

IN THE POST OFFICE HORIZON IT INQUIRY

HOWE + CO BUNDLE

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Client accounts of their experience with Compensation

	Client	Comments
1.	Marion Drydale	Marion Drydale said (in July) : I have sold my jewellery, used my inheritance, cashed in my pension. Every day is filled with uncertainty, a dread of more bills I cannot pay. In December she says: I feel guilty that I am one of the lucky ones. I received an interim payment unlike many of my colleagues. I had been on the verge of losing my home and the interim payment saved me from that. I still have other debts to pay. The interim payment has just given me a breathing space, nothing more. I have no idea where I would have gone had I lost my home. I am in my early sixties. I would still be running my business today had this not happened. The money that I received has not made up for the 12 years of struggle. People are still saying things about me now in my community. The whole matter continues to haunt me. We all need full and fair compensation now to end this nightmare
2.	Peter Worsfold	Peter Worsfold said (in July) that he has still not been able to repay his 94 year old mother for bailing him out when PO demanded money for shortfalls in 2002. He said that he visits the supermarket at 4pm when they put short dated items out at reduced prices. In December he says that he has received interim compensation and it helped pay some debts. He is concerned that receiving compensation in dribs and drabs means that he and other SPMs cannot invest and receive income to look forward to old age. He effectively lost 20 years of business income. He instructs that the compensation he received did not touch the sides of what he has lost. He has struggled desperately to avoid bankruptcy as a single father with 3 children. This included working 6am to 10pm seven days a week. Today he remains dependent on his state pension and depends on his son for financial help. He is still living hand to mouth and is afraid to spend the remainder of the compensation that he has received. He says that the Government's continued reticence to pay full compensation just prolongs the agony and it seems like a never-ending saga.
3.	Virendra Bajaj	My current financial situation is worsening day by day...and the whole cost of living is petering me on a cliff edge...I worry constantly how I will be able to afford all the bills... I can only pay off nominal amounts of my debt and I've been told it will take me over 100 years to pay it all back, it's mentally draining, stressful and exhausting.
4.	Robert Thomson	I have been fighting five years to get my name cleared, in that time I

		have only had one payment which was at the very beginning when this case was getting looked into....Does no one realise the financial strain you are putting on me and my family, I blame myself for the loss of my mum...
5.	Brent Whybro	<p>...I feel the inertia in the whole process is extremely frustrating and alongside the ongoing Inquiry just adds to the strain.</p> <p>My thoughts go out to all those who are in financial difficulties due to the delays in making payments.</p>
6.	Joanne Foulger	<p>Following the Government's announcement on 30 Jun 22....there seemed to be light at the end of this very long, dark tunnel....but the rollercoaster of events that have taken place so far has made it the worse news I have had in over 10 years since I started putting this sorry sager behind me....</p> <p>...The system has failed me and continues to fail me...</p> <p>...I have had to work 3 jobs over the last 3 years, working 7 days a week to provide an income to at least afford to help towards all the bills and to feed and clothe the kids....My mum and dad are both 76 years old, both still working full time as they continue to support me and my family...I have left them in a position where they cannot retire or enjoy their later years....</p> <p>Christmas is going to be a struggle and Christmas dinner will be microwaved....Disappointment after disappointment is making a hole so big, that I feel I will never be whole again.</p>
7.	Shahla Ahmed and Faisal Aziz	<p>We are worried if this winter we would be able to heat our home and serve meals to our large family at the same time. The Interim payment we were given will only last a couple of months considering the rising energy bills and inflation overall....</p> <p>My elder children have started to hide their needs, recently my 13 year old daughter had a tear in her school shoe sole, she didn't tell us about it instead tried to glue it up to save us money... she said, "<i>never mind mama I will manage a few more months with this shoe, I have mended it up. Please don't worry.</i>" This is heart breaking, we never wanted this life for our children....</p>
8.	Mr Ward	I was expecting no issues with my interim payment however after waiting in vain for many weeks it transpired that I was a "complex" case....

		<p>My partner and I suffered severely ... and cut back on expenditure. ...With the interim payment I am considering cutting my work hours ... I feel I need to wind down a bit before getting ill....</p> <p>I look forward to a full and fair pay out quickly so I have a choice of what to do with the rest of my active life rather than having to work to survive.</p>
9.	WITN0293	<p>My experiences regarding the compensation process and claim submission have been difficult due the length of time that has lapsed.... it has caused mental stress....</p> <p>My financial pressures have affected my earning capacity...I am unable to work full time and overtime as I used to do so...</p> <p>...applying for loans at a high interest in order to get through this time ... and borrowing from friends and family members and selling my car and jewellery was the only way to safeguard my commercial loan payments on the building.</p>
10.	James Withers	<p>As for my financial position...I had to travel 126 miles each way to work, working nights and doing lots (sometimes 16 nights in a row) of overtime to try and get back on my feet. I now work a little closer to home (70 miles each way)....The interim payment, if it was paid 100%, would help give some stability to my situation in case I couldn't work all of a sudden...</p> <p>....There appears to be no thought or compassion for the victims from them and for how most of the victims are actually struggling. They seem to have made it their mission to delay the outcome as much as they possibly can.</p>
11.	Janice Adams	<p>...After working very hard and myself and my children not having holidays throughout the years I feel I have moved on....</p> <p>I still work...I have worked as much overtime as was physically possible throughout the years as a Carer....I don't envisage retiring from work at age 66 as I don't think the retirement pension would be enough to live on.</p>
12.	Shane Johnson	<p>I have managed to remain solvent mainly due to good health...</p> <p>I am feeling the pain and hurt every day and fear that when I am ill or physically incapable of continuing in this employment my journey into poverty and despair will be short and quick.</p>

		...still compensation is kicked down the road or derisory amounts are forwarded
13.	Joan Bailey (wife of CP Lawrence Bailey)	<p>Our financial circumstances are we still have a mortgage on our property (the mortgage should have finished 2021) and loans for the business ...we are still paying out payments to the bank ... out of our pensions and we are looking forward to the day when final compensation is paid only then would we feel that it's over, all the pain stress heartache worry and fear.</p> <p>A, early full final compensation is desperately needed for all the victims so cruelty affected by the way were treated by the Post Office...</p> <p>No amount of money will ever take away the pain and grief that Sub postmasters and sub post mistress's managers and family's have suffered but they might be able to see through eyes that are not filled with tears</p>
14.	Marion Holmes (Widow of Peter Holmes)	<p>...my claim was put in in September 2020 and was accepted the post office then argued that I didn't have the proper probate... On the eve of my impact statement....magically obstacles disappeared and I got my compensation in April.</p> <p>...It is only now, leading up to Christmas that I realise what a difference the compensation has made. I no longer panic when I buy little extras for the family meal and no longer have to rely on a very generous financial "Christmas present" from my sister. I hadn't realised how much I used to worry at this time if the year.</p>
15.	Christopher Head	...We cannot have a situation where a claimant is having to wait months or potentially years while the dispute unfolds to receive access to parts of the compensation that are at least agreed. Finally we need clarification on what this full and final compensation means. They keep batting around the word fair....
16.	Victor Price	<p>I have for many years had mental health issues that I was not aware of until I had lost everything...</p> <p>....We agreed to sell everything and just move into our caravan. This we did for 2 years and we have been renting ever since... We don't want charity we just want some form of compensation to make up for the years we have paid in rent</p>
17.	Julie Beisner	I put in my application under the Historic shortfall scheme in summer 2020....

		<p>...Finally on December 22 2021 I received their offer letter....</p> <p>...Postmasters have lost much more than just the alleged financial shortfalls. Some have suffered irreplaceable loss, physical, reputational, emotional and psychological for which no amount of money can ever compensate. The cost of living crisis heightening these issues even further.</p>
18.	Thomas Brown	<p>The compensation process has been extremely unreliable...I was simply told that my case was "complicated" and that they would "be in touch"...it once again left me in a state of financial difficulty...The government has agreed that the bankruptcy should be paid back in full, the only people in disagreement were the trustees. However because I'm in such a desperate financial state, I had no choice but to accept the 51% I was offered. This had a detrimental impact on my mental health as it dragged up all the past trauma caused by the post office over the last 14 years.</p>
19.	Sally Stringer	<p>...I am now in receipt of the full state pension which I received in April 2022 when I reached the grand age of 66. Having worked since I was 18 without a break it is now a God send.</p> <p>...We still have credit card debts ... that we were unable to pay off when we moved, these are on an agreed debt management scheme....</p>
20.	Thomas English	<p>...We were seriously abused by the management whose wages we contributed to by our investments...</p> <p>The fact that I as a retired police officer and former Royal Marine could have my reputation trashed by the management of a supposed organisation that was a pillar of the establishment...</p> <p>The PO ... operated under a tissue of lies, deception and separation having made us believe we defrauded them in isolation when they knew the truth all along and still put subpostmasters through the wringer and destroyed families...</p> <p>This ' thing ' really eats you up and it does so now and I haven't had the suffering of others at the extreme end of this matter.</p>
21.	Donna Gosney	<p>....I was one of the many ex-Sub Post Masters forced into bankruptcy solely due to the scandalous, damning and bullying behaviour bestowed upon me by Post Office Ltd...</p> <p>Fast forward to present day... Although BEIS announced several months</p>

		<p>ago that within three weeks, I would be receiving an interim payment in advance of a final compensation package, as at the time of writing this statement I have yet to receive a single penny.</p> <p>Sir, I feel that I must inform you now that this roller-coaster of events and contradicting information being fed to me by BEIS, Moore's and Freeth's continues to add fuel to the fire that has been slowly destroying my mental and physical ability to cope with life in every capacity....</p> <p>....</p> <p>Please Sir, give me some reassurance that there are people out there with a conscience that realise we have suffered enough over these long dark lonely years.</p>
22.	Fiona Elliott	<p>I am involved in the Historical Shortfall Scheme....</p> <p>....</p> <p>...I feel everything is a very slow process, people are struggling financially and need this compensation as a matter of urgency. I have been waiting 15 years on this to be sorted. It's a very long time. I am getting threatened by bankruptcy companies awaiting money. I am financially struggling daily. The Post Office demanded money from us innocent people within one hour and we have to wait 15 years to get repaid back. We all need immediate interim payments or full compensation urgently as there are going to be more lives destroyed by this miscarriage of justice.</p>
23.	Heather Williams	<p>...Regarding the interim payments, I myself wanted to send an email regarding how not receiving the interim payment at the start of oct/nov I was heartbroken yet again and my health deteriorated very quickly with the stress of not being able to clear my debts off, as a result of trying to afford to eat every other day and not being able to it my heating on for the fear of the rising recent costs I have been in hospital now for over 2 wks hopefully I will be able to go home later in the week should my health improve.</p>
24.	Suzanne Palmer	<p>...Over the years we have learnt to live to our means. We live on my husband's pension and pension credit, We don't have luxuries, no holidays.</p> <p>Christmas, we buy 4 presents. We don't go out much, people have stopped asking us they know we can't afford to. We can't move from our social housing studio flat I have no credit rating because I'm still classed as a bankrupt and we could not afford the rent</p>

		<p>We have one storage heater on, No running hot water, we boil a kettle to wash up, we have an electric shower. we are all electric and with the rising cost of living we struggle to make ends meet This shouldn't be our lives now.</p> <p>We are stuck with this life that the post office has left us with. The best years of our lives gone.</p>
25.	John Heath	<p>....I find myself in a position where I am living in rented accommodation with very little reserves. I am now living month to month on my pensions and have lost the ability to have a comfortable retirement and leave my children any form of legacy. And this is the part that really depresses me....</p> <p>The lack of reserves causes me great distress and anxiety....</p> <p>The final compensation due to me would remove this depression and anxiety and, at last, bring me back to being financially secure.</p>
26.	Gareth Etheridge	<p>The compensation process was a long withdrawn process, with little compensation for the troublesome years that my wife and I are still putting up with....</p> <p>The interim payment, which I thought would have been considerably more than the initial compensation payment, did not materialise and exactly the same situation occurred...</p> <p>....</p> <p>I ... paid back enormous amounts of money because of what POL have done to us. My wife has been unable to work since finishing with the post office due to anxiety and stress and I am still in full time employment so that we can pay our debts.</p>
27.	Susan Hazzleton	<p>If my business had not been snatched away needlessly by the Post Office. I would now have a thriving village shop and Post Office, something I had imagined I would hand to my children to run when I retired. A focal point and community hub for my village, an asset, a pension pot.....but your actions robbed me of this and took away my confidence and put me in the following position.</p> <p>...I like many others we have struggled financially over the years due to our livelihoods being snatched from us. Sometimes wondering how we would be able to afford the electricity bill or our children's school uniforms/school trips. Many times we have had to dip into the schools poor box so that the children could go on educational trips. We never had money for treats.</p>

		<p>We still suffer, we have had to put our house on the market as we cannot afford the upkeep. I am 69 years old next month and still have to work 4 days per week as we cannot survive on the state pension.</p> <p>The promised compensation would allow us to exhale and ease the worrying, and finally allow me to retire.</p>
28.	Mark Kelly	<p>... I will summarise with just two things, money cannot replace, time and life. How many lives have been ruined and lost whilst one argue over these compensation, yet I find it ironic when it was the other way round, they were quick to get their compensation</p>
29.	Francis Maye	<p>When the news broke that we were to receive an interim payment we sighed and our thoughts were, that we could finally see light at the end of the black tunnel which we have lived through this past 12 years. Once again this wasn't to be. We have lost our dignity and respect. All our hopes and dreams are dashed, and this situation is having a terrible effect on our health and wellbeing.....</p> <p>We are now in desperation and pray that we will get the interim payment in time for Christmas, and finally see light at the end of the tunnel...</p>
30.	Shazia Saddiq	<p>I feel I am continuously sinking into a dark financial abyss on a daily basis. I see no light at the end of the tunnel. I do not know if BEIS will ever make good on what they took from me and my children. I did have an interim payment, but it has really not helped that much. I still have an appalling financial situation. I lost my job as a result of my history with the post office becoming known to my employer. I am temping at the moment and I have to tell every employer that I was accused of taking money from the Post Office. This was 8 years ago but continues to haunt every part of my life. I just want BEIS to make good and do what they have promised.</p>
31.	Deirdre Connolly	<p>Once again our hopes were built up and assured payments would be with us on 2 December but then this email came in. We had a call with BEIS on Tuesday 22 November & were given 3 options but in my mind there was only 1 option. 51% or nothing. I feel like second class having to give up 49% of my payment.</p> <p>I was involved in the group litigation and received a tiny amount of compensation. Because of my bankruptcy, I am one of the complex cases. This means that BEIS have given me nothing in interim compensation and I do not know if I will ever get anything or if it will</p>

	<p>simply be taken up in my bankruptcy. It was the Post Office who made me bankrupt it should be their responsibility to give me compensation completely separate from fixing that.</p> <p>As you know, we lost everything as a result of the Horizon system and the Post Office's bully-boy actions towards us especially threatening us by mentioning paramilitaries. I became bankrupt. The shame of having to go cap in hand to borrow money from our families to pay back the so-called shortfalls still burns. We were thieves in the eyes of our local community and bailiffs came to repossess our shop and house. Our bankruptcy was published in the paper for all the world to see and I became a recluse.</p> <p>My family and I are heading into Christmas and I can tell you that it will be a bleak Christmas. We barely scrape by and we can see little hope for the future.</p> <p>I was really grateful when the Inquiry came to Belfast so that I and others here could talk publicly about what was done to us and try to get back at least some part of our reputation. David, I would really ask you to ask Sir Wyn to help us. We are at our wit's end. We have nothing. We have received no compensation, interim or otherwise, and I do not know how we are going to cope.</p>
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On Thursday, December 1, 2022, 10:59 am, Laura Pickering wrote:
Dear Suzanne

GRO

No update at the moment unfortunately, however we are having a call with BEIS on Monday to discuss this matter further.

Kind Regards

Laura Pickering
Insolvency Manager
Moore



www.moorestoke.co.uk

Moore

First Floor, Suite 4, Alexander House, Waters Edge Business Park, Campbell Road, Stoke on Trent, ST4 4DB

From 5th September 2022 my working hours will be Monday, Tuesday and Thursday 8.30am to 5pm, Wednesday 8.30am to 2.30pm and Friday 8.30am to 12.30pm.

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On Thursday, December 1, 2022, 11:02 am, Post Office Group Action Team

<POClaim@**GRO**> wrote:

Dear all,

Please see below a message from BEIS.

Many thanks

Freeths LLP

--

Dear GLO Postmaster,

I am writing to update you on the interim payment you are due to receive under the GLO compensation scheme. Thank you to those who were able to join the call last week. We appreciate you giving us your time and sharing your views.

Over the last few months, we have been urgently trying to reach agreement with Moore to allow us to release the whole of your payment to you. We have engaged with the Insolvency Service and insolvency practitioners on this issue and sought external legal advice to help us make the case. Unfortunately, despite best efforts, Moore disagree with our assessment, and have not agreed to us releasing the whole of your payment. Moore have indicated it would take until mid-December to get another view from their legal counsel on the issue. They have asked for a call on Monday 5th December to find a way forward which we will attend. However, without going to court, we do not foresee us reaching a resolution with them.

We recognise the need to get you some money quickly, and so we plan to agree to monies being paid to you in line with the terms of the original assignment. You would receive the portion of the interim payment which relates to your personal losses. We will confirm with Moore whether any of the initial £11k fee is outstanding in each of your cases. Of the remaining amount, you would receive 51%, and Moore would receive 49%. This decision only relates to your interim payment. How payments are treated under stage 2 of the scheme are yet to be determined.

If you would prefer not to receive an interim payment at this time in light of this information, please let Freeths know by Sunday 4th December. Otherwise, we plan to process your payment w/c 5th December. If anything changes following our call with Moore on Monday, we will update you on the latest position.

It is regrettable that we were not able to make your payment sooner, but we hope this will go some way in helping while we get the full scheme up and running.

If you would like to discuss with a member of the team, please contact

GRO

Interest fees

We are aware that for some of your bankruptcies, interest fees owed may be high. I can confirm that where HMRC is a creditor, they will waive any interest due in their cases. You may also wish to write to your creditors and ask that they also waive their right to any interest owed. This could substantially reduce the amounts owed.

Annulment

If your debts are able to be cleared from the payment Moore receive, you may wish to seek an annulment of your bankruptcy by the court. We suggest that you discuss this option with your Trustee.

Kind regards,

GLO Compensation Team, BEIS



www.gov.uk/beis
<https://twitter.com/beisgovuk>

Post Office Group Action Team

T: 0113 246 2169



FREETHS

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From: Sue Palmer **GRO**
Sent: 30 November 2022 16:53
To: Laura Pickering **GRO**
Subject: Re: GLO Scheme: Update from BEIS re your Interim Payment

Hi Laura

Is there still no update?

Please put me out of my misery

I need to know one way or another

Tomorrow is the 1st December 25 days till another miserable Christmas

Suzanne Palmer

Witness Name: Mrs Suzanne Palmer
Statement No.: WITN0224_03
Exhibits: None
Dated: 30 November 2022

IN THE POST OFFICE HORIZON INQUIRY

THIRD WITNESS STATEMENT OF MS SUZANNE PALMER

I, MRS SUZANNE PALMER WILL SAY as follows:

INTRODUCTION

1. I make this witness statement to update the Chair and the Inquiry on the continuing difficulty I am experiencing with the Department for Business, Energy and Industrial Strategy ('BEIS'). I make this statement regarding the inadequacy and unfairness of government's efforts to compensate subpostmasters whose cases have been classified as "complex" or "difficult". My case has been deemed to be "complex" or "difficult", and as a result have been unable to receive any interim compensation.
2. This is my third witness statement in this Inquiry. The first witness statement I provided addressed the human impact of the issues with Horizon and of Post Office's conduct toward me. In my second witness statement, I addressed the continuing impact on me and my family of the government's inadequate, changeable approach to compensation and reparations for subpostmasters.
3. I have received no interim payment to date. I have received promise after promise, and assurances that an interim payment will be made, but to date I have had nothing. My family and I need financial help, we have needed it for some time, and as we approach Christmas during a unprecedented cost of living crisis, our need for help is becoming more and more desperate. I set out my current financial circumstances in greater detail below.

BACKGROUND

4. In 2007, I was prosecuted for theft and false accounting. I pleaded not guilty and acquitted on all charges. However because of the financial strain on my business, by 2015 we had nothing left: we had sold everything we had, creditors' agents had taken everything we owned of any value. In 2015 I was declared bankrupt. After a year in 2016, I was a discharged from bankruptcy. At that time, following my discharge, I had no debts.
5. I learned about the JFSA and the group legal action after I had been discharged. When I spoke to the solicitors, I was told that I could not participate in the group action if I was a discharged bankrupt. I was told I had to sign over my bankruptcy to Moore Stephens, which I did. At the time I did this through Freeths who said I would have to give away 49% of whatever was recovered. I agreed to do this without hesitation because I understood that my claim was worth, and I would receive, in excess of £1.8m. However, the way in which the case was settled and the amount I received meant that the settlement did not begin to cover the costs of the bankruptcy, let alone before interest started to accrue.

SUBPOSTMASTERS' COMPENSATION

6. In my second witness statement, I said as follows:

13. In August 2021, shortly after the announcement of the interim compensation scheme, I wrote to Paul Scully, the Minister under whom the compensation scheme was devised and announced. That email is exhibited to this witness statement. I asked the Minister why I was excluded from receiving interim compensation, when I had the same experience of prosecution and criminal trial as those who were convicted.

14. I received a response from the Minister on 1 December 2021, which is exhibited to this witness statement. The letter was dismissive. It stated that as a litigant in the group claim against Post Office Ltd, I had received compensation and that the department could do nothing more. It repeated that government would not provide any further compensation to subpostmasters who were claimants in the group litigation, as a full and final settlement had been reached.

15. It is important to say that although I received a payment from the Group Civil Litigation, of that sum, half was taken in lieu of my bankruptcy and by the Administrators. I was made bankrupt by the Post Office as a result of their prosecution of me and dismissal from my post as subpostmaster despite being found not guilty after trial.

16. I responded to the Minister on 2 December 2021. I wanted to ask the Minister why the government had decided that those who had been convicted were more entitled to compensation than those who were prosecuted but not convicted. My email stated:

“Since I received your reply email which you dictated ,and dismissed mine 3 months after I sent it , perhaps we could have a face to face meeting so you can explain how you came to the decision that some people who were prosecuted are more important than others compensation wise . Only the outcome was the same for me guilty/ not guilty”

17. I eventually received a response on 13 January 2022. That response is exhibited to this email. In his response, the Minister stated:

‘Members of the Group Litigation Order (GLO) who have had criminal convictions overturned are eligible for compensation as part of the overturned criminal conviction settlements. The Compensation is open to all those who were prosecuted, including those not convicted and will be determined based on individual circumstances.’

[emphasis added]

.....

22. On 2 February 2022, I received another letter from the Minister, which is exhibited to this statement. The letter was short. In it, the Minister went back on his previous letter.

7. Following the exchanges I set out in my second witness statement, on 19 April 2022 I received another email advising that I was included in the compensation scheme which the Government had announced. On 13 May 2022, Rob Brightwell of BEIS requested a phone call with me. I spoke with him later that day.

8. On 17 May 2022, I received an email from Mr Brightwell informing me that BEIS had received permission to establish a compensation scheme. He asked me to keep this information to myself as it was not general knowledge yet. I sent Mr Brightwell a follow-up email requesting an update.

9. On 30 June 2022 the government made the announcement that £19.5m of interim compensation was going to be made available and distributed to the 555 claimants who had participated in the group litigation. Shortly after that announcement I

received an email from BEIS apologising for the delay and explaining that how the money would be administered.

10. I was informed that the Government had entered into a contract with Freeths (who had conducted the group litigation on behalf of the Claimants), to administer the interim payments to subpostmasters. The money was to be distributed by Freeths in the same proportion as the sum subpostmasters received from the group litigation. I was told it would be a very simple process, that Freeths would be in touch further, and that my payment should take no longer than a few weeks to come through. By this stage, there had been no mention of the process being any different for those who had been made bankrupt, or that those who had so-called "difficult" or "complex" cases would be subject to any delay.
11. A few weeks after the compensation was announced, I began to hear from other subpostmasters that they were receiving offers and payments of interim compensation. I was confused, so on 29 July 2022 I wrote to BEIS again. I asked why there was a delay with my compensation. I wanted to know why I was being treated differently from some of the other subpostmasters. Shortly afterwards I received a response explaining that my case was deemed to be "complex" and that as a result I could not expect an interim payment in the same timescale as other subpostmasters.
12. On 15 August 2022, Sir Wyn published a report concerning subpostmasters' compensation. In his report, Sir Wyn recommended that the subpostmasters who were prosecuted but not convicted should receive interim compensation in the same way as those who were convicted.
13. I have sent endless emails to BEIS and Freeths asking about enquiring about Sir Wyn's recommendation but all I seem to receive are negative responses: I am told (variously) that there is a delay in obtaining legal advice, that BEIS or others lack authority to conclude matters satisfactorily, or issues with my trustee in bankruptcy. I am referred from BEIS to Freeths and back again. I have been told by the Department for Business that there is little that it can do to assist me further, but I cannot understand how it, as a government department, lacks the power or authority to help me. I am trying my best and doing all I can but it feels like no progress has been made. The can is being kicked down the road, again and again.
14. When it was announced by the government that we would be receiving an interim payment in the coming weeks, I did the one thing I have never done and never wanted to do. I borrowed money from my elderly parents, who are 90 and 86 years old respectively, for my son's wedding. I was ashamed that I would not be able to contribute something because of my financial circumstances. I promised my parents that I would pay them back within weeks, on the basis of the positive assurances which I had received from Freeths and BEIS. 5 months have passed now and I have not been able to repay them.
15. On Monday 21 November 2022, at about I received an email from Rob Brightwell of BEIS, inviting me to attend a meeting on 22 November 2022 (the next day) to "discuss the next steps in regards to your bankruptcy and releasing your interim payment".
16. On 22 November 2022 I attended the meeting with BEIS, on Zoom. Mr Brightwell (who chaired the meeting) attended on behalf of BEIS, along with his colleague whose name I believe was Elena. The meeting was conducted alongside about 15 other attendees, all of whom were claimants in the group litigation who had so-called "complex" or "difficult" cases. I was excited. I expected, from reading Mr Brightwell's email that progress had been made and we would be receiving good news about our interim payments.
17. During the meeting, Mr Brightwell told us that we had three options of how to proceed with interim payments. He told us that we had to reach agreement between us on which of the three options we wished to take:
 - a. The first option was for BEIS to bypass Moore UK (our trustee in bankruptcy) and pay us 100% of the interim compensation to which we are entitled. Mr

Brightwell told us that this option risked Moore UK bringing legal action against us to recover some or all of the interim payment.

