

GLO COMPENSATION SCHEME GUIDANCE AND PRINCIPLES

Observations for Horizon Compensation Advisory Board, 25 October 2023

- 1. The GLO Compensation Scheme Guidance and Principles are a helpful, high-level, statement, but there is a need for amendments.**
- 2. The three key recommendations are:**
 - Recommendation 1: the principle of “full and fair compensation” should be identified explicitly as a key, overarching principle.**
 - Recommendation 3: the guidance/principles identified in the Case Assessment Principles document, drawn up on the basis of HSS awards, should be published.**
 - Recommendation 6: the Reviewer’s role needs modification.**

Introduction

3. The GLO Compensation Scheme Guidance and Principles (“the Guidance”) are a helpful, high-level statement of how those applying under the GLO Compensation Scheme (“the Scheme”) should advance a claim and how claims will be handled and determined.
4. This memorandum sets out some observations in respect of the Guidance and some specific recommendations as to how they might be amended.
5. Preparation of these Observations seeks to take into account the events which led to the creation of the Scheme, what is understood to be its purpose, and the need for consistency, so far as is practicable, with the outcomes for claimants who are being dealt with under the Horizon Shortfall Scheme (“HSS”). Reference is made to the document drawn up on the basis of HSS awards entitled “Case Assessment Principles” (“the CAP”). Part of that document contains issues and guidance/principles (“the CAP principles”).
6. The Observations are made against the background, as every common lawyer knows, that it is only in the application of principles to the facts of specific cases that their strengths and weaknesses become evident, and that there may be the need for them to be modified for the future in light of the experience of a particular case.

Key Principles of the Scheme

7. In his First Interim Report of 17 July 2023, Sir Wynn Williams recalled that Ministers and the Post Office had made it clear that those wronged should receive compensation that was “full and fair”, and that in his view this commitment “must apply with equal force to the compensation payable under all three schemes”: para.134.
8. However, that priority is not given much prominence in the Guidance. Rather, the focus of the “Key Principles” section of the document is on legal and procedural matters.

Recommendation 1: the principle of “full and fair compensation” should be identified explicitly as a key, overarching principle in the Guidance.

Heads of Loss

9. A number of possible heads of loss are identified in the Guidance. Although this section will be of some assistance to claimants, there are three concerns:

- a. First, *fluidity of certain heads of loss*. There are some heads of loss which appear to overlap potentially with others. For example, the “malicious prosecution” section mentions possible mental distress and damage to reputation, but there is a separate section for “stigma / damage to reputation” and another for “personal injury” which covers psychological harm. The section on “harassment” also refers to “distress and alarm” caused by the Post Office’s investigations.

The question arises whether any awards in this regard made under the umbrella of “malicious prosecution” (which has an indicative range of £10,000 - £40,000 for mental distress and damage to reputation) in addition to or instead of any awards which might be made under “stigma / damage to reputation” (which has an indicative range of £1,000 to £10,000) or “personal injury” (which can be anything up to £115,730). Can a claimant claim cumulative amounts under “stigma / damage to reputation”, “personal injury” and “harassment” (£2,500 to £30,000 for non-pecuniary harm for alarm, fear, anxiety and distress) or does a claim under one head of loss preclude claims under others?

There is also a further category for “distress and inconvenience” (£1,000 to £10,000) which appears to be a “sweep up” category for things including public humiliation (although it does explicitly say that there will be no double recovery under this section).

- b. Second, *unexplained disparity in indicative ranges of awards*. This particularly arises in relation to mental distress and damage to reputation. As referred to above, there are the varying “indicative ranges” for various heads of loss which relate to this.

Some heads of loss appear to recognise the potential severity of the impact of the distressing events on postmasters and postmistresses with upper limits to the indicative range of awards. However, what one might consider the primary category (“stigma / damage to reputation”) has a range of only £1,000 to £10,000.

