

POST OFFICE OVERTURNED CONVICTIONS
INDEPENDENT COMPENSATION ASSESSMENT PANEL
(PECUNIARY LOSSES)

JULY 2024 REPORT

Introduction

Following discussion with the Horizon Compensation Advisory Board, this report was commissioned by Minister Hollinrake, with the intention that it is produced monthly¹.

This Panel has been formed to facilitate the resolution of the pecuniary loss claims of claimants whose convictions have been overturned by the courts, by providing an independent assessment of any heads of pecuniary loss in dispute between a claimant and the Post Office following the lodging of a claim, a response/initial offer by the Post Office and without prejudice discussions/counteroffers. The procedure before the Panel is itself non-binding and without prejudice, so that, after the assessment, either party may resort to other forms of alternative dispute resolution or formal litigation if they do not accept the assessment.

Figures

The position in respect of claims as at 30 June 2024 (Column 2), with the figures as at the end of the previous calendar month for comparison (Column 1), is as follows.

	Column 1	Column 2
Number of Overturned Convictions	(109)	110
Number of Claims Notified	(108)	109 ²
Number of Ongoing Particularised Pecuniary Claims Received (i.e. Net of Full and Final Settlements)	(5)	7
Number of Assessed Offers Made in Ongoing Claims (i.e. Net of Full and Final Settlements)	(2)	2
Number of Offers Accepted (£600,000)	(40)	44
Number of Offers Accepted (other than £600,000)	(4)	4
Number of Ongoing Claims in which Interim Payments Made	(57)	58 ³
Number of Claims Referred to Panel	(0)	5
Number of Claimants Assessed by Panel	(0)	0
Number of Assessments/Offer after Assessment Accepted	(0)	0
Number of Full and Final Settlements	(44)	48
Number of Claims Closed	(37)	39 ⁴
Total Amount of Interim Payments in Ongoing Claims	(£17.3m)	£17.8m ⁵

Total Amount of Final Payments	(£28.8m)	£31.2m ⁶
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Observations

1. This scheme is relatively new and, as yet, there have been no completed references to the Panel.
2. The main express function of the Panel is to make an independent assessment of heads of pecuniary loss which cannot be agreed between the parties, which are likely to be claims for loss of (future) income and loss of employment chance. It is expected that most heads of claim will be compromised without reference to the Panel. Once a head of claim is settled, then the Post Office pays out the agreed sum for that head of claim (effectively by way of an additional interim payment)
- 1 | 3. The Post Office has made a standing upfront offer of £600,000 in full and final settlement of all pecuniary and non-pecuniary losses which, as the above figures show, has been successful in resolving over one-third of the claims. That offer remains open to a claimant unless and until he or she submits a particularised pecuniary or non-pecuniary claim.
4. Pending full settlement, a claimant is entitled to an interim payment of £163,000 on notification of a legitimate claim, and a total interim payment of £450,000 on the making a fully particularised claim (the latter being an early recommendation of the Chair, which has been accepted the Post Office). The Panel has the power to make a recommendation of a further interim payment in an appropriate individual case, but has received no applications for further interim payments to date.
5. The Panel Chair has adopted a case management function to ensure that there are no undue delays in the process of pecuniary claims through to an ultimate conclusion. He has had several meetings with the parties, most recently on 20 May 2024, to identify the most efficient and effective way of the Chair overseeing and driving individual claims in this way – and issues that may delay further progress. The next meeting is due to take place on 31 July 2024. At his request, most claimant representatives have provided the Chair with a summary of each individual case, identifying any issues which are slowing down progress; and the Chair has held a separate meeting with the main claimants' representatives (Hudgell & Co) to discuss the progress of their individual cases. Those summaries are confidential; but, in appropriate cases, will enable the Chair to give directions and/or have bilateral meetings with the relevant claimant's representative and the Post Office representatives to identify steps that can be taken to speed the process in that individual case. The Chair regards this case management function as vitally important.
6. In the last month, five claims have been referred to the Panel for case management directions. Four of these cases are claims which have settled but there are outstanding costs assessment issues. Case management meetings in these cases have been fixed for 2 August 2024.
7. In respect of claims for loss of (future) income and loss of employment chance, the Chair has investigated with the parties the possibility of identifying common issues or questions which the Panel might determine relatively quickly through illustrative cases. It was envisaged that these cases would be chosen with a view to the Panel not only making recommendations in relation to those specific cases, but also enabling guidance to be given as to the likely approach of the Panel to particular

types of claim which will hopefully assist the parties in resolving other claims more quickly. However, following consideration of the individual claims, the Chair accepts that such common issues cannot be identified, at least at this stage. With the parties, he is now seeking to identify individual cases in which there appears to be an issue which is unlikely to be compromised without intervention of the Panel; so that these can be brought to the Panel soon.