- b. The second option suggested by Mr Brightwell was for us to bring legal proceedings against Moore UK so that we could recover 100% of the interim compensation. Mr Brightwell told us that this option risked Moore UK bringing proceedings against us to recover 100% of the interim compensation and that, even if we were successful, legal proceedings initiated by us could take months to resolve and could be costly.
- c. The third option presented by Mr Brightwell was to accept a split of 51%-49% with Moore, as we had done with the settlement sums from the group litigation.
- d. Finally, if we wished, we could agree to forego interim compensation altogether, instead waiting until the Stage 2 compensation scheme had been established. However, as the Stage 2 compensation scheme has not been formally announced, and will not be accepting claims until the beginning of 2023 at the earliest, it is not possible for me to accept this scheme. Further, it is not clear that the issues with the trustee in bankruptcy will be any different in the Stage 2 compensation scheme.

18. During our meeting, Mr Brightwell told us that BEIS had given Moore UK until the end of the week (25 November 2022) to agree to give us 100% of the interim payment. He said, however, that the government have no power to enforce a split. This is in spite of legal advice which I understand Freeths have received, which stated explicitly and unequivocally that subpostmasters should receive 100% of the interim compensation. As I understand it, if Moore do not agree then we were told to expect 51% of the money in our account by next week.

19. The choice given to us was not a choice. It is a poisoned chalice. We cannot afford our own legal action and we cannot wait for it to conclude. We also cannot risk Moore UK bringing legal action against us to recover money. We have been to court too much. As a result, I asked Mr Brightwell whether we needed to be in unanimous agreement in order to make progress. He told us that we did. I told him that if it meant I could get money, and money soon, I agreed to the 51/49% split. I did so reluctantly and with a heavy heart, as I simply felt I had no choice.

20. I would like to note that it was clear to me during the meeting that by agreeing to this split I was not agreeing to the split as part of the Stage 2 compensation scheme.

21. One of the most frustrating parts of this process has been the delay. If we had known that it was going to end up in the same split as the settlement funds, after all of this time, we would have simply agreed to it. We are getting the same deal as we would have done then, but in the meantime we have had to go through frustration, hurt and worry about our finances. It feels as though we are not important. We were told to fill out a form and expect payment within a few weeks. It has been five months and things are as difficult and unpredictable as ever.

22. All along we were told to wait because they were working on sorting out the complex cases. Nothing has changed and nothing has been sorted. During the meeting I asked why it had taken so long to get to this point because the government knew when they announced the £19.5 interim payment that 30 of the GLO group were bankrupt and so why wasn't this sorted out before. Mr Brightwell told us that in hindsight it should have been, that he was very sorry it's taken so long but that this is where we are now.

23. I was very angry and extremely disappointed by the meeting, both by the outcome and by the delay in agreeing to provide us with the same share of compensation as that which we would have already expected. I told Mr Brightwell that I was going to have to go on mute, as I was likely to say something I shouldn't. Everyone else on the call was just as angry.

24. What I am frightened of is that the government and Freeths have paid subpostmasters and set up the HSS. People like me are at the bottom, sidelined. Once the hearing is over in December we will be sidelined again. I am not being heard by the government or by anyone.
25. My bankruptcy is all business related. I had no credit cards, store cards, car finance or personal loans. All of the liabilities which are causing my financial difficulties relate to the Post Office and the shop. Each of my financial issues, which has inevitably caused issues in all other aspects of my life, is attributable to Horizon and to the actions and inaction of Post Office Limited.

FINANCIAL CIRCUMSTANCES

26. Over the years, my husband and I have had to learn to live within our means. We went from being relatively comfortable, with a paid-off car and financial security, to financial ruin. We survive, just about, on my husband's pension and pension credit. We survive because we don't do anything and we don't go anywhere. Our friends have stopped asking us to go out with them, because we just cannot afford the expense. We have no luxuries, we cannot afford to go on holiday, and we cannot afford to move to a bigger house from our social-housing studio flat.
27. Most of my waking thoughts are about the financial peril my husband and I are in, and I lay awake most nights worrying. My anxiety is only increasing as we come into winter and approach Christmas, especially given the rising cost of utility bills. We have one storage heater to heat the whole of our flat. We have no running hot water; we have an electric shower and we have to boil a kettle to do the washing up.
28. This should not be our lives now. We are left, stuck and thrown to one side by Post Office. We were robbed of the best years of our lives and we are left with the life that Post Office left for us, of financial risk and worry.
29. We need support and we need it urgently.

Statement of Truth

I believe the contents of this statement to be true.

Sue Palmer

Sue Palmer
30 November 2022

Witness Name: Mr Baljit Sethi
Statement No.: WITN0200_03
Exhibits: None
Dated: 30 November 2022

THE POST OFFICE HORIZON INQUIRY

THIRD WITNESS STATEMENT OF MR BALJIT SETHI

I, MR BALJIT SETHI WILL SAY as follows:

INTRODUCTION

1. I make this witness statement to update the Chair and the Inquiry on my experiences with the Historical shortfall scheme, and regarding the inadequacy and unfairness of Post Office limited efforts to compensate subpostmasters through the Historical Shortfall scheme ('HSS'). In particular, I provide this statement to detail the continuing impact on me and my family of the government's continuing inadequate and changeable approach to compensation and reparations.
2. This is my third witness statement in this Inquiry. The first witness statement I provided addressed the 'human impact' of the issues with Horizon and of Post Office's conduct toward me. My Second Witness statement addressed a number of questions put to me by the Inquiry and set out my experiences of applying to the Post Office's Historical Shortfall Scheme. I refer to those statements in full in terms of my background and the full details of my experiences.
3. For the purposes of this statement, I set out in detail my experience of pursuing compensation for the harms I have suffered through applying to the Post Office's Historical shortfall scheme.

4. I made my initial application to the HSS on 27 May 2020, some 30 months ago now. As I recall the scheme was only opened for a matter of months.
5. The Historical shortfall scheme was difficult to apply to. Many Subpostmasters, like myself are now elderly, aged 65 plus and we are not as familiar with technology which makes submitting applications online all the more difficult.
6. I can only describe the process of applying to the HSS as abysmal, and I believe that this is by design rather than by accident. Below I have tried to summarise in the best possible way the process I went through and indeed am still going through but it seems clear that since making my application to the HSS the nature of the process is to be as opaque as possible as by keeping Subpostmasters like myself in the dark.
7. Following my initial application in May 2020, I chased up that application repeatedly myself and via my Member of Parliament. I received no substantive reply to that application.
8. In February 2022, very shortly before I was due to give evidence to the Inquiry, and almost 2 years on from submitting my application, I was left incredulous when the Post Office wrote back to me after almost two years of silence, with a list of a further 60 or so detailed questions to answer, and requests for evidence.
9. I was asked to give evidence to the Inquiry on 14 February 2022, which I did.
10. During my evidence on 14 February 2022, I highlighted the Post Office request for further information in relation to my long outstanding application. I highlighted the fact that when you take into consideration the sub-questions on the application form, the Post Office request consisted of a total of 100 questions.
11. After two years of sitting on my application, the Post Office had the gall to ask me to turn this around within one month, with answers to over 100 questions on matters going back 20 years. Again, I cannot help but feel that this delay seems to be an intentional tactic by the post office, to maximise the length of time the process takes,

perhaps in the hope we give up and take whatever the first offer is. It is truly, quite frankly, disgusting.

12. I was also asked by the Post Office as part of my application to provide paperwork from over 20 years ago, despite the Post Office knowing full well that the majority of Subpostmasters no longer hold such paperwork, especially given that the Post Office locked Subpostmasters out of their offices at the time of their suspension.
13. I was also asked to provide medical evidence of what I went through some 15 – 20 years ago, I find this sickening. Once again this appears to be another intentional step taken to avoid paying fair compensation and allow us to move on with our lives.
14. On the 24 August 2022, I wrote to Post Office limited asking for specific updates on my case, as it had been 5 months on from the information request asking me to answer the further 100 questions and I was none the wiser as to where my case stood. I made a request for the following details:
 - i. How long has my case been at Stage 4 – Claim Assessment?
 - ii. What is the average time spent for each stage up to Stage 7 (Settlement paid/resolution closed)?
 - iii. Please escalate my case.
15. I received no response to this request.
16. On 30 August 2022 I followed up requesting that my case be escalated. I received no response.
17. On 05 September 2022 I wrote again to Post Office Limited requesting to escalate my case. Again, I received no response.
18. On 11 October 2022 I wrote again to Post Office Ltd requesting that my case be escalated, to which I received a response asking me to refer back to the correspondence the Post Office sent in August. This did not provide me with any information in relation to the points I requested as set out above.

19. On 17 October 2022 I wrote back to Post Office limited stating the following;

"This is a never ending circle, a malicious, deliberate attempt to stonewall us, and to continually drag the situation on further."

20. On 21 October 2022, now 7 months on from the information request, and over 2 ½ years on from my initial application, I finally received an acknowledgement to my request to escalate my case.
21. I also engaged with my local MP (Julia Lopez) whose office has also contacted Post Office Limited on my behalf. Unsurprisingly, each time, we were met with the same response that *"each case is unique, we cannot confirm timeframes etc"*.
22. At the current time of writing, it is 30 November 2022, so over a month since the Post Office wrote to me informing me they are *"mindful of the time taken in our case"*; this is all I have received from Post Office limited and the Historical Shortfall Scheme.
23. I have no compensation, no justice, and no information as to when this nightmare will end. I am now back to receiving 'the silent treatment' and back to waiting, wondering and chasing.
24. It took me months to receive an update about my application, and even then I was only provided with minimal information. Often it has taken me several attempts to receive a straightforward answer to my questions. The unwillingness by the Post Office to be forthcoming about my application I believe is the way the scheme was designed.
25. I believe this scheme was set up to show publically that Post Office limited was going to provide justice to Subpostmasters, but in reality that is just not the case. If that was the case why after more than 2 years since submitting my application and continuously chasing for updates am I still waiting for compensation and still chasing Post Office limited for updates.

26. I have received zero compensation, there still has been no justice and I am still struggling financially and living with the 'Spectre' of the Post office hanging over us.
27. This process has become tiresome and draining not only for me but my family too. I have now reached a point where I am struggling to continually repeat myself on this issue. I do not want to think about the Post Office, I do not want to be sitting and waiting around for an offer to be made in order to be able to move on with my life. It is disgusting how the Post Office have behaved, and how they continue to behave by dragging out this torture for us Subpostmasters for over 20 years now. Is it not enough that we lost our livelihoods and some even lost their lives? What more can we possibly go through.
28. Enough is enough. It is time the Post Office stop hiding and stop delaying. I would like myself and everyone else to receive the fair compensation they deserve so that we can all move on and the Post Office can finally disappear from our lives.
29. My biggest fear is that the Post office will put forward a paltry offer. An offer to merely tick the box to say "*an offer has been made*". But what then? What if I receive an offer that is insulting to me? I will be back to square one and have to dispute the offer and continue the fight for fair compensation. It seems that this scheme is set up to be a never ending circle with no set time frames for a resolution.
30. For me timing is imperative. The Post Office must commit to a fair resolution in the event of a dispute. To date the Post Office have said they are attempting to settle 95% of cases by the end of 2022. But that is all, what about the remaining 5% which I cannot help but feel I fall into.
31. It has taken us 20 years to get to this point, and I am still waiting on an offer to this day. However, what happens if Post Office limited put forward a poor offer, is this going to take another 20 years of fighting, because by then I will be long gone and this burden will fall to my family who will continue fighting on my behalf.

32. I feel the way the HSS is being conducted is done in such a way that aims to prevent the applicant from reaching a fair settlement. The consistent delay only causes applicants further financial hardship and makes them more likely to accept any offer they receive because they are tired of fighting and tired of the Post Office.
33. Nearly all of my correspondence with Post Office Limited now has to be managed by my children, because I cannot keep fighting this on my own. It is not fair on them to have to help me fight for justice, they have their own lives and their own children, but they are giving up their time and effort to assist me with making applications and chasing the Post Office for updates which they should not have to do. I consider myself lucky to have family who are willing to fight on my behalf but what about those subpostmasters who do have this same support.
34. The financial situation I now find myself in and have been in for the past 20 years is incredibly difficult for me. We along with the rest of the UK are currently living in a cost-of-living crisis and for some they are able to dip into their savings as times get tough. Unfortunately I do not have this privilege as we simply have no savings because of the action Post Office limited took against us.
35. We lost hundreds of thousands of pounds due to the Horizon computer system and the Post Office. It's not just a case of where we are now, but how we have had to live for the last 20 years. I lost huge amounts of money, I had to re-mortgage my house and eventually I was forced to enter into an IVA.
36. I found myself in a dire financial situation. My name was tarnished and I could not get any credit; lenders would not even consider us because of the IVA registered against us. We had to take out a 10 year mortgage paying over 6% interest even though the Bank of England's interest rate was only 0.5% at this time. We were forced to pay higher mortgage rates accepting the only offer available to us with no flexibility because the Post Office destroyed my finances and my livelihood. I feel it is important to raise this because this is not just about the losses we suffered when our post office was taken from us, but also the losses and hardship we suffered thereafter and

continue to suffer from to this very day. Nobody will lend to you, you do not have options available to you, and you simply have to take what you can get.

37. The financial impact I have described above does not take into account our loss of investment when we purchased the post office, the annual salary we received and the rental income we earned from the property. We lost everything.
38. The strain that this placed on my finances not only impacted me but also affected my children. I could not provide for my children and support them through their education throughout their time at university. I recall that after we entered into the IVA, my son was applying for jobs in the Financial services sector and I remember him being in tears because he was concerned that our IVA which was registered at our address would be flagged against him and place him at a disadvantage.
39. As I am writing this further statement today we have no pension pot to support us. We were employed by the Post Office as agents and not employee's therefore there were no schemes provided to support us in our later life. With no pension support from the Post Office we are now struggling to get by with just the basic state pension. This is all we have to cover our day to day living including our food, gas and electricity bills.
40. As I have already mentioned I have no savings to utilise because the past 20 years of financial hardship has decimated any and all savings we once held. I had to use our savings just to make our mortgage payments when I could not get enough shift work as a security guard to make ends meet.
41. No amount of money will ever be enough to make up for the suffering we have endured these past 20 years. For me and my circumstances compensation is crucial, but the compensation must be fair and consider the financial losses, the emotional impact, the impact it has had on my health, my reputation and my whole life.
42. The consistent delays many of us Subpostmasters are experiencing in relation to receiving compensation shows just how little the Post Office have learnt. I am deeply

concerned that there will never be any meaningful support for myself and my family. I am still waiting and I have no idea when the wait will be over.

43. 9 months ago I gave evidence to the Inquiry about the fact that the Post Office and the Historical Shortfall Scheme had not considered my application for compensation that had been submitted two years before, and that I was afraid that I would die before I every received any compensation. The Post Office were present when I gave my evidence to the Inquiry, they heard what I had to say.
44. Still now, 9 months on, I have nothing. Am I worthless to the Post Office? What do I have to do to get compensation for what the Post Office did to me and my family?

Statement of Truth

45. I believe the contents of this statement to be true.

Signed

Mr Baljit Sethi

Mr Baljit Sethi

Dated – 30 November 2022



Simon Recaldin
 Historical Matters Director
 Post Office Ltd
 Finsbury Dials, 20 Finsbury Street
 London, EC2Y 9AQ

Our ref: DE/POHITI

27 November 2022

Dear Mr Recaldin

Overtured Malicious Prosecution Claims and restorative justice

We write further to our correspondence and meetings, most recently of 22 November 2022 regarding the above.

On 21 July 2021 the Government announced a compensation scheme for subpostmasters who had been wrongly convicted. Although progress has been made in relation to payment of interim compensation to many affected persons and we have had the early neutral evaluation process undertaken by Lord Dyson in relation to non-pecuniary damages, we are nevertheless 16 months on from the announcement and still there is no final scheme to which wrongly convicted subpostmasters can apply.

At our recent meeting with you, your team and Mr Watts of Herbert Smith Freehills you sought our views as to a scheme that would allow subpostmasters to advance claims for full, final and fair compensation. It was clear that your team had developed a number of principles, and you gave us sight of your proposed "High Level Process Flow Chart" as part of the working draft of a potential complex scheme.

We advised you that we considered you and your team were over engineering a process that need not be so complex, and that in doing so you are causing delay and unnecessary costs. We urged you to simply allow us and other legal representatives to work up our clients' claims, by agreeing that our clients reasonable legal costs would be met, that we would have authority (at our discretion) to

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instruct experts where necessary, and to instruct counsel for advice on claims and quantum. In this way, claims could be developed rapidly and efficiently, and submitted to you for consideration with the benefit of your own legal advice; with disputed claims to be settled by reference to an independent assessor.

Although these cases are complex claims, there are relatively small number. At present you are considering somewhere in the region of 70 cases. We, and the very small number of legal representatives acting for this category of SPMs, are experienced in preparing and working up complex claims

Our proposal is the obvious way forward. Please accept it.

If needs be, a meeting/mediation can be arranged between your team, and the three legal representatives acting for this class of subpostmaster, where the details can be discussed and settled.

A venue for such a meeting can be the International Dispute Resolution Centre, where we and your team are in attendance every week. The sensible date for such a meeting would be in the week commencing 12 December 2022, as the Inquiry hearings originally scheduled for that week have now been vacated.

In our meeting on 22 November we asked you to confirm who the decision maker was on your side in relation to these cases. You advised that it was BEIS. Therefore, a representative from BEIS, capable of reaching binding agreements, would also need to be in attendance.

We invite you to agree this proposal and way forward, and to confirm that POL will pay the reasonable preparatory and attendance costs of the SPMs' legal representatives in relation to such a meeting/mediation. We anticipate such a meeting would allow a methodology to be agreed before the Christmas break

Restorative Justice

Attached to this letter are copies of our letter to Mr Nick Reed (Post Office Ltd CEO) of 18 October 2022, and Mr Reed's response of 1 November 2022. We wrote in the following terms:

We write further to the opening submissions made by Kate Gallafent KC, instructed by Post Office Limited, to the Post Office Horizon IT Inquiry on 14 October 2022.

In particular, Ms Gallafent said:

"Having carefully considered the submissions made on behalf of postmasters represented by Howe + Co, Post Office invites any postmaster who would like to meet a senior member of Post Office and receive a personal apology, to contact Post Office via Mr Reed in order for that to be arranged."

We are pleased that Post Office has agreed, on our suggestion, that senior members of Post Office will meet and personally apologise to any subpostmaster who wishes to engage in such a meeting. In advance of those apology meetings, we would like to meet with you and members of your team so that we can discuss how meetings with senior members of Post Office can be arranged. There are a wide range of issues which need to be considered and addressed before meetings can be scheduled, including timing, location, format, presence of representatives and venue.

We invite you to meet with us at 10 am on Monday, 24 October 2022, in order to discuss the apology meetings. An initial meeting can be held via Zoom or Teams...."

Mr Reed responded to our letter, apologising for not being available to meet with us, but rejecting our proposals. In particular, Mr Reed advised:

As the apology meetings are intended to provide an opportunity for senior members of Post Office to directly meet with, and apologise to, Postmasters, and as the process for arranging meetings can be conducted informally, we do not believe that there is a need for lawyers to assist in the process. For this reason, Post Office does not propose covering any legal fees relating to this process. Postmasters can, of course, be accompanied at the meetings by a friend or family member (and of course they can have a lawyer present if they wish, but we would not consider that to be necessary, given the purpose and nature of the meeting).

Our clients consider that Mr Reed's response of 1 November demonstrates that the submission made publicly to the Inquiry on behalf of POL on 14 October 2022 was hollow.

You met with our Mr Enright at the Inquiry venue on 15 November, and discussed matters including restorative justice. You invited us to provide you with further copies of our correspondence on this matter, which we did on 16 November. In our covering email providing those letters we stated, inter alia:

"We also discussed our letter to Nick Read, arising from POL's submissions to the Chair. I attach our letter, sent to Gregg Rowan, on 18 October 2022, and the response of 1 November, in which you and Fintan are mentioned.

As discussed, we have substantial experience of arranging restorative justice/acknowledgement and apology meetings. They can have great value both the victim and to the party who has failed a victim. However, victims do not react well to such meetings where the 'perpetrator' seeks to take control of, shape and limit such meetings. As matters stand, POL's response to our letter does not sit well with POL's submission to the Chair (purporting to welcome and adopt our proposal).

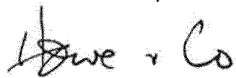
We are prepared to work with POL to facilitate such meetings, but they must be conducted in a manner consistent with restorative justice principles, and there will be a cost in terms of time and associated disbursements such as travel and accommodation costs for victims to attend meetings and for our costs in arranging such meetings."

It is astonishing to us and our clients that Post Office Ltd considers it appropriate for the organisation and people responsible for the many harms suffered by SPMs to seek to take ownership and control of a restorative justice initiative, and deny victims the support of their representatives. Such a stance flies in the face of any concept of restorative justice principles and taints the seemingly helpful suggestion that open and meaningful apologies would be made by POL.

Genuine restorative justice measures are vitally important to very many SPMs and their families, who were and remain in the imbalanced position of attempting to contend with a major national organisation that has visited harms upon them.

We will be raising the issue of restorative justice before the Inquiry again at the compensation hearing on 8 December 2022, and we invite you to review your current position and to agree to our proposals for genuine, meaningful engagement with our clients on their suggested terms, not your top down imposed terms.

Yours sincerely



Howe + Co



Rob Brightwell
 Deputy Director, BEIS Response to Post Office Horizon Inquiry
 Department for Business, Energy and Industrial Strategy
 By email only to: [rob.brightwell](mailto:rob.brightwell@beis.gov.uk) **GRO**

Our ref: DE/POHITI

26 November 2022

Dear Mr Brightwell

GLO SPM Interim Compensation - Complex Cases and GLO ex gratia scheme and

We write further to our previous communications and meetings, most recently our meeting with you on 14 November 2022 regarding the above.

GLO SPM Interim Compensation - Complex Cases

It remains the case that none of the GLO SPMs, whose cases are deemed complex, have received any interim compensation. This is unacceptable, and must be resolved immediately.

You will recall that on 30 June 2022, in the immediate run up to the first compensation focused hearing of the Post Office Horizon IT Inquiry (hereafter POHITI), that BEIS issued a press release under the heading, "*£19.5 million interim compensation package for postmasters who helped uncover Horizon scandal*". BEIS confirmed that it had contracted with Freeths Solicitors to administer interim compensation payments.

Naturally the GLO SPMs *who helped uncover Horizon scandal* took heart from that announcement. However, and as you aware from our correspondence and meetings, the heralded interim

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compensation process was soon beset with delays, in particular in relation to GLO SPMs who had been made bankrupt or who are in IVAs as a result of Horizon related issues.

Disappointingly, BEIS also advised that it would not implement the recommendation of Sir Wyn Williams regarding compensation for the small number SPMs who had been prosecuted and acquitted. We understand that the new Minister may now be reconsidering this position, but clients of ours who fall into this category, and who have been and remain in serious financial distress, have been denied the interim compensation anticipated by Sir Wyn thus far.

We have repeatedly highlighted the distress and hardship that the failure to make good on the announcement of 30 June 2022 has caused to GLO SPMs. We have made that clear in our correspondence and in our meetings with you. In this regard, and by way of example, we refer you to our letters of 28 March 2022, 8 April 2022, 27 June 2022, 29 June 2022, 15 July 2022, 31 August 2022, 12 September 2022 (email) and 13 September 2022.

Indeed, you will be aware that we have been raising the issue of GLO SPMs in bankruptcy long before the BEIS announcement of 30 June 2022, and subsequently. It is therefore astonishing to our clients that the most needy and desperate GLO SMPs (those in bankruptcy or IVA) have not received a single penny of interim compensation to date.