- c. Third, *lack of granular detail*: The CAP contains a much greater level of detail of the sort of factors which will be taken into account when assessing a claim. No doubt this has been a living document, developed over the course of the HSS. The Guidance by its nature is rather lacking by comparison.

10. These three points are a potential cause for concern:

- a. They may result in claimants not claiming what is due to them. Claimants may not realise that their experiences qualify them for certain types of compensation unless they see the granular detail of the factors which the panels will take into account.
- b. They could increase the likelihood of inconsistent decisions across claims. Unless the Panels have clear guidance as to how to approach a claim arising from mental distress and damage to reputation caused by the Post Office’s actions, claimants with similar experiences could end up with very different awards of compensation.
- c. They could result in claimants being dissatisfied with the compensation offered to them. The lack of clarity might result in claimants thinking that insufficient consideration has been given to aspects of their claim, and of course the risk of this is heightened where there are inconsistent decisions.
- d. They make the job of the Reviewer difficult. The fluid, high level nature of the Guidance means that it will be difficult for the Reviewer to review in any case what an assessment Panel has determined on the ground that it has failed to adhere to the Guidance.

11. That gives rise to the following recommendations:

Recommendation 2: Greater clarity/guidance as to the boundaries between different loss categories is needed. In particular, the potential use of D&I as a catch-

all category needs to be reconsidered, and clearer guidance provided as to its scope and limits.

12. **Recommendation 3: More granular detail around the information considered relevant to each of the heads of loss should be available by publication, as an Appendix to the Guidance, of the CAP principles.**
13. It would also seem sensible to obtain the views of the Panel chairs on the CAP principles.
14. **Recommendation 4: A band for cases (envisaging compensation above £10,000) should be introduced under “stigma / damage to reputation”.** Discretion to make an award over £10,000 is catered for in Annex A to the CAP document, which includes as band 5 compensation “in excess of £10,000, in exceptional circumstances”, but this has not fed through to the Guidance.
15. **Recommendation 5: There should be ongoing consistency reviews.** In particular these should cover (i) all of the more ‘subjective’ (i.e., non-pecuniary) and overlapping heads of loss; (ii) approaches to evidence, including the use, where there is a perceived lack of evidence, of discretionary’ awards and/or percentage discounts to awards. Contributing to this would be regular meetings of Panel chairs.

Reviewer’s role

16. The Guidance confines the Reviewer’s role to the grounds of (a) manifest error and (b) procedural irregularity. Each of these grounds is unexceptional, but they do not address the overriding aim of ensuring full and fair compensation. Further, attempts so far to spell out what these terms mean provide an even stricter scope for review than that available in judicial review. That is unacceptable.
17. An additional ground has been suggested, (c) substantial inconsistency with the Guidance. Attempts to spell out what this means is so far a rather formulaic question of whether a Panel has failed to apply the criteria set out in the Guidance or has misinterpreted it. If Recommendations 1 and 5 are accepted, substantial inconsistency with the Guidance would mean inconsistency as well with substantive fairness (“full and fair”) and the CAP principles which would be the Appendix.
18. There is a case for adding a further ground, substantive errors of principle. Examples of this would be cases where, in the contest of particular circumstances, it became obvious that a principle identified in the Guidance or the CAP principles is wrong, or

where a court enunciates a new principle during the course of the Panels' determinations, such as that for the assessment of damages for psychiatric loss.

19. It must be that the Reviewer should only be involved in exceptional circumstances. It may be that as a result of mediation or the Panels' rulings that no cases proceed to the Reviewer. However, the bar to appeal to the Reviewer is set too high. It needs to be applied sensitively. It should be for the Reviewer to determine the meaning of the appeal criteria.

20. Recommendation 6: appeals to the Reviewer should be exceptional but (i) the grounds of appeal need expanding to include whether an award achieves full and fair compensation, substantial inconsistency with the Guidance and CAP principles, and a substantive error of principle; and (ii) it should be the Reviewer's task to define whether an appeal falls within these grounds.

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