. Fiona Elliott and Maureen McKelvey have been subject to wholly unreasonable delays within the HSS process and the HSSA Scheme will be ineffective unless it can operate within a reasonable timeframe. Furthermore, Christopher Head OBE raises an important point about an inherent unfairness within the HSSA.

**The need for legal and expert assistance at the outset of the HSS process.**

15. It is a matter of regret that the HSS, which has proved unsatisfactory, continues to operate. In relation to appeals there is now a 'twin track' approach. Our clients' primary position in relation to the HSS is that it should be abolished and replaced with a more independent and a fairer scheme. At the very least HSS should be amended to ensure that funding and provision of legal and expert evidence at the outset – and not after an inordinately delayed and often derisory settlement offer.

16. Valuable time is lost by claimants through delays in the HSS process. Many SPMS are elderly, and often cite that they may not get much time to obtain and benefit from any eventual compensation.

17. It is uncontentional that legal advice can help claimants understand their rights, advance reasoned claims that save time, assess the fairness of offers received, and build evidenced cases, where necessary, to challenge unfair offers. Furthermore, expert evidence, such as forensic accounting or psychological evaluations, can be crucial in quantifying financial losses and demonstrating the impact on health and well-being of claimants.

18. Those we represent firmly believe that access to legal and expert evidence should be facilitated and supported at the outset stage of these (HSS) schemes to ensure that postmasters can effectively present their claims and receive fair and just compensation at the first stage, rather than after multiple reviews. It is the view of our clients that the complexities of the Horizon scandal and its far-reaching consequences necessitate that

claimants have the necessary resources to navigate the process and achieve a resolution that truly reflects the harm they have suffered.

19. As this scheme is new and under development, it is not possible to assess the effectiveness of its operation now. That is why any recommendations that the Chair makes in his report will assist in the development of a fair and efficient scheme.

20. Our clients would request that the Chair keeps this scheme under review as it progresses to actual operation.

Howe + Co

14 May 2025