You have previously advised us and our clients that their cases are complicated as a result of their bankruptcy/IVA. We understand from your emails to our clients that the trustees in bankruptcy (Moors) in these 'complex cases' wish all or a large proportion of any interim compensation to be paid to them and not the SPMs, from which the trustees in bankruptcy will take their fees and or utilise those monies to pay debtors. Further, that the Insolvency Agency had a role in these matters and was a further obstacle.

This second obstacle is difficult for our clients to understand, as the Insolvency Agency is part of the Department of Business Energy and Industrial Strategy (BEIS), and thus the Minister could instruct that agency to assist GLO SPMs.

When we met with you most recently, on 14 November 2022, at the 'lawyers roundtable' to discuss GLO compensation our Mr Enright again highlighted the position of GLO SPMs with 'complex cases'. Mr Enright asked if BEIS was providing legal funding to assist SPMs with "complex cases" so that they could access interim payments. It became clear that BEIS had not provided legal funding to the law firm retained by BEIS to distribute interim payments, and as a result that firm was hamstrung in working on unlocking the impasse caused by SPM's bankruptcy/IVA. Once again it appears that SPMs are being denied access to the legal representation that they need to achieve a just outcome.

By the time of the hearing of the 8 December 2022, it will be over five months since BEIS trumpeted interim compensation, and the Minister stated, *"I hope this initial step provides some comfort to these pioneering postmasters while reaffirming our commitment to ensuring they receive their fair share in compensation."* As at today those SPMs in most need have received nothing.

Given that we highlighted these matters to the Minister and to you as long ago as 28 March 2022, and repeatedly thereafter, the obstacles to those most in need should have been anticipated, addressed and resolved in advance of the announcement in June or immediately thereafter. This was not done.

The numbers of SPMs who fall into this category are significant but not overly large; somewhere in the region of 60 persons.

There were always obvious solutions.

The first was for BEIS to anticipate this issue, particularly as we had highlighted it well in advance, and to make available provision to meet the additional costs of resolving the insolvency that SPMs were forced into and continue to languish in.

Secondly, if BEIS were not (for whatever reason) willing to meet the cost of resolving SPMs' bankruptcy/IVA issues, BEIS could and should have provided those representing SPMs with the funding necessary to assist SPMs navigating these obstacles to interim compensation.

Money, could solve this problem, and the money is available as significant monies have been made available to resolve historical claims.

It has been notable that whenever the POHITI turns its mind to compensation for SPMS, announcements are made by Government, and previously insurmountable obstacles fall away.

In the run up to the compensation focused hearing on 8 December 2022, we have seen and anticipate frenetic action, or at least the appearance of such action, on the part of BEIS and POL in relation to these matters.

We hope that the focus of this hearing will once again lead to positive action. However, our clients ask why is it that BEIS only seems to act proactively in the days preceding a hearing of the Inquiry?

Our clients are deeply concerned that when the Inquiry's attention is no longer on compensation issues, BEIS/POL action will cease when they are out of the public spotlight of the Inquiry

GLO ex gratia scheme

On 22 March 2022 the Government announced:

A new funding scheme that will ensure postmasters who played a crucial role in uncovering the Post Office Horizon IT scandal receive their fair share of compensation was announced by the Chancellor today

We have met with you (formally and informally) on a number of occasions, and we have corresponded with you on this scheme. We have also made detailed oral and written submissions to you, such as those provided to you in response to the Minister's invitation of 2 September 2022. We submitted, inter alia:

We have sought urgent clarification from BEIS explaining why and how a large proportion of SPMs (the victims who are in the most need) are unable to access interim compensation. We have received no meaningful or substantive response.

It is clearly open to BEIS to resolve the issues affecting SPMs in bankruptcy and IVAs by simply directing BEIS's agency (The Insolvency Service) to take the necessary steps required.

Thus, the actions now in train to develop a full and fair compensation scheme are long overdue. However, and most serious and foreseeable obstacles have not been addressed, and the Department of Business has advised that it will not give force to at least one important recommendation of Sir Wyn Williams in respect of compensation for SPMs.

We ask that the Department of Business remedies this unacceptable situation. It must significantly improve its responses to the recommendations of the Chair and immediately put in place measures to ensure that GLO SPMs with complex cases can and do receive interim compensation now. It is also urgent that BEIS settles a full and fair scheme.

Over 8 months since the Government's announcement, and despite our meetings, correspondence and submissions there is still no scheme, nor any prospect of a scheme being finalised and opened to applications until at least well into next year.

From the outset you have made it clear that there is a hard stop date to the ex gratia scheme. All compensation payments must be made by 8 August 2024.

In our meeting on 14 November 2022 our Mr Howe advised you, in no uncertain terms, that the delay is creating a real risk that complex high value claims may not be finalised in this relatively short time frame. The reasons given by us included that BEIS had:

1. Failed to agree to make provision for SPMs' reasonable legal costs to undertake work to prepare applications in anticipation of the scheme opening,
2. Failed to agree that SPMs legal representatives can instruct appropriate experts now to assist in the development of claims,
3. Failed to agree that provision will be made for SPMs to have the benefit of counsel's advice on the development of their claims and for advice on quantum, and
4. That BEIS advises that the scheme will not be open to applications until the "spring" of 2023.

In circumstances where substantive work cannot be commenced, and the scheme will not be open to applications before the spring of 2023, there is a real risk that complex cases will not be concluded in little more than 12 months.

The experience of our lawyers involved in high value complex cases is that these type of cases need close care and attention to the detailed issues of understanding all the relevant strands of a client's loss, to the important matter of disclosure (a matter with which POL has demonstrated to the Inquiry it has problems), to the instruction of experts (e.g. psychiatric, forensic accountants, property valuers, loss of business assessors), to the assessment of full and fair payments and to the instruction of counsel (where appropriate). These steps all take time and should not be rushed by the very parties that are responsible for the loss and damage in the first place.

In the week before our meeting of 14 November 2022 BEIS circulated a lengthy draft document, with flow charts, setting out heavily regulated (by BEIS) multi-layered proposals for a scheme.

Common sense proposals were made by the SPM legal representatives in attendance at that meeting to cut through the layers of bureaucracy that were being proposed for the scheme. BEIS

was able to agree little at the meeting but advised that the proposals would be taken away for further internal discussion.

We anticipate that BEIS will make submissions to the Inquiry on 8 December that it has developed proposals and has discussed them with SPMs' representatives. However, there still is no scheme and there will be no scheme for many months.

Again, solutions are obvious. Almost all eligible GLO SPMs are legally represented by a very small group of lawyers, who have demonstrated consistently that they can and do work in concert in the interests of those they represent. Two obvious solutions would include:

1. Authorise, and agree to make provision for, those representing the overwhelming majority of GLO SPMs to begin work to develop their clients' cases in the normal way, including an agreement that they may instruct experts and counsel where deemed necessary (by the SPM's legal representatives). This could be done immediately, and in this way, claims could be developed now, so that they are as ready as possible to be submitted as soon as the scheme is opened for applications.
2. Alternatively, agree to meet the legal representatives of GLO SPMs to thrash out the full detail of a scheme in, for example, a two day face to face meeting, with the assistance of a mediator and perhaps with an observer attendee from the Inquiry's team. The venue could be the International Dispute Resolution Centre, where most of relevant parties have been in attendance since February of this year. All that is needed to facilitate this is for BEIS to agree to make provision for the preparatory and attendance costs associated for SPMs legal representatives, and for BEIS to appoint a person or persons capable of authorising agreement.

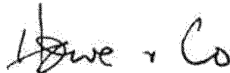
We anticipate that at the Inquiry's hearing on 8 December BEIS will make submissions to the Chair that they have been actively engaged with those representing GLO SPMs, and that progress is being made. There has been engagement and work, but there has been little solid progress to bring the scheme to agreement. Time is the enemy here for SPMs in desperate need of financial support and for BEIS in completing payments by early August 2024.

Conclusion

At our meetings, and in our correspondence, with you and your colleagues we have consistently adopted a positive and constructive approach, as have other representatives. This letter again offers solutions to problems of BEIS' making.

We urge BEIS to stop prevaricating, accept our proposals and to drive towards the Government's stated objective of 22 March 2022, and "...ensure postmasters who played a crucial role in uncovering the Post Office Horizon IT scandal receive their fair share of compensation.."

Yours sincerely



Howe + Co



Kevin Hollinrake MP
Department for Business, Energy & Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Darren Jones MP
Chair, Business, Energy and Industrial Strategy
Committee
House of Commons
SW1A 0AA



17 November 2022

Dear Darren,

Post Office Horizon: Compensation and Costs Update

I am pleased to write to you for the first time in my role as Minister responsible for Postal Affairs. Your Committee has taken a strong interest in the Post Office and, in particular, issues relating to the Post Office Horizon IT system. As with my predecessors, I am committed to continuing the Department's engagement with the Committee on these important matters and ensuring that compensation is provided fairly and swiftly to postmasters.

My predecessors, Paul Scully MP and Jane Hunt MP, committed to keeping you updated on Horizon-related compensation delivery and associated costs on a regular basis. Jane Hunt wrote to you in July this year with the first of these updates and I am pleased to provide you with the next.

In the attached annex, you will find an updated table of costs covering compensation and legal and administrative costs for Overturned Historical Convictions, the Historical Shortfall Scheme, the Group Litigation Order and the Horizon IT Inquiry, setting out both the costs-to-date and estimated outturn for these areas. This is an updated version of the table provided to the Committee in July this year. Some of the estimated outturn will be updated in Post Office's upcoming annual report.

Overturned historical convictions: compensation

Progress continues to be made on claims received from those with Overturned Historical Convictions. An Early Neutral Evaluation ("ENE") was held in July by former Supreme Court judge Lord Dyson, to consider specifically the appropriate monetary ranges for non-pecuniary damages claimed by convicted postmasters. As of 15 November, six of the ten claimants involved in that process have now formally settled their non-pecuniary claims with Post Office and received payment, including full and final settlement for the first two fully-quantified claims (settled both pecuniary and non-pecuniary damages). Post Office anticipates that three of the remaining four non-pecuniary claims will be settled and paid shortly and the remaining claim will be formally finalised by way of resolution for their pecuniary claim, since they have already received interim payments in excess of the non-pecuniary award.

As of 15 November, in addition to the ten claims involved in the ENE, 33 further non-pecuniary claims have been received. Post Office has made offers to 20 of these. In total, Post Office has already made offers for non-pecuniary damages worth c.£7.8m¹. Post Office has shared, or offered to share, the ENE report with the legal representatives of all potential claimants with overturned convictions. Post Office is inviting such claimants to submit evidence in support of their non-pecuniary claims so that these can be settled swiftly, ahead of the pecuniary elements of claims. Government supports this approach to compensate postmasters as swiftly as possible.

Beyond the two full and final settlements, a further six quantified pecuniary claims have been received. Only one has been fully quantified and the remaining cases are subject to requests for further information. Post Office is working with the relevant solicitors on evidential matters to enable opening offers to be made. Government continues to encourage eligible postmasters to submit their claims.

The Department is supporting the Post Office to address barriers to reaching negotiated settlements through a range of Alternative Dispute Resolution approaches. This has included the process of ENE, as described above. Government will continue to encourage Post Office to use the appropriate processes available, which could include good faith meetings and mediation, to reach negotiated settlements with claimants.

We are pleased that the then Economic Secretary to the Treasury announced on 23 September ([HCWS 303](#)) a tax exemption for compensation payments to those with overturned historic convictions. This will support postmasters to get compensated fairly and swiftly.

As of 15 November, 81 claims for interim compensation had been received, 77 payments made and c.£7.7 million paid. I can confirm that, since the update to the Select Committee in July, no further applications for interim payment have been rejected. In relation to the 3 former postmasters whose applications for interim payments were rejected, Post Office and the legal representatives of those claimants have agreed to go to mediation with an independent mediator in order to seek to resolve matters.

I am pleased that Post Office has also, where appropriate, identified 3 potential cases of hardship and offered and paid further hardship payments of £100,000. Furthermore, following the recent statutory tax exemption provided by HM Treasury and the Early Neutral Evaluation process, Post Office will increase all future interim payments up to £163,000 (from the current level of up to £100,000). Post Office will also be offering an additional top-up payments of £63,000 to current claimants who are unable to submit their non-pecuniary claim by 1 December and had received the original interim payment amount of up to £100,000.

Historical convictions: appeals

I would also like to update the Committee on Post Office's progress in identifying those who may have a Horizon-related conviction and wish to appeal, so that no miscarriage of justice is missed.

Post Office continues to provide support to the Public Prosecution Service Northern Ireland (PPSNI), the Crown Office and Procurator Fiscal's Service (COPFS), Royal Mail, the Department for Work and Pensions (DWP) and the Crown Prosecution Service (CPS), in respect of those individuals who were not prosecuted by Post Office. This support has

¹ This figure includes interim payments already paid.

included providing documentation held by Post Office, tracing services, and holding round table and individual meetings to assist in their independent reviews.

In addition, earlier this year the Criminal Cases Review Commission (CCRC), the independent body that investigates potential miscarriages of justice, agreed to Post Office's proposal that they will contact people who have not yet responded to Post Office's information letters. As of August 2022, the CCRC has written to around 250 people.

There are some people who may not be engaging with Post Office's outreach due to distress that they have suffered historically. Therefore, Post Office has signed a contract with Citizens Advice to assist in such outreach. This contract is now live. 97% of people recognise the Citizens Advice brand, and at least 81% of people agree that Citizens Advice is a trustworthy brand to approach for advice. With such high recognition and trust rates, Post Office believes that Citizens Advice is well-placed to give reassurance to those affected who may be nervous about coming forward. The aim of the service is to act as a trusted independent organisation to support them with their case, provide them with ongoing updates, support them in gathering evidence, and identify any additional advice needs they may be experiencing.

Historical Shortfall Scheme

My predecessor Dean Russell MP wrote to you last month on the progress that has been made on the Historical Shortfall Scheme (HSS), and to notify the Committee that the Government is extending its funding to Post Office to allow late applications into the scheme. As of 31 October 2022, Post Office has written to all but 8 of the existing late applicants, who they expect to contact shortly. Post Office has received 40 application forms so far. In addition, the Government has supported Post Office in bringing forward further measures to support claimants who are disputing their offers, including further access to legal advice, and extending the availability of hardship payments. I am grateful for the Committee's work in pushing for these changes.

The Government remains focused on delivering full and fair compensation as quickly as possible and, as previously noted, Post Office continue to publish monthly updates on progress².

As of 15 November, 90% of offers have been made (2,135), and the total amount of compensation offered is now over £64m, an average of slightly over £30k per claim. By the same date, over £44m has been awarded in compensation payments under the scheme to 1,756 eligible claimants; this represents an average payment of over £23.5k. The Committee have previously raised concerns around the level of offers received by postmasters under the HSS and I hope that the data provided below will help to allay these concerns. The below table shows a breakdown of the average payments awarded during the HSS so far, which shows an uplift over time, reflecting the fact that the Panels have reviewed the more complex claims later in the process.

Table: HSS average payment by month

Month	Average Payment by Month (Net)	Cumulative Average Payment (Net)
Mar-21	£3,455.77	£3,455.77
Apr-21	£3,955.05	£3,844.76
May-21	£3,485.09	£3,800.51

² <https://corporate.postoffice.co.uk/en/historical-matters/historical-matters-progress/historical-shortfall-scheme-information-on-progress/>

Jun-21	£3,541.13	£3,790.08
Jul-21	£4,746.58	£3,844.48
Aug-21	£3,466.33	£3,820.95
Sep-21	£3,970.23	£3,831.44
Oct-21	£9,573.63	£4,249.45
Nov-21	£14,977.29	£4,568.49
Dec-21	£13,977.37	£5,665.42
Jan-22	£11,669.39	£6,408.36
Feb-22	£12,411.59	£7,136.94
Mar-22	£14,417.86	£7,858.40
Apr-22	£19,491.71	£9,090.44
May-22	£22,491.96	£10,896.99
Jun-22	£39,471.29	£13,358.71
Jul-22	£57,018.94	£17,246.57
Aug-22	£60,526.93	£20,638.81
Sep-22	£40,542.14	£21,683.67
Oct-22	£50,220.50	£23,515.01

Group Litigation Order

On 30 June 2022 Government announced interim payments to members of the GLO totalling £19.5m. The payments cover all members of the GLO apart from those who were convicted, whose claims are being handled separately as mentioned above as their convictions are overturned³. We have made interim payments to 419 postmasters totalling £16.1m. Of the remaining 65 cases, 9 relate to people who have not yet provided sufficient information (such as bank account details) to allow payments to be made. These are being actively followed up. The remainder relate to complex cases, notably bankrupt or recently-deceased claimants. It is important that such issues are sorted out before payment is made – otherwise postmasters might not get the maximum benefit of both the interim payment and the final compensation.

We have been working with the Insolvency Service to establish the best way of ensuring that each postmaster who has a bankruptcy or IVA receives as much of their interim payment as possible. We continue to strive to ensure that interim payments are made as soon as possible to all eligible postmasters.

On 2 September 2022, Jane Hunt wrote to all members of the GLO and their legal advisers informally consulting them on the design of the final compensation scheme⁴. That consultation has now concluded, and the results will provide valuable input to our design work. We will also take into account other factors like efficiency, feasibility, and cost. We hope to announce the full scheme in December.

We have accepted the force of Sir Wyn Williams's observations about interim compensation for acquitted GLO members and will make additional interim payments where necessary to bring them more closely in line with the arrangements under the Historical Shortfall Scheme.

As mentioned, I look forward to engaging further with the Committee on these important issues, including by providing further updates on progress and costs. Finally, I will continue to work with Post Office to deliver swift and fair compensation to those entitled to it.

³ <https://questions-statements.parliament.uk/written-statements/detail/2022-06-30/hcws161>

⁴ <https://www.gov.uk/government/publications/post-office-horizon-group-litigation-order-glo-ex-gratia-payment-scheme>

I am copying this letter to Sir Wyn Williams, Chair of the Post Office Horizon IT Inquiry and sharing with Parliamentarians who have been active in campaigning on Horizon issues.

Yours ever,

Kevin Hollinrake MP

Kevin Hollinrake MP
Minister for Enterprise and Markets

ANNEX A – HORIZON-RELATED COSTS

1) Government compensation for the Group Litigation Order (GLO)
<p>Estimated outturn (interim payments only, as at 15 November)</p> <ul style="list-style-type: none"> Government committed to making an interim payment of compensation to eligible members of the GLO, who do not have a conviction, totalling £19.5 million.
<p>Costs to date (interim payments only, as at 15 November)</p> <ul style="list-style-type: none"> All but 65 interim payments had been made with total spend of £16.1 million.
2) Historic Shortfall Scheme (HSS)
<p>Estimated outturn</p> <ul style="list-style-type: none"> £150 million estimated cost of settlement compensation as set out in a provision in Post Office's 2020/21 annual report. Post Office will publish the most up-to-date figures in its 2021/22 annual report. <ul style="list-style-type: none"> This includes c.£87 million from Post Office. BEIS has made the funds available to cover the remaining settlement amounts, estimated to be £63.3m. This will soon be updated to account for eligible late applications to the HSS. £76 million in Post Office legal and administrative costs. This covers the period of 2020/21 – 2024/25. <ul style="list-style-type: none"> This includes design, administration, set-up and running costs of the scheme and is an estimate upon closure of the scheme once all payments have been made.
<p>Explanatory Notes</p> <p>1) <i>Settlement compensation:</i></p> <ul style="list-style-type: none"> The actual settlement costs will depend on the compensation paid out under the scheme, which will be determined by the Independent Panel, and, if the initial offer is not accepted, through negotiation with claimants via alternative resolution methods. The estimated outturn will be updated in Post Office's 2021/22 annual report, which will take into account the extension of the scheme to accept eligible late applicants. An initial estimate of £233 million of maximum budget cover from the Government for HSS compensation payments was published by BEIS, as we are required to do, on the Trade and Co-operation Agreement (TCA) subsidy website. This was an estimate of maximum budget cover potentially required from Government and is not an estimate of likely outturn in settlement costs.
<p>Costs to date (as at 15 November)</p> <ul style="list-style-type: none"> Offers have been made to 2,135 of 2,374 eligible claimants (90%). The total value of offers made is over £64 million. Of those, 1,756 (£44.7 million with interest and after tax) have been accepted so far. £39.95 million has been paid (net of tax) for accepted settlement offers. £53.4 million has been spent on legal and administrative costs to run the programme.

- The Government has not been required to make any financial contributions to date.

3) Compensation for overturned convictions

Estimated outturn

- **£780 million** is the estimated maximum potential spend for payment by BEIS of compensation to cover both the interim payments and the final settlements.
- A provision of **£502 million** has been recognised in respect of Overturned Historical Convictions in the Post Office 2020/21 published annual accounts and represents the **most likely** outturn of settlement costs at this date. Post Office will publish the most up-to-date figures in its 2021/22 annual report.
- **£31 million** is the current forecast for all the associated legal and administrative costs to be covered by the Post Office. This covers the period of 2021/22 – 2024/25.

Explanatory Notes

- 1) *Settlement compensation:*
 - Actual costs will be determined by the total number of overturned convictions and the individual settlements reached. The estimated outturn will be updated in Post Office's 2021/22 annual report.
 - The estimated maximum **£780 million** figure was published by BEIS, as we are required to do, on the TCA subsidy website, broken down into maximum estimates of **£94.4 million** to cover interim payments and **£685.6 million** to cover final settlements. This was an estimate of maximum budget cover potentially required from Government and is not an estimate of likely outturn in settlement costs.
 - Government funds will cover settlement payments only and will be paid to Post Office in arrears to fulfil interim payments and individual settlements where the offer made has been accepted by the claimant.

Costs to date (as at 15 November 2022)

- Interim payments have been made to 77 claimants. Government has reimbursed Post Office **£7.675m** for interim payments to date.
- Post Office has made progress on non-pecuniary offers, with offers pending acceptance from 8 claimants (totalling c.**£1m**) and 21 offers either accepted or paid (totalling c.**£2.8m**). These figures exclude the payments made via interim payments. Offer totals exclude 1 claimant whose interim payment settlements exceed the agreed non-pecuniary settlement value.
- Post Office has paid **£0.6m** in pecuniary settlements to date.
- **£7 million** has been spent in Post Office legal and administrative costs for the programme to compensate those with overturned convictions.

4) Other Post Office Costs (as at September 2022)

Costs to date

- **£35 million** on Post Office legal fees relating to legal obligations, response and support activities in relation to postmasters who wish to appeal their Horizon-related convictions.
 - This includes costs associated with identifying and contacting potential future appellants, discovery and disclosure of over 4.5 million documents and preparation and representation at hearings before the Court.
- **£29 million** on other legal, project management, governance, operational reviews, improvement implementation and contracts, regarding Horizon-related issues and requirements.

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Estimated outturn

- Costs in these areas for the remainder of the compensation settlement process cannot be reliably estimated at this time because any further such activity will largely be responsive and demand-led, e.g. as appeals against postmaster convictions are progressed.

5) Horizon IT Inquiry

Costs to date

- Government has spent **£7.5 million** in running the independent Post Office Horizon IT Inquiry for FY 2020/21, FY 2021/22 and FY 2022/23 up to the end of September 2022.
- Post Office has spent **£31.5 million** in legal and administrative costs in responding to the Inquiry to October 2022.

39m

Estimated outturn

- Government: Additional cost estimates for FY 2022/23 and FY2023/24 for the running cost of the Independent Post Office Horizon IT Inquiry are not yet finalised and will be provided in a future update to the BEIS Select Committee on Horizon-related costs.
- Post Office's costs are also not yet finalised and will be provided in a future update to the BEIS Select Committee.



Strictly Private & Confidential

David Enright
Howe + Co Solicitors
1010 Great West Road
Brentford TW8 9BA

By email: GRO

1 November 2022

Dear Mr Enright,

Personal apologies to Postmasters

Thank you for your letter of 18 October 2022.

As Ms Gallafent KC explained in Post Office's Opening Statement on 14 October, we would welcome contact from any Postmaster who would like to meet a senior member of Post Office and receive a personal apology.

I am sorry that we were not in a position to respond to your letter by your proposed meeting date of 24 October, but I confirm that members of Post Office's Inquiry team and Historical Matters Unit (HMU) would be happy to meet with you to discuss arrangements for apology meetings with Postmasters. Please contact Post Office's Inquiry Director, Fintan Canavan, at fintan.canavan@postoffice.co.uk and Post Office's HMU Director, Simon Recaldin, at simon.recaldin@postoffice.co.uk **GRO** to discuss your availability for such a meeting.

In advance of the discussions, I thought it would be helpful to set out Post Office's position on certain of the matters raised in your letter:

- Senior members of Post Office would be pleased to meet your clients, and any other Postmaster, at an appropriate location or locations, but it may not be possible to meet every Postmaster in their first choice of location. We would be happy to discuss with you options for your clients.
- We agree with your comment that it is likely that different Postmasters will desire different formats and outcomes from their apology meetings. We therefore do not think it would be helpful to be too prescriptive in setting the parameters for the meetings. Post Office will also need to take into account the fact that other Postmasters, who are not represented by your firm, may wish to attend an apology meeting.
- We note your comment that there may be better ways for the meetings to be facilitated than via Postmasters contacting me directly. We would propose that members of Post Office's HMU provide the point of contact through which the apology meetings can be facilitated.