8. The Chair has the following particular concerns about factors which may slow future progress.
 - (i) It is an obvious concern that over half of the claimants have not yet either accepted the £600,000 offer or lodged a particularised pecuniary loss claim for assessment. Whilst of course some individual claims are currently awaiting an expert report or Counsel's opinion to enable it to progress, the recent meetings with the parties and reports of the claimants' representatives on individual cases do not suggest any current resource capacity issues in respect of either lawyers or experts. The general picture is that those representing the claimants are generally progressing the claims reasonably quickly but in a myriad of various challenging circumstances. For example, some clients are traumatised or otherwise suffering from mental health issues (often as a result of the convictions themselves), which means that it is often a challenging and time-consuming task for their legal representatives to take instructions, including the particular claimant's version of historical events and their view of the counterfactual (i.e. what would have happened but for the conviction). Some clients are extremely distrusting, and sceptical of all aspects of the process (including, in some cases, their own representatives). Some now live abroad and have complex tax arrangements. For some, late disclosure of (e.g.) their Post Office pension arrangements requires a recalculation of part of their schedule of loss. The challenges faced by those representing the claimants should not be underestimated. The Chair considers that careful and regular case management of the individual cases will be the best way to progress these claims. The Chair has discussed the possible benefits of introducing a "claims facilitator" into the scheme; but the parties do not consider that that would assist. The Chair agrees.
 - (iii) Whilst, at the moment, the claimants' representatives say (and the Chair accepts) that resource capacity is not a factor affecting speed of preparation of claims etc, capacity generally may become an issue following the recent statutory intervention to overturn (several hundred) other convictions. Those representatives say, understandably, that it would be of considerable assistance to them in planning resources to know (a) when the proposed new scheme for the claimants whose convictions have been overturned by statute is likely to be opened, and (b) the nature and terms of that scheme (including the proposed cost provisions).
 - (iv) The claimants' legal representatives say that the Post Office are overdemanding in the particulars of claim it seeks, and slow in responding to legitimate requests for disclosure of documents required for the making and prosecution of a claim. The Chair is investigating this, through case management. It is vital that requests for particulars of a claim are necessary and proportionate, and that disclosure of documents (particularly those in the unique control of the Post Office) are made with expedition.

- 2, 3 | (v) ~~The scheme requires the~~ Post Office **endeavours** to respond to a full pecuniary loss schedule, with an offer, within 40 business days (i.e. 8 weeks). It seems that this is sometimes extended to 10 or even 12 weeks. Furthermore, even where a loss schedule is straightforward, an offer is rarely made in many fewer than 40 days. Again, this does not appear to be a resource issue; but rather the result of the governance procedures within the Post Office and DBT. Given that the initial Post Office offer usually triggers a settlement, it would be helpful if these times could be shortened.
- (vi) Similarly, where a claimant's representative seeks approval for a disbursement for (e.g.) further expert evidence, approval from the Post Office can take some time – again, apparently, for governance reasons. The representatives have suggested that they are granted a disbursement “cap” to enable them, within that capped expenditure, to move more quickly. The Chair would welcome any steps that can be taken to speed up the investigation process.
- (vii) Serious concern has been expressed by some claimant representatives that their costs claims are not being dealt with by the Post Office with due expedition; and this poses a risk to the integrity of the scheme process, because it undermines the confidence that the representatives have in the scheme more widely. The Chair has encouraged representatives in settled claims whose assessment of costs has been delayed to apply to the Panel for directions in respect of assessment (rather than, e.g., pursue separate court proceedings). Applications have been made in four cases, and case management meetings (the parties and the Chair) have been fixed for 2 August 2024 in those cases.
- (viii) More generally, concern has been expressed that “governance procedures” within the Post Office and/or DBT have led to delay and disruption of the procedures and timetable set out on the scheme.
9. The Chair does not envisage any delays once a claim is referred to the Panel for consideration. The procedure requires the Chair to take into account the overriding objective of the process, which is to achieve swift and fair resolutions at proportionate cost. It is expected that most claims will be considered by the Panel on the basis of written submissions only, with a short oral hearing only where necessary. It is expected that most claims will be dealt with by the Panel, through to a final assessment, within 2-4 weeks of reference. The Post Office is required to settle a head of claim which is agreed within 28 days.

Sir Gary Hickinbottom
Chair
16 July 2024

¹ This first published report includes a brief overview of the processes involved in the Scheme, as well as data and observations. Future monthly reports will focus on the data and observations on progress.

² This is the total number of claimants who have been in contact with the PO regarding the Overturned Convictions Redress Scheme (not all of whom have yet applied for an initial interim payment).

³ This is the total number of claimants to whom interim payments have been made, including initial £163,000 initial interim payments, proactive settlement payments, non-pecuniary settlements, and other interim or part settlement payments. This figure does not include claimants who had received interim payments but subsequently fully and finally settled their claims.

⁴ Of the 48 full and final settlements, 9 claims still have outstanding legal costs to be agreed or assessed before they

can be closed. 6 of these claimants have submitted a costs schedule, 3 have yet to do so.

⁵ This figure has been rounded to the nearest £0.1m. It includes all interim payments and includes proactive, part and non-pecuniary settlements payments; but does not include interim payments made to Claimants who have subsequently fully and finally settled their claims.

⁶ This figure has been rounded to the nearest £0.1m. It includes all £600,000 settlements as well as those who have accepted offers following submission and assessment of a particularised claim.

Track Changes

1	Insert	<i>Ciara LAWRENCE (DBT), 23/07/2024 03:04 PM</i>
2	Delete	<i>Elena MICHAEL (DBT), 24/07/2024 09:43 AM</i>
3	Insert	<i>Elena MICHAEL (DBT), 24/07/2024 09:43 AM</i>