This team has a wealth of knowledge from its working relationships with Postmasters, from supporting the operation of branches on a day-to-day basis to business management support, all of which have been key to aiding an understanding of Postmasters' views. We hope that facilitation through this team will encourage more informal contact and go some way to the confidence building to which you have referred.

- As the apology meetings are intended to provide an opportunity for senior members of Post Office to directly meet with, and apologise to, Postmasters, and as the process for arranging meetings can be conducted informally, we do not believe that there is a need for lawyers to assist in the process. For this reason, Post Office does not propose covering any legal fees relating to this process. Postmasters can, of course, be accompanied at the meetings by a friend or family member (and of course they can have a lawyer present if they wish, but we would not consider that to be necessary, given the purpose and nature of the meeting).

We hope that the points covered in this letter go some way to the confidence building to which you have referred. Fintan Canavan and Simon Recaldin stand ready to discuss these matters with you in further detail, and how contact arrangements for Postmasters can be established with the HMU team, so that the process for setting up the apology meetings can begin at the earliest opportunity.

Yours sincerely,

Nick Read

Nick Read

Group CEO

Finsbury Dials, 20 Finsbury Street
London, EC2Y 9AQ

postoffice.co.uk



Nick Read
Post Office Limited
By email only

18 October 2022

Dear Mr Read

Restorative Justice - Personal apologies to subpostmasters

We write further to the opening submissions made by Kate Gallafent KC, instructed by Post Office Limited, to the Post Office Horizon IT Inquiry on 14 October 2022.

In particular, Ms Gallafent said:

"Having carefully considered the submissions made on behalf of postmasters represented by Howe + Co, Post Office invites any postmaster who would like to meet a senior member of Post Office and receive a personal apology, to contact Post Office via Mr Read in order for that to be arranged."

We are pleased that Post Office has agreed, on our suggestion, that senior members of Post Office will meet and personally apologise to any subpostmaster who wishes to engage in such a meeting. In advance of those apology meetings, we would like to meet with you and members of your team so that we can discuss how meetings with senior members of Post Office can be arranged. There are a wide range of issues which need to be considered and addressed before meetings can be scheduled, including timing, location, format, presence of representatives and venue.

We invite you to meet with us at **10 am** on Monday, **24 October 2022**, in order to discuss the apology meetings. An initial meeting can be held via Zoom or Teams. Before this meeting, however, there are issues which we wish to raise with you, so that constructive progress can be made:



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Building confidence - We met with a large proportion of our core participant subpostmaster clients yesterday to apprise them of your offer. There were a range of responses, from those who were open to such a meeting to those who were suspicious that such meetings were genuine, and to those who were hostile to the idea of such meetings. Given the background to these matters Post Office will have to commit to a significant confidence building process in relation to this offer. However, if properly managed, a restorative justice initiative such as this can have real benefits for the victims and Post Office. This is clearly an issue that will need to be discussed with you and your team.

Venue – The Post Office will have to be flexible in terms of venue. There will be subpostmasters who will wish the senior Post Office Official to visit them at their home, or place of business. We previously facilitated home visits to victims by the Archbishop of Birmingham as part of restorative justice in the Child Sex Abuse Public Inquiry. There may be other subpostmasters who would wish or would be willing to travel to a neutral or indeed Post Office venue to meet the senior Post Office official. The wishes of each victim will need to be respected and facilitated. For now, we ask for confirmation that Post Office will reimburse any expenses associated with attending these meetings.

Format of meetings – It is likely that different subpostmasters will desire different formats or outcomes from such meetings. For example, it is likely that some subpostmasters will wish to recount their experiences and the impact that the Horizon Scandal had on them, and to have those experiences acknowledged. Some subpostmasters may wish to ask questions and receive answers. Further, it is highly likely that due to a lack of trust on the part of our clients, or vulnerabilities that they experience, that they will wish to be accompanied by us at any such meeting.

Facilitation – You will agree that merely inviting subpostmasters, *“to contact Post Office via Mr Read in order for [a meeting] to be arranged”* is not sufficient. The Post Office must be proactive and demonstrate that it genuinely wishes to meet subpostmaster victims, and to make this possible.

We act for 153 of the approximately 200 victim subpostmaster core participants in the Public Inquiry, as well as subpostmaster victims who are not core participants in the Inquiry. If Post Office is genuine in its offer, it will be appreciated that arranging meetings, canvassing our clients' views and working out the modalities of apology meetings will involve a significant amount of work for our firm. This work will need to be funded. The Section 40 Inquiries Act funding award, through which our clients' representation before the Inquiry is funded, does not extend to work on apology meetings/restorative justice.

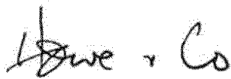
Understandably, many of our clients do not wish to engage with Post Office directly, and will wish correspondence and contact to be conducted via us. Our clients will wish us to scope out and explain to them what this offer means, where such meetings will occur, what the format of such meetings will be, and what they can expect from such meetings. In order for us to conduct this work, make arrangements on their behalf and for correspondence on their behalf to come through us, such work will need to be funded. It would be unfair and counterproductive to the spirit and restorative intent of the offer made by Post Office, that SPMs be expected to fund their own legal support in these matters.

In these circumstances, we ask that you confirm that our reasonable legal costs will be met by Post Office for work related to settling the detail of these meetings, facilitating them and attending with SPMs where a vulnerable SPM feels unable to attend alone. We ask that such funding will be treated as commencing from 14 October 2022 (the date of the offer was publicly made by Leading Counsel for Post Office, and the date when we first raised it with our clients).

The above, are headline issues that will need to be resolved quickly if Post Office genuinely wishes to engage in a meaningful restorative justice process.

We look forward to hearing from you, in particular in relation to our offer to meet with you and your team at 10am on Monday 24 October.

Yours sincerely



Howe + Co

**IN THE MATTER OF STAGE 2 COMPENSATION
PAYMENTS FOR SUBPOSTMASTERS**

**RESPONSE OF SUBPOSTMASTERS REPRESENTED BY HOWE + CO
TO CONSULTATION IN RELATION TO STAGE 2 'EX GRATIA' PAYMENTS**

Introduction

1. These submissions are made on behalf of subpostmasters ('SPMs') represented by Howe + Co, in response to an invitation from the Department for Business, Energy and Industrial Strategy ('BEIS') to make submissions on the Stage 2 compensation scheme.

Background

2. Since the settlement of the Group Litigation (Bates & Ors), there has been widespread concern as to the conduct of Post Office Ltd in that litigation. That conduct is to be the subject of investigation by the Post Office Horizon IT Inquiry (POHITI). A further concern was that although those who brought the Claim exposed the Post Office scandal, leading to the overturning of scores of wrongfully convicted SPMs amongst other matters, those Claimants received a mere fraction of the compensation they were properly due. Indeed, it became clear that those GLO SPM Claimants, who exposed the scandal, opening the way for compensation for others, were left in a far worse position than other SPM victims.
3. This unfairness has been the subject of widespread comment, including in the House of Commons. It is also a matter that has recently been considered by this Inquiry. Sir Wyn Williams, in his updated report of 15 August 2022 (paragraph 10) confirmed:

10. This document is a Progress Update relating to one, albeit important, aspect of the Inquiry's work. It contains my views on the steps which BEIS and POL are taking and have taken to fulfil commitments to provide compensation which is "full and fair". I will follow closely the extent to which the views I have expressed are acted upon and, in particular, whether they are acted upon promptly. If it becomes clear in the coming weeks that progress is too slow – in particular in finalising a Group Litigation Scheme and/or making payments thereunder - I will very likely determine that I should deliver to the Minister an interim report pursuant to section 24(3) of the Inquiries Act 2005 containing specific recommendations. Further, I might very well conclude, then, that I should convene a further hearing relating to compensation issues at short notice.

4. It is clear therefore, that the Post Office Inquiry takes the matter of a "full and fair" compensation process and compensation for Group Litigants very seriously, and is a matter that the Inquiry will follow closely.

Delay

5. Those we represent have reasonable concerns that the steps taken to consult on full and fair compensation and to publish a compensation scheme for GLO SPMs are very long overdue, and that delay has caused the most significant further losses and harms to SPMs.
6. It will be recalled that Howe & Co, on behalf of those SPMs we represent, called on the Minister and Post Office Ltd as long ago as 6 December 2021 to confirm:

(i) your department has commenced work on an holistic reparations scheme for subpostmasters and other persons affected by the Horizon IT scandal;

(ii) if your department has not commenced that work, that your department will start the work immediately to establish a reparation scheme to adequately compensate subpostmasters;

(iii) your department commits to providing a meaningful sum of interim compensation to all affected persons, within 28 days of application, in line with

the scheme for interim payments for those criminally convicted, and who have had those convictions overturned;

(iv) that any future holistic compensation scheme will not exclude claimants who participated in the High Court Group Litigation of Bates and Others v Post Office Ltd; and

(v) your department will commit to paying to the claimants subject to the the Group Litigation Order in Bates and Others v Post Office Ltd the legal and funding costs they incurred in order to bring that claim to a successful judgment that exposed the scandal

7. Indeed, the above matters had already been raised with the CEO of Post Office Ltd on 22 October 2021; thus almost a year ago. These matters were urgent before October 2021 and remain urgent now.

8. The serious harm caused by delay is not merely theoretical but is a reality for GLO SPMs. Just one of the many examples we could cite is in relation to our clients Mr Mujahid and Mrs Shahla Aziz, as set out in our letter of 27 June 2022 to Mr Brightwell (copy attached). That letter raised the dire plight of Mr and Mrs Aziz. The position of these individuals has not improved, despite receipt of an interim payment, which came nowhere near to meeting the large debts they incurred and had to maintain as a result of the Horizon Scandal. Indeed, in this current month Mr and Mrs Aziz continue to receive threats of legal action from their debtors. The position of Mr and Mrs Aziz is shared by many of the GLO SPM Claimants. Mr and Mrs Aziz have made important responses to the consultation, which have been sent to BEIS and copied to Howe & Co. These are set out in the attached annex and detailed elsewhere in these submissions.

9. It may be recalled that Sam Stein KC set out the dire positions of some of our clients in his submissions to the Inquiry at the compensation hearing on 6 July 2022:
 - Marion Drydale says: *I have sold my jewellery, Used my inheritance, Cashed in my pension. Every day is filled with uncertainty, a dread of more bills I cannot pay*

- Peter Worsfold says that he has still not been able to repay his 94 year old mother for bailing him out when PO demanded money for shortfalls in 2002. He visits the supermarket at 4pm
- Susan Hazzleton says: *I am 69 years old in December and still work 4 days a week as I cannot afford to retire. We have also just had to put our house on the market*
- Geoffrey Pound: *Our house and business were repossessed back in 2008. At 74 I would need to live till about 150 years old to repay in full.*
- Shazia Saddiq says: *"The ounce of dignity I thought was remaining is being eroded daily" I am so tired. At the age of 38 I feel like a pensioner. The effect of POL's actions have destroyed me."*

10. The plight of many of our clients is urgent. Yet despite the Department of Business announcement of the 30 June 2022, regarding speedy interim compensation for GLO SPMs, serious problems and delays persist.

11. A particularly egregious example of BEIS failing to act in accordance with its public announcements and other assurances is the decision by those coordinating the development of the compensation scheme, advising that BEIS would not give effect to the POHITI Chair's recommendation in his update report of 15 August 2022, in respect of GLO SPMs who had been prosecuted but not convicted.

12. It will be recalled that in his update report Sir Wyn Williams found and recommended that:

159. I am aware of a number of persons who were prosecuted on the basis of alleged shortfalls which they alleged were falsely generated by Horizon, who were acquitted of the charges brought against them and who went on to become Claimants in the Group Litigation. Some of those persons gave evidence in the Human Impact hearings

and their evidence described how they have suffered substantially notwithstanding their acquittals. This category of acquitted persons is deliberately excluded from the Overturned Historic Convictions Scheme.

160. The only basis for that exclusion was that this category of persons had not reserved their rights to bring claims for malicious prosecution in the Settlement Deed which brought to an end the Group Litigation. They had accepted a payment of compensation in full and final settlement of all their claims.

161. The position has now altered. Claimants in the Group Litigation are now going to receive further compensation payments and, indeed, they are going to receive interim payments. The difficulty is that the interim payments which acquitted Claimants in the Group Litigation will receive will be calculated in such a way that it is very likely that the interim payments which will be paid to acquitted Claimants in the Group Litigation will be very substantially less than the £100,000 paid over to persons whose convictions have been quashed. While I accept that the trauma of conviction and sentence was a very significant factor in the decision to make interim payments at the level of £100,000 to sub-postmasters whose convictions had been quashed those who were acquitted are also likely to have been awarded very significant sums if they had successfully pursued their claims for malicious prosecution. In my view, acquitted Claimants in the Group Litigation should either be brought into the Overturned Historic Convictions Scheme (and then paid an appropriate interim payment) or, if there are thought to be legal difficulties with that course of action, paid interim payments in the Group Litigation Scheme which are properly reflective of the fact that they suffered the trauma of prosecution. If the latter option is thought preferable, I do not consider that there would be a need to disrupt the agreed formula for making interim payments described in paragraph 113 above. Rather, funds should be made available over and above the £19.5m so that appropriate interim payments can be made to acquitted Claimants in the Group Litigation. Given the overall sum which will be necessary to compensate all the victims of Horizon fully and fairly the making of a small number of enhanced interim payments at this stage would, in my

opinion, cause no appreciable detriment to the public purse but would be of considerable benefit to the persons receiving the payments. [Emphasis added]

13. In our meeting on 25 August 2022 to discuss the development of the GLO SPM compensation scheme, BEIS rejected our request that BEIS, consistent with the Chair's update, ensure that immediate enhanced interim payments were made to our clients and the small number of other persons known to be in this category (estimated by BEIS to be some 15 persons). It was argued by BEIS that making the enhanced payments recommended by the Chair would delay the wider compensation scheme.
14. We disagreed during that meeting and in later correspondence, and called on BEIS to give effect to the Chair's update report in this regard and for this small number of SPMs.

Complex cases

15. A further deeply worrying matter arose on 12 September 2022 in relation to SPMs who were forced into bankruptcy and IVAs as a consequence of the scandal, and who appear to make up over 10% of the GLO SPM group of victims.
16. As per our correspondence with BEIS of 12 and 14 September 2022, our clients were advised in an email from the Justice for Subpostmasters Alliance (who have been in weekly meetings with BEIS regarding compensation arrangements) that:

"This email is only being sent to all those who have one of the more complex cases and have yet to hear about their interim payment.

"As you know, there are nearly 500 in the GLO group who are to have their cases reviewed in order to receive what Government refers to as further compensation, and which the JFSA is determined to ensure is the compensation that will financially restore people to the situation they would have been in had it not been for the Horizon scandal.

“To that end Government agreed a £19.5m Stage 1 interim payment package and then to develop a Stage 2 scheme to examine and compensate each case. So far, close to 400 of the roughly 500 cases have received their interim payments, and about 40 have either to provide more details or even return their forms. However, you are one of the 60 who have a complex case and this email is to explain the problem with those cases.

“The JFSA holds regular weekly meetings with BEIS which Freeths attend in order to provide updates on matters such as the current position with the interim payments which they have been commissioned by BEIS to distribute. Now, despite the assurances given by the Minister to the House of Commons on 30 June 2022, that they planned to distribute funds within a few weeks of receiving your application, in many of your cases it has been over two months since you submitted your completed forms, and you have still not received anything and are having problems trying to find out what is happening.

“This position is something that we are very aware of, and I wrote to the Minister back in the middle of August because the stumbling block then, as it is now, is presently there is no money being made available by Government to sort out each of the complex claims like yours. This might even mean you may not receive any interim payment and may have to wait for your Stage 2 claim to be agreed and processed before receiving anything.

“So why is that the position with your case?” In most instances, it is because there is a bankruptcy or IVA which has to be resolved before any interim payment can be made, and it is very much in your best interests and highly important to all of you that these issues are sorted out long before you achieve any final Stage 2 payment. Unfortunately, there is no money left in the budget that Government allowed for the distribution of the interim payments to enable the work on the complex cases to be completed. And so until more funding is made available, generally the complex claims like yours are on hold.

“What is being done to sort this problem?” As already mentioned, when it first became evident in mid-August the matter was raised with the Minister and in response an

assurance was given that talks were underway to resolve the issue. But it has been almost a month since then, and little has changed.

“The officials at BEIS we deal with on a regular basis fully understand the problem and we can see they are trying their best to obtain a solution to allow work on the complex cases to resume. But we are told, that due to Departmental processes it will take time to resolve, and no timescale can be given as to when that might be.

“So what can you do about it? I know most of you are in dire financial straits and desperately need your interim payment soonest and had been expecting it weeks ago in line with what the Minister had promised back in June. But as work has stopped on most of these cases it is not possible for anyone to say if, or when, you will receive anything, and it would probably make sense for you to ask your MP if they can obtain an answer for you, because despite our best efforts, we cannot find out anything further.”

17. The cause of the funding gap for so-called ‘complex cases’ does not appear to have been made clear to JFSA. It appears that there is insufficient money in the BEIS budget to provide SPMs with ‘complex’ cases with any interim compensation at all. This is unacceptable.
18. It is a matter of some concern to our clients that this issue was not raised by BEIS previously in submissions to Sir Wyn Williams, nor in the context of the recent compensation focused hearings of the Inquiry, nor when solicitors from Howe & Co met with the BEIS team on 25 August 2022. Neither was it raised in BEIS’s response following that meeting.
19. A lack of interim compensation for these 60 individuals, regardless of the reason why funding is not available, is of serious concern to the clients of Howe & Co and the other SPMs in a similar position.

20. It is not acceptable that more than 10% of the group litigation SPM claimants will not receive any interim compensation and must, it appears, await the determination of their application under stage 2 compensation before they receive anything. It is important to highlight that we have been advised by BEIS that the Stage 2 compensation scheme will not be available to applicants until the beginning of 2023 at the earliest.
21. This matter is exacerbated by the fact that Howe & Co raised this specific issue, the position of GLO SPMs in bankruptcy and IVAs with BEIS, as long ago as in our letter 28 March 2022.
22. Additionally, the Insolvency Service is effectively a department of BEIS. As the insolvency home page website states:
- "The Insolvency Service is an executive agency, sponsored by the Department for Business, Energy & Industrial Strategy"*
23. We have sought urgent clarification from BEIS explaining why and how a large proportion of SPMs (the victims who are in the most need) are unable to access interim compensation. We have received no meaningful or substantive response.
24. It is clearly open to BEIS to resolve the issues affecting SPMs in bankruptcy and IVAs by simply directing BEIS's agency (The Insolvency Service) to take the necessary steps required.
25. Thus, the actions now in train to develop a full and fair compensation scheme are long overdue. However, and most serious and foreseeable obstacles have not been addressed, and the Department of Business has advised that it will not give force to at least one important recommendation of Sir Wyn Williams in respect of compensation for SPMs.
26. We ask that the Department of Business remedies this unacceptable situation. It must significantly improve its responses to the recommendations of the Chair and immediately put in place measures to ensure that GLO SPMs with complex cases can and do receive interim compensation now. It is also urgent that BEIS settles a full and fair scheme.

27. Finally on this point, and as detailed in the closing section of these submissions, the Chair of the Inquiry is aware to these issues and has made clear, inter alia, that:

"...I am disappointed with the apparent lack of substantial progress to date. I am aware from correspondence with me that discussions are taking place, however I am also aware that there are individuals who remain dissatisfied with the pace of progress.

I propose to allow all of those involved time to finalise their discussions. I intend to schedule a one day hearing at the end of this year, or the beginning of next year, when I will call upon everyone to provide a detailed update to me.

If at the hearing it becomes apparent to me that sufficient progress has not been made I will then, as stated in the conclusion of my Progress Update, deliver an Interim Report containing specific recommendations under s24(3) of the Inquiries Act 2005.

Consultation

28. In a letter on 2 September 2022, the Minister for Small Business, Consumers & Labour Markets, Jane Hunt (**'the Minister'**), set out two options proposed by BEIS for a scheme to provide additional compensation to SPMs. The Minister invited comments from SPMs on the two proposed schemes and more generally comments on the mechanism of any compensation scheme.

29. Unsurprisingly, the SPMs we represent have a plurality of views in relation to the proposed Stage 2 compensation scheme. A full range of these views are annexed to these submissions in a separate document. Further, we are aware that several SPMs – including those represented by this firm – have communicated their views to BEIS directly including by the email address within the Minister's letter of 2 September 2022.

30. In response to the invitation for consultation, there is a consensus within our clients about BEIS's proposed options and in relation to the compensation scheme generally. However, our clients also highlight important issues.

Subpostmaster responses to Minister's the consultation

31. Whereas below we set out our clients views on the options for the scheme and other matters, clients of Howe & Co have identified a number of discreet barriers and/or concerns to engagement with the scheme. Many examples of these are set out in the attached annex of subpostmaster responses to the consultation. BEIS has also received comments directly from those we represent. Those responses are highly informative and underpin our submissions. Those responses include:

30. **Mr Brent Whybro**, who states:

- Any barriers you foresee that could inhibit you from participating in the scheme

I am not the original litigant named under the GLO action. My wife was the sub postmaster and she has passed away since the original action. Will I be able to make a claim?

I have not been able to pursue a claim for an Interim Payment due not being the official legal representative of my wife's estate and needing to apply for 'Letters of Administration'. I have now applied for 'Letters of Administration' to rectify the situation. The timescales for this are months so is there any other criteria I will need to fulfill to make a claim under the scheme.

32. Given how long these matters have been continuing it is likely that other persons are also acting on behalf of deceased spouses, partners etc. (for example Mrs Marion Holmes, who is engaged in the overturned convictions scheme in place of her deceased husband Peter Holmes).

33. This issue, the position of those acting in the capacity of a representative of a deceased person must be carefully considered and the scheme tailored to meet the needs of this group, including provision for reasonable legal costs being sufficiently flexible to allow such persons to be assisted in navigating the scheme.

34. **Mr Whybro** also raises a wide spread issue of absence of records or evidence. He states in his consultation response:

I have no evidence of losses incurred due to Horizon as the office records were destroyed under instruction from the Post Office.

35. This issue arises in the cases of most subpostmasters, and is addressed elsewhere in these submissions. In short, subpostmasters' records were often taken from them or destroyed as a result of Post Office Ltd action, and subpostmasters cannot be penalised for lack of records/evidence in such cases.

36. **Mr and Mrs Aziz** – Barriers to employment. In their response to the consultation Mr and Mrs Aziz raise the serious issue that they have experienced severe barriers to employment as a result of the Post Office scandal. They state in their consultation response, inter alia:

We would request BEIS in the 2nd stage of compensation to CONSIDER a major POINT that I and my Mrs have been refused work at many prestigious organisations since we left the PO business and sold it for a huge loss in desperate circumstances. We have an unpaid business loan from the bank which is preventing us from finding a suitable job in our field hence we are still jobless and struggling financially. I was rejected from even a call centre because of my credit history.

My Mrs got shortlisted for a job at the Home Office but was later refused after they performed extensive background security checks as our credit history is in tatters. We are refused from banks even to open any other account.

37. **ANONYMOUS** – In her response to the consultation raises the important issue of provision for legal, financial, medical, quantum and accounting experts and assistance. She says, inter alia:

c. The scheme must confirm prior to launch that BEIS will cover all reasonable Legal, Financial, Medical, Quantum and Accounting costs for each claimant as

well any other relevant professional advice necessary to make a competent claim. BEIS must also confirm the Tax Implications for the compensation that each claimant may receive.

38. This issue is addressed elsewhere in these submissions and is a matter that the scheme must make adequate provision for.

39. **Mr Paul Harry** – In his response to the consultation raised the important issue of tax liability. He states, inter alia:

Could I also ask for clarity on the tax situation to be discussed in the inquiry or with BEIS as potentially we could be paying 40% back to the government which doesn't seem right for a compensation payment.

40. Again, this is an issue that is addressed elsewhere in these submissions, relying upon the statement by HM Treasury.

41. **Mr Kevin Palmer** – In his response raises the vital importance of impartiality in the operation of the scheme. He states, inter alia:

I'd rather wait years for an independent enquiry and a non-bias panel to determine my compensation.

42. **Sally Stringer** raises very similar points in her response to the consultation, she states, inter alia:

Only a completely independent organisation should oversee this process to ensure accountability and good governance is carried out.

43. **Ms Stringer** adds also that:

The HSS scheme lacked clarity and had been designed to be as complicated as possible.

44. This response to the consultation echoes others, and mitigates strongly in favour of subpostmasters being supported in engaging with the development of this scheme so that it enjoys the confidence of the victims.

45. Ms Stringer concludes in this way:

Over the years the P.O managerial teams, their government paid lawyers and advisors have been on a very long gravy train and have feathered their own nests at the expense of what was once a trusted brand...

There needs to be a swift resolution to this issue so that we can all start to rebuild lives that have been absolutely destroyed by Post Office Limited.

46. It will be appreciated that victims of this scandal have been waiting for many years, in some cases decades for a resolution of these issues. We have been advised that there is a “hard stop” of 7 August 2024 for resolution of these matters, and thus a potential shared objective of swift resolution. However, a swift and fair resolution requires that subpostmasters are provided with the support they need to engage with the development of this scheme and the support needed to navigate it.

The options proposed by BEIS

47. Overwhelmingly, our clients prefer the second option for the delivery of compensation.

That option is, as contained in the Minister’s letter:

‘A scheme which so far as possible uses the information which you and your legal advisors prepared for the High Court case and builds on that to ensure enough evidence is available properly to assess compensation. An independent case facilitator would work with your lawyer and our advisors to seek a solution, with assessment by an independent panel of experts. BEIS would meet your reasonable legal costs involved in the process.’

48. Our clients have expressed a clear and very strong preference for the second option. SPMs have noted with concern the flawed manner in which the original iteration of Historic Shortfall Scheme (‘HSS’) operated. We do not propose to go into detail about those concerns; they were explored as part of our clients’ submissions to the statutory

Inquiry. It is primarily for these reasons that our clients have a strong preference for the second option.

Delivery of the scheme: BEIS or Post Office

49. Our clients do not believe that the scheme should be delivered or administered by the Post Office. Unsurprisingly, our clients do not believe that the Post Office is capable of delivering a fair, independent or transparent scheme. In the past, the Post Office has operated or been involved with SPMs' efforts to receive proper compensation. None have been successful. At every turn, the Post Office have obfuscated and thwarted attempts by SPMs to obtain compensation.
50. Post Office has demonstrated in the past that it is not capable of achieving independent or fair outcomes. Its disastrous mediation scheme provides a paradigm example of these failings. Those who participated in the mediation scheme consider that they were bullied and pressurised into accepting derisory and insufficient offers, which were conditional on agreeing not to pursue Post Office for their losses.
51. Our clients note that Post Office's conduct in the group litigation before the High Court was the subject of excoriating disapproval by the trial judge, Fraser J. That conduct exacerbated SPMs' suffering. That conduct is being investigated by the Inquiry chair, Sir Wyn Williams. Our clients do not believe that the compensation scheme will be conducted in good faith by Post Office, regardless of any assurances Post Office may give or whether an independent panel or case facilitator is involved in liaising between parties.
52. The Historic Shortfall Scheme addressed above is managed by Post Office. SPMs who have participated in it complain of a scheme blighted with delay and opaqueness. The scheme is being administered in the wake of the High Court litigation, and whilst the Inquiry is ongoing. Our clients are concerned that a scheme administered by Post Office will have the same issues.

53. As a result, our clients do not believe that Post Office should be involved in any part of the administration of compensation to SPMs. Rather, Post Office's role in this scheme should be to provide relevant documents and information (documentation is addressed further below). Simply put, the scheme is supposed to remedy the harms caused by Post Office and its staff. Our clients cannot countenance a compensation scheme being administered by the organisation which caused the harm that the scheme is designed to help repair.
54. However, the Department of Business (the sole shareholder in Post Office Ltd, with the most significant control of its actions and inactions) also have a great deal of ground to make up in order to establish itself as an actor in good faith.

Comments on the schemes and barriers to participation

Costs and expert advice

55. It is not clear from the Minister's letter or the summaries enclosed with it whether 'reasonable legal costs' will be covered in respect of each option. Clearly, our clients will require legal representation and professional advice in relation to preparing and submitting their claims under either compensation scheme. That professional advice (including but not limited to legal advice) is necessary until each individual's claim is concluded. By way of example, legal representation and professional advice must extend to dispute resolution or any appeal process, including making representations to the independent panel.

Case specific and generic costs

56. Provision for the reasonable legal costs of SPMs, associated with their specific cases, must be made available from at least 2 September 2022, the date of the Minister's letter requesting responses from SPMs on the consultation in relation to the development of the scheme.

57. If provision is not made from this date, and up to the settling and publication of the scheme, this will cause severe, unnecessary and damaging further delay in the provision of fair and full compensation.
58. Additionally, there must be provision for the reasonable legal generic costs of subpostmasters, which must also be made available from at least 2nd September 2022, the date upon which the Minister wrote requesting responses from subpostmasters.
59. The provision for generic costs has been awarded in other similar schemes, an example being the Hillsborough Misfeasance compensation scheme.
60. The defendant in that action, South Yorkshire police, agreed generic costs with the applicants' solicitors for legal work undertaken in preparation of that scheme, to ensure that cases could be progressed in a timely manner, once the scheme was agreed and fully operational.
61. Provision for legal funding now will allow SPMs to meaningfully engage in the development of a fair scheme, and will allow those assisting SPMs to begin work in preparing matters in anticipation of making the applications early in the New Year, so that applications can be efficiently made and processed once the scheme is established in the New Year. Provision for professional advice to SPMs is critical, and must commence from 2 September 2022 at the latest.
62. It is clear that there must be provision for both generic costs until the Stage 2 compensation scheme is agreed and fully operational to allow SPMs to have a meaningful opportunity to be consulted on and to participate in the development of the scheme.
63. Further, provision for case specific costs must be made available from 2 September 2022, so that work can commence now in obtaining evidence etc, so that when the scheme is opened that applications can be made efficiently.
64. By way of example, it is certain that most if not all applicants will need to secure copies of their HMRC records, GP records, accountancy and other such records. This can take up to 3 – 6 months. Thus, if applicants are not funded now, they will only be able to begin to

seek evidence to support their claims once the scheme is opened, causing very significant delay in applications and consideration of applications.

65. The need for such provision extends, in our clients' view, to the provision of expert advice. In its establishment of the scheme, BEIS should make clear that fees for medical, accountancy, employment and other expert advice will be available to scheme claimants.
66. Without this evidence, establishing fair quantum of compensation will be next to impossible, particularly given the "range of impacts" which the Minister's letter explicitly acknowledges will be compensated by the scheme (*'Horizon shortfalls, loss of income, consequential losses, distress and inconvenience and any effects on [claimants'] health'*). Proceeding to value and settle claims without the input of appropriate experts, including counsel, creates serious risks of under-settlement, and will perpetuate the harm which has been caused in part by SPMs' difficulty in accessing proper advice on an equal footing with Post Office.
67. Again, agreement on such provision is urgent, so that work can begin now to prepare applications, so that the scheme is able to operate efficiently from the outset.

Taxation of compensation payments

68. Further, many of our clients are concerned that a significant proportion of additional compensation payments will be taxable, and that as a result they will not receive full compensation. Our clients believe that any payments should not have an adverse financial impact on them. They ask that, as part of the establishment of the scheme, work is done to ensure that they will not be penalised as a result of the additional compensation, and that claimants receive proper assurance from BEIS and any other relevant government department that they will not face a tax burden arising from the payment of compensation.
69. We have received correspondence dated 23 September 2022 from Herbert Smith Freehills to the effect that an announcement was made on that same day by HM Treasury,

advising that compensation received by those under the overturned convictions scheme will not be subject to tax. We can see no reasonable basis for this exemption not being extended to the Group Litigation Scheme as well.

70. Please confirm the position urgently.

Effect on those in receipt of state benefits

71. Whilst the position regarding taxation is relevant for all of our clients, many of them are also in receipt of state benefits (means tested and non-means tested). Their concern is that receiving compensation from the scheme will deprive them of their right to claim benefits. As BEIS and the Minister's predecessor recognised, this compensation scheme is designed to compensate historic losses. Those of our clients who receive state benefits are concerned that receiving the compensation to which they are entitled will have a detrimental effect on their income in the future. Those individuals submit that this outcome should be avoided by government, with assurances provided to them by BEIS and/or the Department for Work and Pensions (DWP) that their income will not decrease a result of payment made under this scheme.

72. We understand that there are mechanisms in place which will achieve this result. In general personal injury actions defendants also apply to the CRU Compensation Recovery Unit for a CRU Certificate (which is issued by the Department of Work and Pensions (DWP)) to show the amount of recoverable state benefit or lump sum payments, which would apply to an injury compensation claim.

73. Therefore, it must be established during the consultation process whether any monies will be deducted from Stage 2 awards, if so for what period, and if no deductions are to be made whether NIL certificates will be provided by the DWP confirming this.

74. It is imperative that our clients who receive benefits are protected from deductions during this process.

Assurances in respect of those SPMs subject to bankruptcy/ IVAs

75. A significant number of our clients are or were made insolvent (whether bankrupt, subject to an IVA or otherwise) because of the actions of Post Office. Many of them have already received letters from trustees in bankruptcy which claim an entitlement to significant proportions of any further compensation. We have made BEIS aware of this issue in previous correspondence. Those clients submit that they should not face further financial damage by ceding large proportions of their compensation to creditors and trustees in bankruptcy, in particular given that Post Office's conduct caused their insolvency in the first place. They seek assurance from BEIS and/or the Insolvency Service that their compensation will be protected against deductions by trustees in bankruptcy.
76. Given the length of time which this scandal has been ongoing, many SPMs have died before any compensation was available to them. This issue has been highlighted by our clients in their responses to the BEIS consultation. In circumstances where there is a surviving spouse, child, family member or other successor in title to the legal claim, clear guidance should be available from the start of the claim process as to who can make a claim where the primary claimant is either deceased or lacks capacity.

Delay and decision-making

77. SPMs need compensation as a matter of urgency. There is widespread concern in our client group about the time which has passed since compensation was announced. Our clients now face a further delay until at least the New Year before claims can be formulated and submitted.
78. From the scheme's start, it is imperative that there are indications about the timescales for each stage. Where there is a delay (which should be unusual), SPMs should be informed quickly about the reason for any delay, the steps which are being taken to ameliorate any further delay and when claimants can expect a resolution.

79. It is important that BEIS and the independent panel operate with as much transparency as possible to avoid the pitfalls of previous schemes. Given that the need for compensation is extremely urgent and, given the relatively short long-stop date, the panel and the decision-making mechanism should be operational as soon as is possible after the establishment of the scheme.
80. Our primary position in relation to the instruction of experts is that the scheme should devolve decision making on such matters to SPMs' legal representatives. This would speed up decision making and enhance efficiencies in the operation of the scheme, which we are told is time limited to 7 August 2024.
81. In the alternative, a far less efficient approach would be that where expert evidence is required, authorisation should be forthcoming from BEIS promptly, and permission to obtain that information should not be unreasonably withheld. The default position should be to grant fee support for experts with refusals of support being the exception. Whilst we understand BEIS's wish to control the purse strings SPMs must be trusted to know when they need expert advice and should not be made to feel as if providing fees to properly assess their losses is a favour by government.
82. Our clients suggest that once they consider that expert assistance is needed then the independent claims facilitators should have the authority to swiftly make decisions about incurring disbursements related to expert advice. Alternatively, claimant legal representatives should have an email address to which they can direct requests to incur disbursements. Experts are likely to be an integral element of a large number of claims, in particular the large value claims, and given the time constraints of the scheme easy and early access to experts must be facilitated within the scheme.
83. In any event, a fixed timescale should be agreed for approval to incur disbursements. The format by which requests are made should not be made complex or onerous on SPMs or legal representatives.

84. Whilst our clients welcome the indication that an independent experts panel would be appointed as part of the second option, it is important that work begin soon so that a panel is ready and able to consider applications quickly.
85. Therefore, if it has not already begun, work should start immediately to find and appoint an expert panel with sufficient breadth of expertise and independence to provide supporting evidence to allow the assessment of SPMs' claims. Our clients submit that this work should take place transparently, and in consultation with them and their representatives.
86. All panel members making decisions on claims to the scheme should be trained or given guidance on the function of Horizon. Our clients consider that at least one individual who has direct or first-hand experience in a post office branch or similar environment should be appointed to the panel. In our clients' view, a proper understanding of sub post offices, of the work of SPMs and the operation of Horizon is essential for the fair consideration and determination of claims to the scheme.
87. Decisions cannot and should not be made in a vacuum, without the relevant context of how our clients' businesses were managed, and the nature of their relationship with Post Office.
88. More broadly, BEIS, other stakeholders and the independent panel should adopt a flexible and cooperative approach in all elements of the scheme. The scheme should not be contentious in nature. If the conduct of the scheme is contentious or hostile for claimants, there will be significant delay in them receiving the compensation to which they are entitled, and there will be consequential increases in the cost and efficiency of the scheme. There would also be the wholly disastrous risk of simply running out of road as to the long stop date.
89. Those who establish and administer the scheme must remember that for the claimants, the claim process will be involved and emotionally distressing and in itself will re-traumatise some SPMs. For SPMs, the claims will relate to livelihoods and indeed lives

lost. Compensation has taken a great deal of time to come to these individuals and the process of achieving that compensation has been too difficult and hard-fought.

Documents and evidence

90. Given the passage of time and the action taken by Post Office staff (often removing lock stock and barrel swathes of relevant documents on carrying out unannounced audits), SPMs do not have access to the documents which would ordinarily be necessary to evidence a legal claim. A significant portion of our clients have given evidence to the Inquiry that as part of an audit of their branch, or in the process of Post Office assuming control of their branch, they were locked out of premises and computer systems which held important business information.
91. Other SPMs have lost records because of the passage of time or as part of having to move accommodation. Some had to leave their homes very quickly and at short notice because of the backlash from their local community to the allegations of theft and fraud made against them by Post Office, losing records in the process.
92. These SPMs submit that there should not be an onerous evidential burden on them, given that the unavailability of documents is often directly attributable to Post Office's conduct. Claims should be accommodated as far as possible with the information which is available, whether or not there is comprehensive supporting documentation.
93. As part of the process of establishing the scheme, attention should be given by BEIS to the likelihood that many individuals simply do not possess documents from the relevant time. Our clients consider that they should not be penalised because these documents are not available. There should be a presumption of loss and the burden of proof of loss should be low to take into account the destruction, removal or loss of what are historic records.

Next Steps

94. In light of the above submissions please confirm the following:

- (i) That interim compensation will be provided to GLO SPMs in line with the recommendations of Sir Wyn Williams in his August 2022 update report without further delay
- (ii) That all cases for interim compensation will be considered now and consideration of 'complex cases' will not be deferred.
- (iii) That a holistic compensation scheme for GLO SPMs will be developed in line with Option 2, published in draft and forwarded to ourselves and other interested parties as a matter of urgency.
- (iv) That the scheme will not be delivered or administered by Post Office
- (v) That the scheme will not penalise SPMs who lack documentary evidence.
- (vi) That the scheme will provide funding for professional advice, not limited to legal advice, but also including expert advice, counsel's input and advice on quantum, and legal representation at any review or appeal,
- (vii) That provision for case specific legal advice will be backdated to at least 2 September 2022, the date of the Minister's consultation letter,
- (viii) That provision for generic legal costs be made available from 2 September, to allow for work necessary with the development of the scheme can be undertaken,
- (ix) That GLO SPMs' compensation will be subject to a tax exemption in line with the recently announced position for SPMs with overturned convictions.

- (x) That those SPMs in receipt of state benefits will not lose such benefits upon receipt of compensation, and that this important consideration is to have retrospective effect.
- (xi) That arrangements will be put in place to ensure ring-fencing of compensation where SPMs are subject to bankruptcy/ IVAs
- (xii) That clear guidance is issued to confirm that surviving family members/beneficiaries of deceased SPMs and family members/official representatives of those SPMs who lack capacity will receive compensation.
- (xiii) That the scheme provides for regular reviews of its operation with full consultation with the representatives of SPMs and SPMS.

95. Sir Wyn Williams (Chair of the Post Office Horizon IT Inquiry) published a further statement on 23 September 2022, expressing his concern in relation to arrangements for compensation for GLO subpostmasters. He stated:

1. *On 15 August 2022 I delivered a Progress Update following the hearings I convened on 6 and 13 July to address issues of compensation following my invitation to Core Participants to provide submissions on the same. The Update focused on the three schemes that had been established to compensate sub-postmasters impacted by failings surrounding the Horizon system: the Historical Shortfall Scheme (HSS), the Overturned Historic Convictions Scheme and the Group Litigation Scheme. I indicated that I would closely monitor in the weeks that followed the extent to which my views were acted upon and particularly whether they were acted upon promptly.*
2. *I am grateful to those Core Participants who have taken the time to provide me with their initial updates. I am disappointed with the apparent lack of substantial progress to date. I am aware from correspondence with me that discussions are taking place, however I am also aware that there are individuals who remain dissatisfied with the pace of progress.*

3. *I propose to allow all of those involved time to finalise their discussions. I intend to schedule a one day hearing at the end of this year, or the beginning of next year, when I will call upon everyone to provide a detailed update to me.*
4. *If at the hearing it becomes apparent to me that sufficient progress has not been made I will then, as stated in the conclusion of my Progress Update, deliver an Interim Report containing specific recommendations under s24(3) of the Inquiries Act 2005.*

96. In the light of the Chair's statement, we reserve the right to refer these submissions to the Chair of the Post Office Horizon IT Inquiry, and to appraise the Chair appropriately of progress on the progress of the development of this scheme.

Howe + Co

28 September 2022

Statement by the Chair following Progress Update on Issues Relating to Compensation

22 September 2022

1. On 15 August 2022 I delivered a Progress Update following the hearings I convened on 6 and 13 July to address issues of compensation following my invitation to Core Participants to provide submissions on the same. The Update focused on the three schemes that had been established to compensate sub-postmasters impacted by failings surrounding the Horizon system: the Historical Shortfall Scheme (HSS), the Overturned Historic Convictions Scheme and the Group Litigation Scheme. I indicated that I would closely monitor in the weeks that followed the extent to which my views were acted upon and particularly whether they were acted upon promptly.
2. I am grateful to those Core Participants who have taken the time to provide me with their initial updates. I am disappointed with the apparent lack of substantial progress to date. I am aware from correspondence with me that discussions are taking place, however I am also aware that there are individuals who remain dissatisfied with the pace of progress.
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Sir Wyn Williams

Chair

22 September 2022

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[Sir Wyn Williams delivers compensation Progress Update](#)

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Howe + Co

Rob Brightwell
 Deputy Director, BEIS Response to Post Office Horizon Inquiry
 Department for Business, Energy and Industrial Strategy
 By email only to: rob.brightwell@gro.gov.uk

Our ref: DE/POHITI

13 September 2022

Dear Mr Brightwell

SPM interim compensation - Complex Cases

Thank you for your email of last night.

As you acknowledge, this development has raised alarm and very serious concerns for the people affected. I note what you say regarding Mr Bates' email to the 60 SPM GLOs who are in bankruptcy or IVAs.

I also note what you say regarding a great deal going on since mid-August to resolve this category of case. However, this is a matter that I have raised with you previously, including in a letter as long ago as 29 March 2022 (copy enclosed). That letter stated, inter alia:

Compensation taken by bankruptcy

Very shortly after your department's announcement, two of our clients received letters from their trustees in bankruptcy. The two letters are identical in form, and materially state:

As you may already be aware, the Government have recently announced a new compensation scheme for postmasters who played a crucial role in uncovering the Horizon IT scandal.

As yet I do not know the terms of the scheme, I am not at present able to confirm what interest your bankruptcy will have in any compensation paid.

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The trustees in bankruptcy of those individuals have clearly stated that these letters were triggered by your department's announcement of compensation for those previously excluded.

Those clients, were both declared bankrupt as a result of the Post Office Horizon scandal and Post Office's actions. These financial circumstances are shared by other subpostmasters. We anticipate that the ongoing appointment of a trustee in bankruptcy will not be unusual for subpostmasters who, as you are aware from the human impact evidence before Sir Wyn's Inquiry, faced financial difficulties and bankruptcy in many cases. It is highly likely that other subpostmasters will also have received letters of this type.

The interest of trustees in bankruptcy and/or subpostmasters' creditors is an issue which goes to the very heart of the adequacy and sufficiency of any compensation. Our clients have serious concerns about the position of any new compensation they receive, and in particular, whether and to what extent that compensation may be absorbed into their bankruptcy estate. Our clients have expressed a concern that if compensation is indeed taken by trustees in bankruptcy, government's compensation scheme(s) will be rendered otiose.

In those circumstances, our clients seek your urgent clarification on:

- 1. that the Scheme (be it a distinct scheme or an extension of the existing Historic Shortfall Scheme ('HSS')) will include provision for legal and other professional advice, to assist subpostmasters in accessing the compensation which it provides; and*
- 2. where Scheme claimants have been made bankrupt by, or as a result of, Horizon and Post Office's actions, what steps you propose to ensure that compensation provided by the scheme is not absorbed or subsumed by trustees in bankruptcy.*

You replied to that letter on 8 April 2022:

Your letter raises the issues of provision for professional advice and treatment of bankrupt claimants. These points were already firmly on our agenda, but I am grateful for your thoughts on them, which we will take into account as our work develops.

As such, the issue of SPMs who are in bankruptcy or IVAs is not new, but was live from the announcement of interim compensation for subpostmasters, was highlighted to BEIS over 5 months ago, and was similarly "firmly on [BEIS's] agenda" at that time.

Despite our exchanges of correspondence, our formal and informal meetings, BEIS's submissions to the POHITI, and BEIS's public statements, at no time over the past five months has BEIS alerted us, our affected clients, or the Inquiry to the fact that GLO SPMs in bankruptcy will experience problems and serious delays in receiving interim compensation.

Conclusion

This issue is of the utmost importance to our clients. The large cohort of affected persons (60) are, or are likely to be, the victims who are in the most desperate of financial circumstances, and most in need of urgent interim compensation.

Regrettably, a great deal of time has passed since government announced its intention to make interim compensation payments to subpostmasters. Whilst we welcome the confirmation in your email that work is being done to (as you say) 'resolve the difficult cases', our clients simply are not experiencing the rapid distribution of interim compensation which the Minister told subpostmasters and parliament would be forthcoming.

As you recognise, these individuals represent some of the most vulnerable individuals in the most precarious financial circumstances of the subpostmasters, a group who are very often in difficult financial circumstances. Whilst that work is being done, and whilst they wait for the financial relief they were told would be given quickly, they continue to suffer irreparable financial harm and continuing emotional distress.

We welcome, too, your confirmation that if you consider it unlikely anyone will have to wait until their claims under the Stage 2 compensation scheme have been made and determined before they receive a payment.

However, in the absence of any clarity or timescale in this respect our clients are understandably concerned that they will once again have to wade through conflicting information and endure the consequences of further delays.

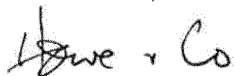
In these circumstances, we ask that you provide our clients with an update, including as much detail as possible regarding:

- which issues have arisen which make the payment of interim compensation in 'difficult' or 'complex' cases problematic or time-consuming to conclude;
- the work which is being done to resolve those issues by BEIS and your colleagues in government; and
- when our clients can expect an announcement from government in relation to the resolution of those issues, and when our clients can expect interim payments to be made.

We look forward to hearing from you.

To be clear, these urgent issues are being highlighted to Inquiry Chair.

Yours sincerely



Howe + Co

Howe Co

Sir Wyn Williams
 Chair – Post Office Horizon IT Inquiry
By email only

Our ref: DE/POHITI

12 September 2022

Dear Sir Wyn

GLO compensation

We write in relation to important and urgent issues which have direct bearing on your Update Report on matters relating to compensation of 15 August 2022.

These matters have been brought to our attention today by clients of ours including our client Sue Palmer, a core participant who was prosecuted but acquitted, and who gave evidence to you on 23 February 2022. Ms Palmer has asked us to write to you urgently about those issues, which are:

1. that the £19.5m allocated by government to make interim payments is not sufficient to compensate or make payments to those individuals with 'complex cases' i.e. in insolvency; and
2. that the provision of interim compensation has not been extended to those subpostmasters who were prosecuted but not convicted, as recommended in your August 2022 Update.

We ask that you obtain urgent clarification from BEIS explaining why and how a large proportion of subpostmasters are unable to access interim compensation, and for an explanation of why those individuals who were prosecuted and acquitted remain ineligible for interim compensation, as recommended in your Update Report.

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1. Insufficient funds to compensate those with "complex cases"

As detailed below in this letter, Ms Palmer wrote to us on 5 September asking that we write to you concerning a particular issue affecting her and other core participants (we address this issue later in this letter). However, during our telephone attendance on Ms Palmer this morning, she advised us that she had (as we were speaking) received an email from Alan Bates of the JFSA. That email, sent this morning, stated:

"This email is only being sent to all those who have one of the more complex cases and have yet to hear about their interim payment.

"As you know, there are nearly 500 in the GLO group who are to have their cases reviewed in order to receive what Government refers to as further compensation, and which the JFSA is determined to ensure is the compensation that will financially restore people to the situation they would have been in had it not been for the Horizon scandal.

"To that end Government agreed a £19.5m Stage 1 interim payment package and then to develop a Stage 2 scheme to examine and compensate each case. So far, close to 400 of the roughly 500 cases have received their interim payments, and about 40 have either to provide more details or even return their forms. However, you are one of the 60 who have a complex case and this email is to explain the problem with those cases.

"The JFSA holds regular weekly meetings with BEIS which Freeths attend in order to provide updates on matters such as the current position with the interim payments which they have been commissioned by BEIS to distribute. Now, despite the assurances given by the Minister to the House of Commons on 30 June 2022, that they planned to distribute funds within a few weeks of receiving your application, in many of your cases it has been over two months since you submitted your completed forms, and you have still not received anything and are having problems trying to find out what is happening.

"This position is something that we are very aware of, and I wrote to the Minister back in the middle of August because the stumbling block then, as it is now, is presently there is no money being made available by Government to sort out each of the complex claims like yours. This might even mean you may not receive any interim payment and may have to wait for your Stage 2 claim to be agreed and processed before receiving anything.

"So why is that the position with your case?" In most instances, it is because there is a bankruptcy or IVA which has to be resolved before any interim payment can be made, and it is very much in your best interests and highly important to all of you that these

issues are sorted out long before you achieve any final Stage 2 payment. Unfortunately, there is no money left in the budget that Government allowed for the distribution of the interim payments to enable the work on the complex cases to be completed. And so until more funding is made available, generally the complex claims like yours are on hold.

"What is being done to sort this problem?" As already mentioned, when it first became evident in mid-August the matter was raised with the Minister and in response an assurance was given that talks were underway to resolve the issue. But it has been almost a month since then, and little has changed.

"The officials at BEIS we deal with on a regular basis fully understand the problem and we can see they are trying their best to obtain a solution to allow work on the complex cases to resume. But we are told, that due to Departmental processes it will take time to resolve, and no timescale can be given as to when that might be.

"So what can you do about it?" I know most of you are in dire financial straits and desperately need your interim payment soonest and had been expecting it weeks ago in line with what the Minister had promised back in June. But as work has stopped on most of these cases it is not possible for anyone to say if, or when, you will receive anything, and it would probably make sense for you to ask your MP if they can obtain an answer for you, because despite our best efforts, we cannot find out anything further."

The cause of the funding gap is not clear. Similarly, it is unclear when it became clear that there was insufficient money in the budget to provide subpostmasters with 'complex' cases with any interim compensation at all.

On 25 August 2022, our Martin Howe and David Enright met with Rob Brightwell and his team from BEIS; James Hartley from Freeths, Mr Tim Moloney KC on behalf of Hudgells; and a representative of John Dorkin solicitors (who represent one claimant). During that meeting, the serious funding issue in relation to 'complex' cases was not mentioned. Nor was it raised in BEIS's response to our letter of 31 August following that meeting (copy enclosed).

A lack of interim compensation for these 60 individuals, regardless of the reason why funding is not available, is of serious concern to Ms Palmer and the other subpostmasters in a similar position.

Given the findings in your report, it cannot be acceptable that more than 10% of the group litigation claimants will not receive interim compensation and must, it appears, await the determination of their application under stage 2 compensation before they receive anything.

It is important to highlight that the Stage 2 compensation scheme will not be available to applications until the beginning of 2023 at the earliest (please see attached our letter of 31 August 2022).

It is clear from your Update that the Inquiry appreciates subpostmasters' desperate need for interim compensation. This need is particularly acute for those 'complex' cases where the individual is, as the email from Mr Bates states, '*in dire financial straits and desperately need [the] interim payment*'. It now appears that those with the greatest need are being excluded from interim compensation.

The meetings between BEIS and Freeths and the JFSA referred to in the email above are meetings to which neither we nor our clients are not party. If the email is correct, this appears to be highly relevant information which you and the Inquiry team should have been made aware of at the time of drafting your Update. Given that you do not address a lack of interim compensation for such a large subset of subpostmasters, we assume that you were not made aware of these issues by BEIS whilst drafting the Update.

In these circumstances, we ask that you obtain urgent clarification from BEIS explaining why and how a large proportion of subpostmasters are unable to access interim compensation. If it is the case that a great number of subpostmasters, some of whom are in the most desperate financial circumstances, are unable to access interim compensation, then this may seriously undermine the submissions made to you by BEIS and POL regarding compensation, and casts doubt on government's commitment to full and fair compensation for subpostmasters.

2. SPMs who were prosecuted but not convicted

Ms Palmer has also asked that we raise with you the continuing exclusion of those individuals who were prosecuted by Post Office but not convicted. Ms Palmer wrote:

Dear David

Would it be possible for you to contact Sir Wyn Williams on my behalf and ask why BEIS has refused even after his recommendation on 15th August 2022, to include those who were prosecuted and not convicted in the interim payment scheme the same as those who were prosecuted and convicted. Even though in a conversation I had with Rob Brightwell he said i should think myself lucky that I didn't go to prison???
Perhaps he should have lived my life for the past 17 yrs since this started.
Also it was recommended that I should receive this interim payment as well as my interim payment from the 19.5 million GLO payment
This I have still not received because I am a bankrupt.

Many thanks

Sue Palmer

Ms Palmer gave evidence to you on 23 February 2022, in which she detailed how she had been prosecuted by Post Office Ltd, and after trial found not guilty. Despite the acquittal she lost her post office, business and home¹. On 30 June 2022, immediately prior to the first of the compensation focused hearings, the Department of Business published an announcement of compensation for subpostmasters². The announcement assured GLO claimants that:

Postmasters in the Group Litigation Order (GLO) group will be contacted by Freeths – the firm that represented them during that action – very shortly with application details and will receive payment, once their application has been processed, within a few weeks.

In your update report of 15 August 2022, you addressed the situation of subpostmasters who had been prosecuted and acquitted. You recommended that:

159. *I am aware of a number of persons who were prosecuted on the basis of alleged shortfalls which they alleged were falsely generated by Horizon, who were acquitted of the charges brought against them and who went on to become Claimants in the Group Litigation. **Some of those persons gave evidence in the Human Impact hearings and their evidence described how they have suffered substantially notwithstanding their acquittals. This category of acquitted persons is deliberately excluded from the Overturned Historic Convictions Scheme.***

160. *The only basis for that exclusion was that this category of persons had not reserved their rights to bring claims for malicious prosecution in the Settlement Deed which brought to an end the Group Litigation. They had accepted a payment of compensation in full and final settlement of all their claims.*

161. *The position has now altered. Claimants in the Group Litigation are now going to receive further compensation payments and, indeed, they are going to receive interim payments. **The difficulty is that the interim payments which acquitted Claimants in the Group Litigation will receive will be calculated in such a way that it is very likely that the interim payments which will be paid to acquitted Claimants in the Group Litigation will be very substantially less than the £100,000 paid over***

¹<https://www.postofficehorizoninquiry.org.uk/hearings/human-impact-hearing-23-february-2022>

²<https://www.gov.uk/government/news/195-million-interim-compensation-package-for-postmasters-who-helped-uncover-horizon-scandal>

to persons whose convictions have been quashed. While I accept that the trauma of conviction and sentence was a very significant factor in the decision to make interim payments at the level of £100,000 to sub-postmasters whose convictions had been quashed **those who were acquitted are also likely to have been awarded very significant sums if they had successfully pursued their claims for malicious prosecution. In my view, acquitted Claimants in the Group Litigation should either be brought into the Overturned Historic Convictions Scheme (and then paid an appropriate interim payment) or, if there are thought to be legal difficulties with that course of action, paid interim payments in the Group Litigation Scheme which are properly reflective of the fact that they suffered the trauma of prosecution.** If the latter option is thought preferable, I do not consider that there would be a need to disrupt the agreed formula for making interim payments described in paragraph 113 above. **Rather, funds should be made available over and above the £19.5m so that appropriate interim payments can be made to acquitted Claimants in the Group Litigation.** Given the overall sum which will be necessary to compensate all the victims of Horizon fully and fairly the making of a small number of enhanced interim payments at this stage would, in my opinion, cause no appreciable detriment to the public purse but would be of considerable benefit to the persons receiving the payments.

(emphasis added)

As can be seen from our enclosed letter referred to above, at the meeting we attended with BEIS, we raised the cases Ms Palmer and Ms McKelvey (both core participants in your inquiry). The matters raised by us in this regard are set out at pages 3 – 5 of that letter. Mr Brightwell replied to that letter by email on advising:

Dear David

Thanks for this. You have now seen Minister Hunt's letter to GLO members.

Your letter rather mis-reports some aspects of what I said at the meeting. I won't go through every nuance, but there are a couple which I ought to correct:

- "The scheme will not be open to applicants before the New Year" – You have reported this as definitive, but I said only that this was my expectation and dependent on choices about the way the scheme is to be implemented.

- I did not "reject" your request for further interim payments to those GLO members who had been prosecuted but not convicted. I said that this is an issue which we would discuss with Ministers, although I noted the point which we had made in our submission to the Inquiry that making such payments would delay the wider compensation scheme.

As I said at the start of the meeting, we are determined to deliver prompt and fair compensation – and are most likely to achieve that if we can build a trusting and candid relationship with you and other firms. That is why I convened the meeting on 25 August, and am planning further such sessions. However trust and candour can be inhibited by a concern that views expressed orally will be formally recorded – especially if that record is less than accurate. For that reason, whilst we did take careful note of the comments made by you and others, we didn't produce a formal written record of the discussion. I appreciate that your letter has come only to me and to colleagues within your firm – but I'd be grateful if you did not circulate it further.

That said, we had certainly noted each of the items on your five-point list, all of which are very helpful. We will reflect on them in future design of the scheme.

I look forward to future discussions. We'll be in touch about dates and agendas in due course.

Regards

We disagree with Mr Brightwell's description of his response to our submission on this issue. In any event, Mr Brightwell's response speaks for itself.

Current position

To date, Ms Palmer has received no payment of interim compensation. She understands that at least of a part of the delay is caused by the fact that she remains bankrupt, and that her trustees in bankruptcy wish to receive some 49% of any interim compensation. However her solicitors (Freeths) consider that she should receive all of the interim payment. She understands that BEIS will not make a payment until this is resolved.

It is unlikely that Ms Palmer's situation is unique, as many subpostmasters remain bankrupt. That Ms Palmer and probably other bankrupted SPMs have not received any interim compensation over two months after BEIS's announcement is of real concern. However, the apparent position of BEIS that it will not give force to your recommendation regarding the small cohort of SMPs who were prosecuted but found not guilty, is something that our client wishes us to highlight to you.

Ms Palmer's situation now appears to be even more serious, given the content of the email she received from the JFSA this morning.

Conclusion

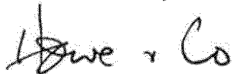
We note that in your Update Report of 15 August 2022 at paragraph 10, you advised:

10. This document is a Progress Update relating to one, albeit important, aspect of the Inquiry's work. It contains my views on the steps which BEIS and POL are taking and have taken to fulfil commitments to provide compensation which is "full and fair". I will follow closely the extent to which the views I have expressed are acted upon and, in particular, whether they are acted upon promptly. If it becomes clear in the coming weeks that progress is too slow – in particular in finalising a Group Litigation Scheme and/or making payments thereunder - I will very likely determine that I should deliver to the Minister an interim report pursuant to section 24(3) of the Inquiries Act 2005 containing specific recommendations. Further, I might very well conclude, then, that I should convene a further hearing relating to compensation issues at short notice.

Given the continuing interest you have in ensuring that your recommendations are acted on, and acted on promptly, our clients wished us to draw your attention to the very serious issues which remain outstanding. These are a further and unnecessary barrier to our clients receiving full, final and fair compensation.

With that in mind, we ask that you call for urgent clarification from the relevant institutional core participants, with a view to rectifying the issues outlined in this letter. We respectfully suggest that failing a satisfactory response to that invitation, you consider whether a further hearing and/or an interim report is necessary.

Yours sincerely



Howe + Co

Howe Co

Rob Brightwell
Deputy Director, BEIS Response to Post Office Horizon Inquiry
Department for Business, Energy and Industrial Strategy

By email only - rob.brightwell@gro.gov.uk **GRO**

Our ref: DE/POHITI

31 August 2022

Dear Mr Brightwell

GLO compensation proposals

Thank you for meeting with us on 25 August 2022.

In that meeting you provided sight of two potential models outlining BEIS' options for additional compensation for subpostmasters. You also provided some further update in relation to interim payments to GLO claimants. It is worth recalling that we raised the need for urgent and immediate interim compensation payments and the need to begin immediate work on a final compensation scheme for GLO claimants with Post Office Ltd and BEIS as long ago as 21 October 2021, and repeatedly thereafter.

The key issues that arose from our recent meeting were as follows:

1. BEIS will write to GLO claimants, via the JFSA, in the next few days (unless there is a change of Minister due to the outcome of the conservative leadership contest).

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2. BEIS will seek the views of GLO claimants on the two potential compensation schemes.
3. The views of GLO claimants will be considered by you, preferably before the end of September.
4. After considering GLO claimants' views and further consultation, a scheme will be selected.
5. The scheme will not be open to applications before the New Year, as BEIS considers that the consultation and other arrangements cannot be completed before the end of this year.
6. GLO claimants will have free choice of whom they wish to choose to represent them in applications to the scheme.
7. BEIS will pay the reasonable legal costs of the chosen legal representatives.
8. All compensation payments must be completed by 7 August 2024.

During our meeting we raised a number of points, including:

1. That the scheme must make provision (where appropriate) to meet the cost of medical expert reports, including psychological/psychiatric reports for SPMs.
2. That the scheme must make provision (where appropriate) to meet the cost of forensic accountant or other relevant expert reports.
3. That the scheme must make provision (where appropriate) to meet the cost of counsel's input on claims and advice on the quantum of compensation.
4. That the scheme be designed from the outset to be efficient, and to avoid delays, for example, by establishing an agreed panel of experts who can prepare reports rapidly.

5. That SPMs will not be disadvantaged because they lack evidence to support claims in relation to matters that occurred up to 20 years ago.

We also raised the issue of enhanced interim compensation for SMPs who had been prosecuted and found not guilty of theft or fraud. We reminded you that the Chair of the Post Office Horizon IT Inquiry, in his update report of 15 August 2022, made specific recommendations in regard of SPMs in this category.

At paragraph 8.4 of the Update Sir Wynn states:

8.4. Claimants in the Group Litigation who were acquitted of Horizon related offences should now be included in the Overturned Historic Convictions Scheme and be eligible for interim payments. (See also paragraph 94 of the Chair's update)

As you will be aware, this was a matter upon which we made submissions to the Inquiry. In view of the comments in the Update, our following clients should now be entitled to an enhanced interim payment (over and above the £19.5 million that has been set aside for this purpose):

- Sue Palmer
- Maureen McKelvey

The relevant paragraphs in the Chair's Update are as follows (emphasis added):

159. I am aware of a number of persons who were prosecuted on the basis of alleged shortfalls which they alleged were falsely generated by Horizon, who were acquitted of the charges brought against them and who went on to become Claimants in the Group Litigation. Some of those persons gave evidence in the Human Impact hearings and their evidence described how they have suffered substantially notwithstanding their acquittals. This category of acquitted persons is deliberately excluded from the Overturned Historic Convictions Scheme.

160. The only basis for that exclusion was that this category of persons had not reserved their rights to bring claims for malicious prosecution in the Settlement Deed which brought to an end the Group Litigation. They had accepted a payment of compensation in full and final settlement of all their claims.

161. The position has now altered. Claimants in the Group Litigation are now going to receive further compensation payments and, indeed, they are going to receive interim payments. The difficulty is that the interim payments which acquitted Claimants in the Group Litigation will receive will be calculated in such a way that it is very likely that the interim payments which will be paid to acquitted Claimants in the Group Litigation will be very substantially less than the £100,000 paid over to persons whose convictions have been quashed. While I accept that the trauma of conviction and sentence was a very significant factor in the decision to make interim payments at the level of £100,000 to sub-postmasters whose convictions had been quashed those who were acquitted are also likely to have been awarded very significant sums if they had successfully pursued their claims for malicious prosecution. In my view, acquitted Claimants in the Group Litigation should either be brought into the Overturned Historic Convictions Scheme (and then paid an appropriate interim payment) or, if there are thought to be legal difficulties with that course of action, paid interim payments in the Group Litigation Scheme which are properly reflective of the fact that they suffered the trauma of prosecution. If the latter option is thought preferable, I do not consider that there would be a need to disrupt the agreed formula for making interim payments described in paragraph 113 above. Rather, funds should be made available over and above the £19.5m so that appropriate interim payments can be made to acquitted Claimants in the Group Litigation. Given the overall sum which will be necessary to compensate all the victims of Horizon fully and fairly the making of a small number of enhanced interim payments at this stage would, in my opinion, cause no appreciable detriment to the public purse but would be of considerable benefit to the persons receiving the payments.

It follows from the position taken by the Chair that those SPMs who were prosecuted and acquitted (e.g. our clients Sue Palmer and Maureen Mckelvey) should now receive substantial and speedy interim payments, either under the Overturned Historic Convictions Scheme or via the GLO scheme (utilising funds additional to the £19.5 million currently set aside) to ensure parity with those who were convicted and had their convictions overturned.

In our meeting on 25 August you rejected our request that BEIS, consistent with the Chair's update, ensure that immediate enhanced interim payments were made to our clients and the small number of other persons known to be in this category (you estimated the number as being 15). You maintained that making the enhanced payments recommended by the Chair would delay the wider compensation scheme.

You will recall that we strongly disagreed with you on this, and called on BEIS to give effect to the Chair's Update report in this regard and for this small number of SPMS. You made the point in the meeting that the Update report is not a direction by the Chair and BEIS is therefore not obliged to follow the suggestion of the Chair. However, you will be aware that the Chair has made it clear that if the scheme is not proceeded with quickly and fairly he will consider laying a report before Parliament to give his recommendations sharper teeth. We trust you will reflect on your position and we suggest that BEIS embraces the spirit of the Chair's comments and makes the additional interim payments he has clearly identified as being fair payments to a small class of claimants who are readily identifiable.

We again call on BEIS to give force to the Chair's specific recommendation in relation to SPMs who were acquitted following trial.

Next steps

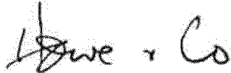
As detailed above, you expect that you will be writing to GLO claimants via the JFSA in the coming days (so long as there is no change of Minister), to seek their views on the proposed compensation models. We provided suggestions as to how best you might gain feedback from the GLO claimants.

We are aware that Freeths have written to GLO claimants advising them of the meeting of the 25 August and your intention to canvas their views. We have therefore also briefed our clients.

We agreed that we would schedule a follow up meeting in the coming weeks. We would be grateful if you would propose dates for that meeting.

Finally, in our meeting you advised that Sir Wyn Williams was aware of the meeting and your engagement with us and other legal representatives, and that you would be providing his Inquiry with an update on proposals on compensation. We confirm that we will also be providing the Inquiry with our clients' view of the proposals etc. related to further compensation for SPMs.

Yours sincerely



Howe + Co

The Post Office Horizon IT Inquiry

Chair's Progress Update on Issues relating to Compensation

15 August 2022



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Executive Summary

1. Over the last two years, representatives of Post Office Limited ("the Post Office") and Ministers¹ on behalf of the United Kingdom Government and/or the Department for Business, Energy and Industrial Strategy ("BEIS") have asserted that sub-postmasters² who have suffered pecuniary and non-pecuniary losses as a consequence of data produced by the Horizon IT System ("Horizon") should receive compensation which is "full and fair" and that it should be delivered promptly. Since the settlement of the litigation between Bates and others v Post Office Limited ("the Group Litigation") two schemes have been put in place by the Post Office and/or BEIS with a view to achieving those stated aims and a third is currently being developed. The schemes in existence are: (i) the Historical Shortfall Scheme ("HSS" or "the Scheme"); and (ii) a scheme to provide interim and final payments for sub-postmasters convicted on the basis of evidence generated by Horizon whose convictions have been quashed, sometimes referred to now as "the Overturned Historic Convictions Scheme" (a phrase which I will adopt in this Summary). The scheme under development is a scheme to provide further compensation for all the Claimants in the Group Litigation who are not eligible for compensation under the Overturned Historic Convictions Scheme which I will refer to as "the Group Litigation Scheme".
2. During Human Impact Hearings in February, March and May 2022 I became concerned that some of the features of HSS and the Overturned Historic Convictions Scheme might be impacting adversely upon the twin goals of delivering full and fair compensation payments to all those entitled to such payments and also delivering them promptly. Accordingly, on 9 May 2022, after receiving written submissions on behalf of those Core Participants represented by Howe+Co Solicitors ("Howe+Co") and Hudgell Solicitors ("Hudgells"), the Post Office and BEIS, I published my provisional view upon certain issues relating to compensation which I had identified as being, apparently, anomalous. I also announced that I intended to hold hearings at which Core Participants and/or their recognised legal representatives could make oral submissions about my provisional views and, further, address a number of issues which I identified in a separate document entitled "Submissions on Issues of Compensation" ("the Compensation Issues") which I published on 10 May 2022.
3. In advance of the hearings, I received a number of very detailed written submissions. I heard oral submissions over 2 days on 6 July and 13 July 2022. I did not hear evidence at these hearings, although many references were made to aspects of the evidence already provided to the Inquiry in written and oral form.
4. Between 13 July 2022 and 5 August 2022, I received written submissions and communications from individuals and on behalf of institutions which I had not invited. To a very limited extent these communications and submissions provide information about events or announcements which have occurred since 13 July 2022. However, much of their content consists of argument upon contentious issues which were fully debated in writing and orally at the hearings. As it happens, however, nothing which has been sent to the Inquiry since 13 July 2022 has deflected me from the conclusions which I had reached on

¹ The word "Minister", in the context of ministerial announcements, is used to mean either the Secretary of State for Business, Energy and Industrial Strategy or other Ministers within that Department.

² The term sub-postmaster is used to mean sub-postmasters, sub-postmistresses, their managers and assistants and any person employed by the Post Office or its predecessor companies who claim to have suffered loss by reason of the Horizon IT System unless the context dictates otherwise.

the basis of the information available to me as of 13 July 2022. On 12 August 2022, I received a short letter from the legal representatives of BEIS containing purely factual information relating to interim payments to applicants under the Group Litigation Scheme.

5. I have always understood that I cannot reach definitive conclusions about all the relevant issues relating to compensating sub-postmasters without hearing evidence. However, I was confident that I could reach conclusions upon many important issues relating to the three schemes identified above on the basis of the evidence already provided to the Inquiry and the written and oral submissions I anticipated receiving. As it happens, my confidence has not been misplaced and, as will appear, I have reached a number of conclusions about these schemes. I must stress, however, that there will be a further detailed investigation of issues relating to compensation in Phase 5 of the Inquiry at which evidence will be heard.
6. My key conclusions in respect of HSS, the Overturned Historic Convictions Scheme and the Group Litigation Scheme are as follows.

The HSS

7. I welcome the express commitment within the Scheme to provide fair compensation even if that means departing from established legal principles. However, I will be able to judge whether that crucial objective has been achieved only after I have completed my investigations in Phase 5 of the Inquiry.
 - 7.1. Both the Post Office and BEIS accept that there have been avoidable and, therefore, unwarranted delays associated with the Scheme. The Post Office and BEIS have formally apologised for unnecessary delay in the implementation and administration of the Scheme.
 - 7.2. I accept that the pace of making offers of compensation has quickened considerably during the course of the last 12 months. Ultimately, there is a balance to be struck between speed of decision-making and ensuring that offers which are made are full and fair.
 - 7.3. I know of no proper explanation for the delays in determining whether those applications which were made after 27 November 2020 should be rejected or accepted into the Scheme. The delay in determining many if not all of these applications is wholly unacceptable, and, in my view, it remains largely unexplained.
 - 7.4. I am also very concerned that under the Scheme it is the Post Office which makes the definitive and final determination as to whether a late application is accepted or rejected. In my view, any applicant whose claim is rejected by reason of it having been made after 27 November 2020 should have the right to have that decision reviewed by the Independent Advisory Panel and the Scheme should be amended to make that clear.
 - 7.5. I am not persuaded that I should characterise the process for determining the offers of compensation payments to applicants as lacking in independence. The process is capable of delivering full and fair offers to applicants. Whether it has done so will be under investigation in Phase 5.
 - 7.6. In any event, if an offer is not acceptable to an applicant, he/she need not accept it, and there are processes open to applicants in which a person or body other than the Post Office determines the amount of compensation which should be paid. In my view, this is

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a sufficient safeguard for applicants provided that they are able to obtain legal assistance when appropriate.

- 7.7. Save in one respect, I do not consider it likely that the application form used in HSS would have been unduly difficult for applicants to understand and complete. If necessary, however, this can be the subject of investigation in Phase 5.
- 7.8. My reservation in relation to the application form relates to how Question 24 would have been understood in the absence of guidance as to its meaning. On any view, it is most unfortunate that there was no guidance upon answering this question until sometime in September 2020. Whether the failure to issue the Guidance at the proper time had the effect of causing applicants to omit legitimate heads of claim can only be determined after hearing evidence. No doubt that issue can be examined in Phase 5 together with any other evidence, if any, tending to show that applicants failed to present all their legitimate claims when answering this question.
- 7.9. Appropriate legal assistance and advice in respect of most of the higher value claims yet to be determined is likely to be essential. The fees allowed for advising on offers which are made henceforth should be increased to levels commensurate with the work reasonably carried out by an applicant's lawyer. Further, in all cases in which an offer is rejected, the Post Office should, thereafter, fund the applicant's reasonable cost of obtaining legal advice, assistance and representation as the dispute resolution process unfolds. The Scheme should be amended to provide for payment of reasonable legal fees as described in this paragraph.
- 7.10. The provision of funds for instructing lawyers henceforth cannot, of course, remedy any instances of injustice which have already occurred through lack of legal funding. Whether there have been instances of injustice on account of the absence of funding for lawyers must await Phase 5.
- 7.11. The Scheme's Terms of Reference should be amended to make express provision for the making of interim payments in cases where the personal circumstances of the applicant justify such a payment or when there are agreed and quantified heads of loss which can be paid over while the process of determining other claims proceeds.

The Overturned Historic Convictions Scheme

8. This is not a formal remediation scheme. If applicants are aggrieved by decisions of the Post Office, at present, they must engage in dispute resolution processes or resort to litigation. That situation has some unfortunate consequences – see below.
- 8.1. I am pleased to report that, in the vast majority of cases, interim payments have been made within 4 weeks or thereabouts of applications being made to the Post Office. That is in accordance with assurances which were given at or about the time this Scheme was announced.
- 8.2. Interim payments have been refused in 3 cases. I have reservations about the decision making in these cases for reasons I express at paragraph 93 of the Update.
- 8.3. The Post Office should not be the final arbiter of applications for interim payments if the claim is rejected. A person or panel, independent of the Post Office, should be appointed to determine such claims. That person or panel could also have a role in relation to final compensation payments – see paragraph 8.5 below.

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- 8.4. Claimants in the Group Litigation who were acquitted of Horizon related offences should now be included in the Overturned Historic Convictions Scheme and be eligible for interim payments.
- 8.5. There should be contingency planning now as to how disputes about final compensation payments are to be resolved in the event that negotiated settlements are not possible. There is a need either for a formal remediation scheme or at minimum an independent advisory panel as an intermediate step before litigation or formal dispute resolution.
- 8.6. If appropriate contingency planning occurs so that appropriate methods of resolving disputes are in place, there is no need for persons whose convictions have been quashed to have the option to have their claims determined within the Group Litigation Scheme.

The Group Litigation Scheme

9. This Scheme is in its infancy. It is anticipated by all concerned, however, that a remediation scheme will be necessary.
 - 9.1. This Scheme will emerge after discussions and negotiations between a number of parties. It is vital that these discussions and negotiations are undertaken within weeks and should not stretch over many months.
 - 9.2. I welcome the agreement between Justice for Subpostmasters Alliance ("JFSA") and BEIS relating to interim payments for eligible Claimants in the Group Litigation.
 - 9.3. If Claimants in the Group Litigation who were acquitted of Horizon related offences are not included in the Overturned Historic Convictions Scheme, they should receive interim payments in the Group Litigation Scheme which takes account of those circumstances as well as their calculated share of the fund of £19.5m made available by the Government.
 - 9.4. I welcome the commitment to make final compensation payments to the Claimants in the Group Litigation which are equivalent to that available to sub-postmasters who were not part of the Group Litigation and the willingness to make available funds to pay the reasonable fees of lawyers engaged to promote and advise upon the claims put forward.
 - 9.5. The Group Litigation Scheme should be administered expeditiously. Self-evidently, there is a clear and compelling need to finalise and pay further compensation to the Group Litigation Claimants as quickly as reasonably possible.
10. This document is a Progress Update relating to one, albeit important, aspect of the Inquiry's work. It contains my views on the steps which BEIS and POL are taking and have taken to fulfil commitments to provide compensation which is "full and fair". I will follow closely the extent to which the views I have expressed are acted upon and, in particular, whether they are acted upon promptly. If it becomes clear in the coming weeks that progress is too slow – in particular in finalising a Group Litigation Scheme and/or making payments thereunder – I will very likely determine that I should deliver to the Minister an interim report pursuant to section 24(3) of the Inquiries Act 2005 containing specific recommendations. Further, I might very well conclude, then, that I should convene a further hearing relating to compensation issues at short notice.

Progress Update on Issues relating to Compensation

Introduction

1. Over the last two years, representatives of Post Office limited (“the Post Office”) and Ministers³ on behalf of the United Kingdom Government and/or the Department for Business, Energy and Industrial Strategy (“BEIS”) have asserted that sub-postmasters⁴ who have suffered pecuniary and non-pecuniary losses as a consequence of data produced by the Horizon IT System (“Horizon”) should receive compensation which is “full and fair” and that it should be delivered promptly. Since the settlement of the litigation between Bates and others v Post Office Limited (“the Group Litigation”) two schemes have been put in place by the Post Office and/or BEIS with a view to achieving those stated aims and a third is currently being developed. The schemes in existence are: (i) the Historical Shortfall Scheme (“HSS” or “the Scheme”); and (ii) a scheme to provide interim and final payments for sub-postmasters convicted on the basis of evidence generated by Horizon whose convictions have been quashed, sometimes referred to now as “the Overturned Historic Convictions Scheme” (a phrase which I will adopt in this Update). The scheme under development is a scheme to provide further compensation for all the Claimants in the Group Litigation who are not eligible for compensation under the Overturned Historic Convictions Scheme (“the Group Litigation Scheme”).
2. During the Human Impact Hearings in February, March and May 2022 I became concerned that some of the features of HSS and the Convictions Scheme might be impacting adversely upon the twin goals of delivering full and fair compensation payments to all those entitled to such payments and also delivering them promptly. Accordingly, on 9 May 2022, after receiving written submissions on behalf of those Core Participants represented by Howe+Co Solicitors (“Howe+Co”), Hudgell Solicitors (“Hudgells”), the Post Office and BEIS, I published my provisional view upon certain issues relating to compensation which I had identified as being, apparently, anomalous. I also announced that I intended to hold hearings at which Core Participants and/or their recognised legal representatives could make oral submissions about my provisional views and, further, address a number of issues which I identified in a separate document entitled “Submissions on Issues of Compensation” (“the Compensation Issues”) which I published on 10 May 2022.
3. In order to facilitate the management of these hearings, I indicated that any Core Participant who wished to make oral submissions at the hearings should first file written submissions by a specified date⁵ which addressed the issues I had identified.
4. I received written submissions on behalf of the following Core Participants -
 - Core Participants represented by Howe+Co.

³ See footnote 1 in the Executive Summary.

⁴ See footnote 2 in the Executive Summary.

⁵ Originally the specified date was 31 May 2022, but a number of Core Participants sought and were granted extensions of time for filing their submissions.

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- Core Participants represented by Hudgells.
- Core Participants represented by Hodge Jones & Allen.
- The National Federation of Sub-postmasters (“NFSP”).
- The Post Office.
- BEIS.
- United Kingdom Government Investments (“UKGI”).

All the Core Participants listed above, save one, indicated that their advocates of choice would make oral submissions at the hearings I had indicated would take place. The exception was NFSP; their Chief Executive Officer, Mr. Calum Greenhow, indicated that NFSP would rely upon their written submissions.

5. I also received written submissions on behalf of named persons (all of whom are now Core Participants) drafted on their behalf by a barrister, Mr. Paul Marshall and a letter dated 30 May 2022 from Freeths LLP, the solicitors who had acted for the Claimants in the Group Litigation. Mr Marshall is not the recognised legal representative of the persons for whom he submitted written submissions, but his submissions were made with their knowledge and consent.
6. All these written submissions together with supporting documents were disclosed to all Core Participants and they have all been published on the Inquiry’s website. Further, a Bundle of Documents was prepared for use at the hearings and the index for that Bundle has, also, been published.
7. The hearings took place on 6 and 13 July 2022. On 6 July, I heard oral submissions from Leading Counsel to the Inquiry, Leading Counsel for the Post Office, Counsel for UKGI and Leading Counsel for those Core Participants represented by Howe+Co. On 13 July I heard oral submissions from Counsel for BEIS, Leading Counsel for the Core Participants represented by Hudgells, Counsel for the Core Participants represented by Hodge Jones & Allen, and, very briefly for a second time, from Leading Counsel for the Core Participants represented by Howe+Co.
8. The dates of the hearings were chosen to enable the Core Participants to be represented by their advocates of choice. However, because there was a gap of a week between the two hearings, it was inevitable that the Inquiry would be provided with further written material in the days between the two hearings. All these documents, save for the emails from 2 individual Core Participants, have been disclosed to all Core Participants and published on the Inquiry’s website. As I indicated at the hearing on 13 July, I decided against publishing the emails from the 2 individual Core Participants; however, as I also explained, the substance of the emails constituted a request to me that I continue to involve myself in all issues relating to compensation.
9. The hearings on 6 and 13 July 2022 were open to the public and they were broadcast on the Inquiry’s YouTube channel.
10. I am grateful to all those who provided me with written and oral submissions. I have considered them all. I have been able to refresh my memory of the oral submissions from the transcripts of those submissions.

- 11. The written submissions I received did not simply address those issues I had identified on 10 May 2022 in the Compensation Issues or the provisional views I had expressed on 9 May 2022. Further, between my announcement of the hearings and their taking place and, indeed, during the week between the two hearings, events took place and announcements were made which impacted significantly upon some of the issues I had identified in the Compensation Issues. Accordingly, I have concluded that it would not be appropriate in this Update simply to address the responses to my provisional views and the submissions which relate specifically to the contents of the Compensation Issues. Instead, I have decided to take this opportunity to consider and reach conclusions upon whether, as of now, the stated aims of the Post Office and BEIS to provide full and fair compensation promptly are being fulfilled. I appreciate that I will return to consider this aspect of the Inquiry's work during Phase 5 when I will receive significant written and oral evidence about all aspects of delivering compensation. In my view, however, an assessment of whether the stated aims of the Post Office and BEIS are being delivered cannot wait until I produce my final report. If there are flaws in the processes which have been or will be set up to deliver compensation it is far better that I identify them now and indicate, where that is possible, what should be done to remove them.
- 12. It will come as no surprise to anyone to read that, even after the oral hearings closed on 13 July 2022, I received written communications from some of those who have an interest in this Update. All relevant communications sent to me since 13 July 2022 will be disclosed to Core Participants, and, in due course, published on the Inquiry's website.

The existing and proposed schemes for providing compensation

The Historical Shortfall Scheme ("HSS" or "the Scheme")

A description of the Scheme

- 13. HSS is a voluntary remediation scheme which came into existence following the settlement of the Group Litigation. The Deed of Settlement which brought an end to the litigation laid the foundation for the Scheme⁶ and the Scheme itself was published by the Post Office on 1 May 2020.
- 14. In its written submissions of 8 April 2022, the Post Office say that HSS was designed and set up *"to deal with particular types of claims, most notably claims for shortfalls and related losses such as those arising from suspensions and terminations as well as associated consequential loss, arising out of the judgments of the High Court in the Group Litigation"* (paragraph 20). It suggests that it was also designed to allow offers of compensation to be made to applicants *"on a fair and principled basis, following existing judicial guidance given in the Group Litigation, in a more streamlined way"* (paragraph 22) In paragraph 6 of its submissions of 31 May 2022, the Post Office explain that as well as being designed to be *"streamlined"* the Scheme was also designed to be *"user-friendly"*. The Post Office stress that from the outset offers of compensation made under the Scheme would be determined with regard to applicable legal principles, including the judgments handed down in the

⁶ See Clauses 9.4, 9.5 and Schedule 6 of the Settlement Deed.

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Group litigation, but would not be constrained by them. Rather, offers of compensation could and would be made *"in line with broad considerations of fairness"*.

15. From its inception, HSS had specific eligibility criteria. It was open only to applicants who were or had been in direct contractual relations with the Post Office. The application had to relate to shortfalls which had arisen in respect of *"previous versions of Horizon (sometimes referred to as Legacy Horizon, Horizon Online or HNG-X)"*. Only certain categories of persons were entitled to bring a claim on behalf of others e.g. it was necessary for a personal representative to make an application on behalf of a deceased person. The applicant had to agree to be bound by the Terms of Reference of the Scheme.
16. The eligibility criteria also contained specific exclusions. Claimants in the Group Litigation were excluded from being eligible to seek compensation under HSS as were all persons (including the Group Litigation Claimants) who had been convicted of criminal offences related to their time with the Post Office. As at the opening date of the Scheme persons were not eligible for compensation if they had entered into any settlement agreement with the Post Office other than as part of the *"Initial Complaint Review and Mediation Scheme"* which had commenced in 2013 or as a result of *"Network Transformation or other scheme"*. However, after the Scheme had been open for some time the provision which excluded persons who had entered settlement agreements with the Post Office was changed so that the only operative exclusion related to persons who had entered into settlement agreements after 16 December 2019 (the date of the Horizon Issues judgment handed down by Fraser J).
17. In its original manifestation (i.e. the version published on 1 May 2020) HSS consisted of two documents which were published on a discrete website. They were an application form and the Scheme's Terms of Reference.
18. The original application form began by setting out information about how applications were to be made. It then set out the eligibility criteria for the Scheme in 6 numbered paragraphs in bold type (summarised in paragraphs 15 and 16 above).
19. The remainder of the form comprised a series of questions/requests for information. The first 18 questions were designed to elicit relevant personal information about the applicant, his or her branch and other details referable to his/her time with the Post Office. Questions 19 to 23 were designed to provide information about shortfalls suffered by the applicant, whether the shortfall had been paid to the Post Office and what action had been taken by the Post Office in respect of shortfalls. Question 24 was as follows: -

"Have you experienced any other losses that are directly related to the alleged shortfall(s) in respect of which you would like to claim?"

If the answer to that question was Yes, the applicant was asked to provide a description of the nature of the alleged loss and the date thereof and specify how the loss arose because of the alleged shortfall and the value/size of the loss. Questions 25 to 28 related to what were called *"Miscellaneous matters"*. Question 29 asked applicants to describe why they believed that they had been treated unfairly by the Post Office and question 30 was, in effect, a request to produce any documents held by applicants to support their claim. The application form concluded with a space for applicants to provide any further relevant information not covered in the previous questions and a *"Statement of Truth"* followed by a space for the applicant's signature.

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20. No part of the application form made any specific reference to any time limit for making an application. In fact, however, there was a time limit; applications had to be submitted by midnight on 14 August 2020 i.e., applicants had a little more than 3 months in which to make an application.
21. This time limit was to be found in the Scheme's Terms of Reference. Paragraph 3 provided:
- "All applications to join the Scheme must be received by the Post Office by midnight on Friday 14 August 2020. If they are not, Applicants will not be eligible to join the Scheme unless Post Office agrees otherwise."*
22. In June 2020 the Post Office published a revised application form. This form incorporates the Scheme's Terms of Reference which, hitherto, had been contained in a separate document. As a consequence, the time limit for making an application is referred to within the application form itself. As of that date, the time limit for submitting an application was still said to be midnight on Friday, 14 August 2020. Save for the incorporation of the Terms of Reference into the form, the revised application form published in June 2020 is identical (or, if not identical, very similar) to the application form published in May 2020.
23. HSS did not close on midnight of 14 August 2020. The Post Office decided that it should remain open to applicants for a further period of 15 weeks, i.e. until 27 November 2020. The Post Office explain that decision as being a consequence of there being a change in the eligibility criteria to permit applications from sub-postmasters (other than Group Litigation Claimants) who had entered into settlement agreements with the Post Office prior to the settlement of the Group Litigation.⁷
24. Since 1 May 2020, the Post Office has produced and published additional documents relating to HSS. They are documents entitled:
- I. "Eligibility Criteria";
 - II. "Terms of Reference of the Historical Shortfall Scheme Independent Advisory Panel" (the "IAP Terms of Reference");
 - III. "Consequential Loss Principles and Guidance" ("the Guidance"); and
 - IV. "Questions and Answers".
25. The document entitled "Eligibility Criteria" reflects the change in the criteria to which I referred in paragraph 23 above and, presumably, this was published in the summer of 2020. The IAP Terms of Reference which the Post Office disclosed to the Inquiry for the purpose of the hearings on 6 and 13 July is a version of the document which was approved on 3 February 2022, but I have seen nothing at this stage of the Inquiry to suggest that any earlier version was substantially different. The Guidance is undated. Leading Counsel for the Post Office, in her oral submissions, said:
- "Now the Guidance was introduced on 1 October 2020 at which point Post Office wrote to all applicants to the Scheme at that stage to communicate that update and the availability of the Guidance. Post Office also published a press release about the Guidance and*

⁷ See Written Submissions on behalf of the Post Office, dated 31 May 2022, paragraph 23 and footnote 17 thereof.

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published it on the Scheme website, so any applicants who hadn't applied by that point would be made aware of it from the website itself."

In his oral submissions, Counsel for BEIS told the Inquiry that the Guidance was sent to all applicants in October 2020 and was published and signposted on the front page of the HSS website during September 2020.

26. The document entitled "Questions and Answers" is also undated. It is reasonable to infer that this document was published (although at this stage I do not have definitive evidence to confirm that) and it is also reasonable to infer that it was produced prior to 14 August 2020, since the document refers to that date as being the date by which Post Office were to receive all applications under the Scheme.
27. Not surprisingly, both in written submissions and during the course of the oral submissions on 6 and 13 July, very significant attention was paid to the terms of the application form, the Scheme's Terms of Reference, the IAP Terms of Reference and the Guidance. I have described the application form already in some detail; I turn next to describe the main features of the Scheme's Terms of Reference, the IAP Terms of Reference and the Guidance.
28. As I have already explained, the Scheme's Terms of Reference requires that all applicants "agree" the Terms of Reference and submit their applications to the Post Office by the specified date(s). Clause 7 of the Terms specifies, in summary, the process to be followed upon receipt of an application. First, it is screened for eligibility. Second, assuming the application meets the eligibility criteria, it is investigated, and the result of the investigation is provided to an independent advisory panel in the form of a written report. That panel then recommends an offer of compensation to the Post Office and, assuming the Post Office accepts that recommendation, the offer is communicated to the applicant.
29. In the event that an offer is accepted, a legally binding settlement agreement is concluded between the Post Office and the applicant. In the event that an applicant is dissatisfied with an offer, a "Dispute Resolution Procedure" can be invoked by the applicant as provided by paragraph 8 of the Scheme's Terms of Reference. In summary, this process begins with a "good faith meeting" between the applicant and a representative of the Post Office. If the dispute is not resolved at that meeting, an "escalation meeting" between the applicant and a member of senior management of the Post Office takes place. If the dispute is still not resolved, it is referred to a specified mediation service. Paragraph 8.5 of the Scheme's Terms of Reference specifies that all good faith meetings, escalation meetings and mediations are carried out on a confidential and "without prejudice" basis to ensure each party is able to engage in an open and meaningful fashion, and paragraph 8.6 specifies that any settlements which result from these processes will be on a full and final basis, and will not be capable of being reopened, save in the event of fraud.
30. Paragraph 8.7 contains two clauses which deal with the situation in which the dispute between the parties is not resolved by any of the stages so far described. Paragraph 8.7.1 provides that disputes relating to sums totalling not more than £10,000 will be resolved by recourse to civil proceedings in the County Court pursuant to the Small Claims Track, and paragraph 8.7.2 provides that disputes relating to sums totalling more than £10,000 will be referred to and finally determined by arbitration under the Arbitration Act 1996.
31. I should also mention paragraphs 6 and 10 of the Scheme's Terms of Reference. Paragraph 6 provides: -

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“Once an application has been made, either party may write to the other to request relevant information. The parties shall cooperate with one another in providing any information which the other party may reasonably request. Information obtained and provided in relation to each application should be proportionate to the circumstances of that application.”

Paragraph 10 contains a commitment by the Post Office to act in good faith.

32. Under the IAP Terms of Reference, the “*Historical Shortfall Scheme Independent Advisory Panel*” was constituted to “*assess eligible claims*”. The Terms of Reference included an overriding objective in the following terms:

“1. The task of the Panel is to assess and recommend to Post Office a fair outcome for Eligible Claims made to the Scheme for shortfall losses and consequential losses.

2. The Panel’s objective is to assess Eligible Claims by applying the principles and standards set out in Section E below.

3. The Panel will aim to assess and recommend outcomes on Eligible Claims in a timely manner, having regard to the need to ensure sufficient care and consideration is given to each claim to provide a fair recommendation.”

33. The Independent Advisory Panel consists of a number of legal specialists, forensic accounting specialists and retail specialists. Each individual application is considered by a panel of three comprising one each of those specialists which then makes a recommendation to the Post Office. In advance of a panel meeting a case assessor will have produced a written report upon the application under consideration which will contain a suggested offer of compensation. The case assessor attends the meeting of a panel as a “*case presenter*”. Having considered the case assessor’s report and any oral observations made by the case assessor the panel makes its recommendation to the Post Office. Thereafter, the Post Office, acting through a committee known as the “*Historic Shortfall Scheme Approvals Committee*” considers the recommendation and makes an offer of compensation to the applicant.

34. If a panel considers that a claim requires further investigation prior to the making of a recommendation, it can refer the claim back to the investigation stage for further enquiries to be made – see paragraph 26 of IAP Terms of Reference. If it requires expert assistance to make a recommendation, the Panel may recommend to the Post Office that such expert assistance is obtained at the Post Office’s expense – see paragraph 27 thereof.

35. Section E of the IAP Terms of Reference (paragraphs 28-32) provides guidance as to the principles which should be applied when assessing an application. It is worth quoting paragraphs 30, 31 and 33 in full:

“30. In formulating its recommended offer, the Panel may recommend the making of an offer to the Postmaster if, guided by broad considerations of fairness, the Panel considers that doing so would produce a fair result in all the circumstances of a particular case. For the avoidance of doubt, in doing so, the Panel’s discretion will not be confined solely to the specific heads of Consequential Loss claimed by the Postmaster, but will take into account any facts and matters which the Panel considers will produce a fair result on the facts of a particular case.

31. *Many Eligible Claims will relate to Shortfall Losses and Consequential Losses suffered a significant number of years ago. In order to draw a line under the issues caused by previous versions of Horizon and treat Postmasters who have been affected fairly, the Scheme (including the Panel) will not apply the laws of limitation in its assessment of Shortfall Losses or Consequential Losses, but shall deal with each claim on the basis that it is not barred by the expiry of any relevant limitation period. Post Office's rights to rely on limitation defences outside the Scheme (including in any subsequent litigation or arbitration proceedings commenced under the Dispute Resolution Process) are strictly reserved. Given the large number of applicants to the Scheme, claims may take some time to investigate and assess. Post Office is therefore willing to agree, in respect of each applicant, that time will not run for limitation purposes from the date the applicant joined the Scheme to the date on which the applicant receives their offer letter."*

"33. Where:

*a. there is evidence that the shortfall in question existed and was paid; and
b. there is no evidence that the shortfall was caused by something other than a potential issue with Horizon, for the purposes of this Scheme the presumption is that the shortfall is a Horizon Shortfall."*

36. Finally, in relation to the IAP Terms of Reference, I draw attention to paragraphs 34 and 35. Paragraph 34 specifies that a panel should apply the Guidance when considering losses other than Shortfall losses. Paragraph 35 provides discrete guidance in respect of personal injury claims where insufficient evidence has been provided for a claim to succeed without further medical and / or expert evidence. In those circumstances, a panel may recommend the making of an offer to the applicant which the Panel considers to be fair. In the event that this occurs, the applicant will have the option of accepting the offer or obtaining such further evidence as may be necessary in order to pursue a personal injury claim *"in accordance with the ordinary legal standards relevant to such claims, including as to proof of causation and assessment of damages"*.

37. Both the IAP Terms of Reference and the Guidance contain definitions of the phrases *"Shortfall Loss"* and *"Consequential Loss"*. Shortfall Loss is defined to mean the amount of a Horizon shortfall that the Postmaster has repaid or is regarded by the Post Office as still owing. Consequential Loss is defined to mean financial or non-financial loss that is not a Shortfall Loss. The Guidance consists of five sections. For the purposes of this Update, it is necessary to mention only two, namely Section 3 headed *"Key Principles"* and Section 5 headed *"Type of Loss"*. The Key Principles are:

- "Applicants bear the burden of proving on balance of probabilities the consequential loss which they claim, although*
- Where an applicant is unable to satisfy the burden of proof in relation to their claim, it may nonetheless be accepted in whole or in part if that outcome is considered to be fair in all the circumstances.*
- Claims which are supported by evidence are more likely to be successful.*
- Greater weight will be attached to contemporaneous evidence and / or factual evidence that is undisputed or verifiable.*

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- *When assessing a claim, the Panel will take into consideration any relevant evidence held by the Post Office.*
 - *In assessing a claim, the findings of the Common Issues Judgment and the Horizon Issues Judgment which are relevant to the claim will be applied together with any relevant legal and accounting principles applicable to the assessment of damages for breach of a legal duty.”*
38. Section 5 recognises that there is no exhaustive list of the types of consequential loss which may be claimed by an applicant. However, it highlights the following potential types of loss, together with the nature of the evidence which might be expected to exist to support such a claim. The types of loss identified are loss of earnings, loss of profits, loss of property, loss of opportunity/loss of chance, penalties/general or increased costs of financing, bankruptcy/insolvency, incurred legal and professional fees, stigma/ damage to reputation, and personal injury/harassment.
39. In written and oral submissions, Leading Counsel for the Post Office provided more detail as to the personnel involved in various stages of the process described above.⁸
40. The task of determining whether an application meets the eligibility criteria of the Scheme is undertaken by a case assessor who is member of staff of Herbert Smith Freehills, the solicitors appointed by the Post Office. If an application fails to meet the Eligibility Criteria, the applicant is so notified, and his/her application is rejected. The Independent Advisory Panel has no role at this stage.
41. If the case assessor is satisfied that an application meets the eligibility criteria, it is then referred to a person who is a member of the Specialist Case Review Team at the Post Office i.e. an employee of the Post Office. That person undertakes an investigation of the application and provides a written report to the case assessor.
42. The case assessor considers the investigation report and provides “*an initial assessment and recommendation based only on applicable legal principles, which is then presented to [an] Independent Advisory Panel for their consideration*” – see paragraph 31.d. of the Written Submissions on behalf of the Post Office, dated 31 May 2022.
43. As well as the recommendation of the case assessor, an advisory panel is provided with the initial investigation report compiled by an employee of the Post Office and a complete set of supporting documents. The panel members then undertake their own assessment of the application and submit a recommended outcome to the Post Office, i.e. it makes a recommendation about whether and, if so, how much compensation should be offered to an applicant.
44. Following receipt of the panel's recommendation, the Post Office (through its Approvals Committee) decides the outcome of the application. An outcome letter is prepared by Herbert Smith Freehills and in the higher value cases the outcome letter is reviewed by the panel so as to ensure that they agree with its terms.
45. The outcome letter sent to an applicant lists all the documents which were considered by the panel prior to the formulation of an offer of compensation. Prior to acceptance or rejection of an offer the applicant can seek disclosure of all or any of the documents so

⁸ These processes are those which are used in higher value claims; a more truncated procedure is used for claims categorised as “lower value” the definition of which can be found at paragraph 49 below.

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listed if he/she is so minded. This is the first time, in the process, when disclosure of written material is given to an applicant unless an applicant has invoked paragraph 6 of the Scheme's Terms of Reference and made a written request to the Post Office for documents or information earlier in the process.

Progress under the Scheme

46. By the extended closing date of 27 November 2020, the Post Office had received 2,523 applications. Of those, 2,368 applications met the eligibility criteria; 155 applications did not. I assume (since I have received no information to the contrary) that the unsuccessful applicants to the Scheme were notified of the decisions made in their cases and they have accepted that they do not qualify for compensation under the Scheme.
47. At the hearing on 6 July 2022 the Inquiry was informed by Leading Counsel for the Post Office that, as of that date, 1,659 applicants had been made offers of compensation under the Scheme. Of those, 1,300 applicants had accepted offers in settlement and 92 applicants had rejected the offers made to them. According to the HSS website, as of 2 August 2022, 1,729 applicants had been made offers and 1,360 applicants had accepted the offers made to them.
48. As of 6 July 2022, 115 applicants have engaged the Dispute Resolution Process. 31 of those applicants had reached agreement with the Post Office on the amount of compensation. None of the 115 applications had reached the stage of mediation by 6 July. As of 2 August 2022, there were 100 applicants who were engaged in dispute resolution.
49. I note that the Post Office decided to consider, first, those applications which were comparatively simple to understand and involved claims for compensation involving a shortfall of up to £8,000, with an additional claim for distress and inconvenience – referred to in the written and oral submissions as "*lower value claims*". By 6 July 2022, offers of compensation in 688 lower value claims had been made, of which all but 10 had been accepted.
50. Very few applicants have, to date, availed themselves of the opportunity to take legal advice at the expense of the Post Office in respect of offers of compensation made to them. Paragraph 19 of the IPA Terms of Reference specifies that the sum of £400 is available towards the cost of legal advice where the Post Office offers to pay an applicant's claim in full or "*largely in full*"; in all other cases Post Office contributes £1,200 if a contribution is sought. Of those who have accepted offers of compensation, two applicants obtained legal advice at the expense of the Post Office. Of those who have rejected their offers in compensation, 13 have obtained such legal advice.
51. Leading Counsel for the Post Office acknowledged in her oral submissions that those claims which remain to be determined and/or are already the subject of dispute, are those which are more complex and potentially more valuable and, therefore, likely to be difficult to resolve. She accepted that the take-up of legal advice at the expense of the Post Office may increase when offers in settlement are made in these more contentious cases.
52. Leading Counsel acknowledged, too, that there have been significant delays since HSS was first launched in May 2020. The reasons for delay are now well documented. First, the Post Office underestimated the numbers of applications. It was expected that applications would be numbered in the hundreds, whereas, as I have said, applications within the extended specified time limit exceeded 2,500. Second, the number of applications was

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such that Post Office could not provide “*full and fair compensation*” from its own resources. It had to seek and obtain further funding from HM Treasury. That funding was not arranged and announced until March 2021. Third, it became clear to the Post Office that it had recruited insufficient numbers for the Independent Advisory Panel, with the consequence that further members had to be sought and appointed. Fourth, the claims for compensation made by applicants have a very wide range in terms of their value and complexity. The lowest claim advanced under the Scheme is £15.25, whereas the highest claim is put at several million pounds. Inevitably, there has been a need to develop appropriate procedures and practices for handling such wide-ranging and different claims.

53. However, the Post Office contends that delay, in the main, has been confined to periods in 2020 and 2021. It argues that progress during 2022 has been much more encouraging. It has set itself a target of making offers in 95% of the eligible applications by the end of 2022. Given that most applications in which no offer in settlement has yet been made are complex in nature, that is an ambitious target. Nonetheless, both in its written submissions and in the oral submissions made by Leading Counsel, the Post Office expressed confidence that it can reach that target.

54. That brings me conveniently to the role played by BEIS and UKGI in the administration of the Scheme. BEIS has set the Post Office the target of making offers in settlement in respect of every application made and accepted under the Scheme by 31 December 2022. In oral submissions on behalf of BEIS, Counsel was at pains to stress that it is one of the department’s central objectives to ensure that all applicants are “*promptly, fully and fairly compensated for their financial losses, distress and the hardship they have experienced over many years*”. In order to explain the role which BEIS has assumed in relation to the Scheme, Counsel relied upon part of the written responses of the Government to the Report of the Business, Energy and Industrial Strategy Committee, entitled “Post Office and Horizon – Compensation Interim Report”. The Report itself was published on 17 February 2022 and the Government’s response, published on 14 April 2022, contains the following paragraph:

“Government’s Role

The Government has responsibility for providing the funding for settlement payments, agreeing significant decisions in relation to the settlement strategy and monitoring the Post Office’s progress towards reaching final settlements. BEIS, supported by UKGI, has been involved in the design of the compensation programme and holds regular monitoring, decision making and working group meetings, both internally and with the Post Office. This includes sign off on processes, principles and oversight on initial cases. This is to ensure that negotiations are advancing in line with the Government’s desire to see timely and fair compensation delivered to Postmasters.”

55. At first blush, that passage might be thought to be referable to compensation schemes involving sub-postmasters and others whose convictions were quashed, but in his oral submissions Counsel for BEIS relied upon that passage as accurately describing the role of BEIS in respect of all compensation schemes.

56. In its written submissions dated 31 May 2022 (paragraph 19), BEIS accepts that offers in response to applications under HSS during 2021 were made more slowly than initially intended and anticipated. The reason for that situation, maintained Counsel, was as described by the Post Office (summarised by me at paragraph 52 above).

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57. Like the Post Office, however, BEIS maintains that progress during 2022 has been satisfactory and, as I have said, it has set the Post Office the very ambitious target of making offers of settlement in all cases which have met the eligibility criteria by 31 December 2022.
58. The role of UKGI in the HSS is encapsulated by paragraph 4 of its written submissions, dated 1 June 2022. I quote:
- “4. UKGI supports BEIS in its handling of the compensation schemes and wider processes, including in its interactions with POL, as part of its role as shareholder representative for POL. UKGI also regularly meets with and provides challenge to POL on operational and strategic issues concerning compensation, including in relation to (i) the Historical Shortfall Scheme (“HSS”), in respect of which, a UKGI representative attends meetings of the BEIS Steering Committee as an observer...”*
59. As I mentioned at the hearing on 6 July 2022, the role of UKGI will be scrutinised more closely during Phase 5 of the Inquiry at hearings which will take place next year.
60. Neither the Scheme’s Terms of Reference nor the IAP Terms of Reference make specific provision for the making of interim payments of compensation. Nonetheless, as of 6 July 2022, the Post Office had made 28 such payments. Leading Counsel for the Post Office told me that such payments had been made to some elderly applicants, to applicants who had demonstrated severe financial or personal hardship and to applicants who were suffering from terminal illness.
61. By 6 July 2022, the Post Office had received 186 applications for compensation under the Scheme which had been delivered to the Post Office after midnight on 27 November 2020. It has yet to determine, definitively, whether to accept some or all these applications. At paragraph 23 of its written submissions of 31 May 2022, the Post Office explain that it is *“actively considering how best to address”* these applications. When Leading Counsel for the Post Office made her oral submissions, she was unable to provide me with any update as to how the Post Office intended to deal with these applications. That state of affairs was still subsisting on 13 July 2022 when Counsel for BEIS was addressing me.
62. As is clear from the Scheme’s Terms of Reference, the Post Office quite deliberately retained, and still retains, the ability to accept an application notwithstanding that it was made after 27 November 2020. The Scheme is silent, however, about the principles or criteria which the Post Office will apply when determining whether to accept an application which is late.
63. During the Human Impact Hearings, I read evidence and heard oral evidence to the effect that some applications for compensation under the Scheme had been rejected on the basis that they had been submitted after the closing date of 27 November 2020. It is not yet clear to me how many, if any, late applications have been finally accepted or rejected but in each case the numbers are likely to be very small at the moment. At the oral hearings on 6 July and 13 July 2022, there was no attempt by the Post Office or BEIS to explain how the very many late applications still undetermined are to be treated going forward.

Criticisms of HSS and the response thereto

64. In the written submissions filed on behalf of the Core Participants represented by Howe+Co, a number of criticisms were made about the Scheme. Some of these criticisms

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were emphasised during oral submissions by Leading Counsel at the hearing on 6 July 2022. The main criticisms advanced were as follows although not in any order of priority.

65. First, the Scheme makes no specific provision for the making of interim payments and, as a matter of fact, interim payments have been made in very few cases. It is strongly suggested that in relation to those applications which are still undetermined in which there is potential for protracted delay by reason of disputed heads of claim, and/or in those applications in which certain heads of claim are agreed, prompt interim payments should now be the norm.
66. Second, applicants to HSS have been confronted with an onerous process which was difficult to navigate. In practice, applicants have been expected to provide documentary proof to substantiate heads of claim when, as must have been well known to the Post Office, many of their losses occurred years, if not decades, ago and documentary evidence would very likely be unavailable to them. Indeed, in many instances an applicant's failure to have relevant documentation to support a claim was compounded by the fact that documents had been taken from them by the Post Office and not returned. Further, Question 24 on the application form (which concerned losses other than shortfall losses – see paragraph 19 above) is unclear in its terms and no guidance was published about the type of losses which would be regarded or accepted as "*consequential losses*" until September/October 2020, i.e. at a time when very many applications had already been made.
67. Third, offers of compensation are determined by the Post Office and, accordingly, the Scheme is not truly independent. The recommendations made to the Post Office by a panel are not binding and it matters not that, to date, the Post Office has never rejected a recommendation made by a panel.
68. Fourth, the Scheme does not provide for the reimbursement of reasonable legal expenses incurred by applicants in formulating claims for compensation and/or undertaking necessary investigation and evidence gathering. The level of fees allowed for obtaining advice about compensation offers is far too low. The Scheme should, from the outset, have provided for an applicant's reasonable legal fees to be paid by the Post Office in addition to the compensation paid to an applicant.
69. Fifth, and linked to the absence of proper provision for the funding of appropriate legal services for applicants, it is suggested that many eligible applicants have failed to make applications to the Scheme because "*they felt powerless*" to challenge the Post Office in the event of a dispute.
70. Sixth, the suggestion is made that applicants to the Scheme may have accepted offers in settlement which did not reflect the true value of their claims. That came about, so it is said, because of the combined effect of applicants feeling inhibited about challenging the Post Office and feeling unable to do so without appropriate legal advice and assistance.
71. During the hearing on 6 July 2022, Leading Counsel emphasised most of the points which I have summarised above. Additionally, he developed a detailed argument to seek to demonstrate that there had been unwarranted and unconscionable delay in the rolling out and administration of the Scheme. He pointed out, in particular, that the Settlement Deed was concluded on 10 December 2019, that the Scheme was rolled out on 1 May 2020, and yet it is only now, more than two years later, that those administering the Scheme are beginning to grapple with the most complex and challenging cases.

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72. Hudgells act for nearly all the Core Participants who have had convictions quashed. However, it is apparent that they are also acting for, or at least assisting, many of the applicants to HSS. In the Written Submissions presented on behalf of the Core Participants represented by Hudgells, there were a number of similar criticisms of the Scheme to those which had been advanced on behalf of the clients of Howe+Co. The Written Submissions contended that these criticisms were based upon an analysis of "a cohort of approximately 70 cases" (see paragraph 4 of the Submissions) and upon their assessment of some of the evidence given during the Human Impact hearings.
73. In his oral submission on 13 July 2022, Leading Counsel instructed by Hudgells made a number of discrete points in criticism of HSS. First, he suggested that the Scheme made no proper provision for applicants to obtain expert evidence at the expense of the Post Office when that was reasonably necessary to advance their claims. This problem has been and is particularly acute, he maintained, in respect of those applicants who wish to pursue claims for compensation for personal injuries. Second, he argued that paragraph 31 of the IAP Terms of Reference (see paragraph 35 above) was drafted in such a way that there was at least a possibility that if an applicant rejected an offer made by the Post Office and pursued dispute resolution to a contested arbitration, the Post Office might seek to rely upon a limitation defence in respect of losses which had crystallised many years previously. He suggested that this would be unfair and a clear disincentive to an applicant to reject an offer in settlement and pursue dispute resolution processes in order to obtain a more favourable outcome. Third, he drew attention to the plight of those applicants who had been made bankrupt because of apparent shortfalls generated by Horizon. Leading Counsel pointed out that neither the Guidance nor any other published document gave any real clue as to how this thorny issue would be dealt with in formulating a compensation offer. A redacted letter was produced to the Inquiry to demonstrate that in many cases a Trustee in Bankruptcy might have first call on that part of any compensation payment which related to financial losses and the argument advanced that it would be most unfair if large parts of compensation payments were swallowed up in an applicant's bankruptcy when many, if not all, of the applicants who were made bankrupt claimed that their bankruptcy was a direct consequence of reliance upon Horizon data. A fourth criticism advanced by Leading Counsel was that the outcome letter sent to applicants simply listed the documents which had been relied upon to formulate the offer of compensation. He maintained that the letter should always be accompanied by all the documents relied upon and which underpinned the offer of compensation. It should not be incumbent upon an applicant to request such disclosure of information. The fifth criticism of the Scheme was that there was no express provision within it for making interim payments of compensation. Further, although, as a matter of fact, a small number of interim payments had been made no criteria had been published as a guide to those who might wish to pursue an application for such a payment. Additionally, many applications for compensation were broken down into a number of different heads of loss. In cases where certain heads of loss were agreed, but others disputed, there was no good reason why the agreed heads of loss could not be paid as an interim payment. While it might be appropriate to focus upon final offers in settlement in the lower value claims, or where the claims were easily justified or rejected (as the case may be), it was not appropriate to withhold any payments of compensation in the more complex cases until a final amount could be agreed when agreement was possible in respect of some of the heads of claim.
74. Leading Counsel was also at pains to point out and emphasise delay in decision making on the part of the Post Office and/or BEIS. He complained, in particular, of delay in determining whether applications for compensation made after 27 November 2020 would be rejected on the grounds that the Scheme had closed before the applications were made

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or determined on their merits. He complained, too, of delay in reviewing whether reasonable legal costs would be paid to applicants whose claims under the Scheme remained unresolved. He asked me, in effect, to express disapproval of these delays given the actual and potential adverse impacts upon individuals which had been and would be occasioned by such delays.

75. Finally, Leading Counsel raised concerns about what he called the “*operational independence*” of the independent advisory panels. He suggested that there was, at the very least, a possibility that the panels would be unduly influenced by recommendations made to them by the case assessors, especially since there was a need to deal with applications promptly and the case assessors acted as “presenting officers” at panel meetings. It was suggested that the Inquiry should investigate how often Independent Advisory Panels had made recommendations to the Post Office in a sum which was greater than the case assessor had suggested.
76. Hodge Jones & Allen now represent 5 Core Participants who have, by any measure, suffered a great deal as a consequence of decisions made in reliance upon Horizon data. None of those 5 Core Participants were eligible to make applications under HSS since they were claimants in the Group Litigation and three of them were convicted of criminal offences in reliance upon evidence generated by Horizon. That being so, and entirely understandably, the written submissions filed on behalf of these Core Participants and the oral submissions made by Counsel on 13 July 2022, did not relate specifically to HSS.
77. The written submissions filed on behalf of the NFSP explained that they were not involved in any of the discussions which preceded the rolling out of HSS. Nonetheless, NFSP has provided assistance to current and former members in making applications to the Scheme and it has contacted the Post Office on behalf of current and former members about the progress of their claims. Additionally, being concerned about the delays in the administration of the Scheme, in December 2021 Mr Greenhow made an enquiry of the Post Office as to whether such delays had been occasioned by the departure from the Post Office of Mr Declan Salter, who had held a senior oversight position. Mr Greenhow had been assured that Mr Salter’s departure had not caused or contributed to any delay.
78. NFSP was also concerned about the level of legal fees payable by the Post Office to applicants who sought legal advice about whether they should accept offers of compensation. I regard it as implicit in the submissions made on behalf of NFSP that they consider it important that applicants to the Scheme should be reimbursed the reasonable cost of obtaining necessary legal advice about offers in settlement which are made to them rather than be provided with a fixed sum regardless of the complexity of the particular case.
79. Both the Post Office and BEIS acknowledged and apologised for the delays which have occurred in administering HSS. In summary, they both accept that there was a significant delay following the opening of the Scheme on 1 May 2020 before any offers of compensation were made and that many of the offers which were made in the early stages were in respect of lower value claims which were comparatively easy to process and assess. They acknowledge that, in the main, those applicants with very substantial claims and/or difficult claims to assess are still waiting for offers of compensation notwithstanding that more than 2 years has elapsed since the opening of the Scheme. However, both the Post Office and BEIS maintain that the rate at which offers of compensation have been made over the last year or so has accelerated and, as I have said the Post Office have a target of making offers of 95% of cases by 31 December 2022 and BEIS expects that offers will have been made in all cases which satisfy the eligibility criteria by that date.

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80. The available data supports the view that there has been an increase in the rate at which offers of compensation have been and are being made. When I published my first Progress Update on 15 September 2021, I reported that 474 offers of compensation had been made by 13 August 2021 of which 447 had been accepted. In the Government's Response to the Report of the BEIS Committee, it was reported that, as at 25 of March 2022, 1,106 offers in settlement had been made of which 911 had been accepted. The figures for July and August this year are as set out at paragraph 47 above.
81. Neither the Post Office nor BEIS have advanced any reason (either in written or oral submissions) why it has taken so long to determine whether applications for compensation which were made after 27 November 2020 should be rejected or accepted. A decision on this issue is said to be "under review" but, to date, no substantial information has been provided to the Inquiry about the process for determining these late applications.
82. Neither the Post Office nor BEIS rule out the possibility that an amendment to HSS will be made, going forward, to permit applicants whose claims are unresolved to claim the reasonable cost of obtaining legal advice and assistance over and above the £1200 currently on offer for advice about offers of compensation. A decision on this issue is also said to be under review.
83. In respect of the other criticisms made of HSS, the Post Office and BEIS, in the main, reject them. They reject the criticisms made of the application process itself. They hold to the view that the Scheme is user friendly (or at least sufficiently so) and that it can be navigated sensibly by non-lawyers. They argue that the settlement rate is very high, as a proportion of offers made, which supports their view that the Scheme is understood by lay people. When expert opinion is considered necessary, there is a mechanism for obtaining such evidence at the expense of the Post Office in which the applicant whose claim is under consideration has a role⁹ and each panel is made up of persons with wide-ranging expertise. The very low take-up, to date, of the funding for legal advice in respect of offers of compensation is a further indicator that the Scheme and the principles for assessing compensation are understood by very many applicants. They maintain that the process for determining each application is fair and submit that decision-making on offers of compensation is independent of the Post Office. Both the Post Office and BEIS point out that all the members of the Independent Advisory Panel are distinguished experts in their field and very capable of making decisions based on their own collective judgment. It is very unlikely that panel members would be improperly influenced by case assessors. The Inquiry was told that all offers of compensation made by the Post Office to date were in the sum suggested by the independent advisory panels and that in some instances the panels had suggested a higher sum than that which had been recommended by the case assessor. There is no need for all the documentation provided to panels to be provided, automatically, to applicants when an outcome letter is sent to them. It is sufficient that applicants are alerted to their availability. The making of interim payments (except to alleviate very substantial hardship or provide some compensation to the very elderly) would be inconsistent with the aim of providing full and fair compensation promptly.
84. The Post Office draw particular attention to those provisions of the Scheme which mandate the Post Office to make offers which are fair - even to the extent of departing, where appropriate, from settled legal principles relating to compensation if fairness so demands. They also emphasise the presumption contained within paragraph 33 of the IAP Terms of Reference (see paragraph 35 above) as demonstrating the commitment to ensure that

⁹ See IPA Terms of Reference paragraph 27.

applicants to the Scheme are treated fairly. Overall, both BEIS and the Post Office maintain that HSS has delivered and is delivering full and fair compensation albeit for some, at least, this had not been delivered promptly.

Interim and Final Compensation payments for persons whose convictions have been quashed (“Overturned Historical Convictions Scheme”)

85. As at the date hereof, 81 people convicted of criminal offences of dishonesty in reliance upon evidence adduced from Horizon have had their convictions quashed. The convictions of 64 people have been quashed by the Court of Appeal (Criminal Division) on appeal from Crown Courts around England and Wales. 17 people have had their convictions quashed at Southwark Crown Court on appeal from Magistrates’ Courts around England and Wales.
86. On 22 July 2021, the Minister announced that funds would be made available to the Post Office so that interim payments of compensation of up to £100,000 per person could be paid to those whose convictions for offences of dishonesty, which were reliant upon evidence generated by Horizon, had been quashed.
87. Shortly after that announcement had been made, Herbert Smith Freehills, on behalf of the Post Office, produced an application form which was used by applicants to claim an interim payment. It is widely accepted that all claims for interim payments have been determined promptly and that payments have also been made promptly. The Post Office say that in most cases payments have been made within 28 days of receipt of the application and there is no reason to suppose otherwise.
88. As of 6 July 2022, 69 applications for interim payments had been considered and, as I understand it, all applications, save for the three discussed at paragraphs 91 to 93 below, have been successful.¹⁰
89. The rationale underpinning the making of interim payments to those whose Horizon related convictions have been quashed is that such persons would have very good prospects of a successful claim for compensation against the Post Office for malicious prosecution. In the Settlement Deed which brought an end to the Group Litigation, the rights of convicted claimants to bring claims for malicious prosecution against the Post Office were expressly preserved in the event that their convictions were quashed.
90. The announcement made by the Minister in relation to interim payments was not confined to persons who had brought claims against the Post Office in the Group Litigation. Interim payments are available to all persons whose Horizon related convictions are quashed i.e. as the Horizon related convictions of persons are quashed it is open to those persons to seek an interim payment.
91. As I indicated in paragraph 24 of the document which I published on 9 May 2022,¹¹ there are 3 Core Participants whose convictions have been quashed but whose applications for interim payments of up to £100,000 have been rejected by the Post Office. They are Mrs

¹⁰ Since 13 July 2022 6 persons have had their *Horizon* related convictions quashed and, presumably, they have applied or will apply for interim payments.

¹¹ “Provisional view of the Chair on compensation issues relating to prosecuted sub-postmasters”.

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Adedayo, Mr Kalia and Mr Patel. In summary, the Post Office rejected each application because they concluded that there was evidence in each case independent of that which was generated by Horizon (alleged confessions) which was capable, if accepted, of justifying convictions. Accordingly, at least arguably say the Post Office, the prosecution of these individuals was justified and their prosecution was not malicious. The quashing of the convictions of these individuals was not opposed because, according to the Post Office, it would not have been in the public interest to have opposed that course of action.

92. At paragraph 27 of the same document, I explained that I needed to guard against making myself the arbiter of disputes between Post Office Limited and Mrs Adedayo, Mr Kalia and Mr Patel about whether they were eligible for interim payments. It is not my function, under the Inquiry's Terms of Reference, to determine such disputes and, in any event, I have no power to compel the Post Office to comply with any view which I might express or any determination I might make. However, I am entitled to consider whether any scheme for providing compensation is fair and/or is being administered with fairness.

93. I have three concerns about the fairness of the process for decision-making and the decision-making itself in relation to Mrs Adedayo, Mr Kalia and Mr Patel. These concerns would apply equally to any other persons who may, in the future, be treated similarly by those responsible for deciding whether interim payments should be paid. First, the Post Office is the final arbiter of whether they should be awarded such payments. There is no mechanism (save for starting legal proceedings in the civil courts or engaging in other dispute resolution processes such as binding mediation or arbitration) whereby an interim payment can be ordered against the Post Office. The interim payment scheme administered by the Post Office has no mechanism within the scheme itself whereby an independent person or panel can scrutinise and review decisions made by the Post Office and, where it is appropriate to do so, direct that a refusal to make an interim payment should be overturned. Second, I am concerned that the reasoning deployed by the Post Office to justify the refusal of interim payments in the cases of Mrs Adedayo, Mr Kalia and Mr Patel could not be used to justify the refusal of interim payments to those whose convictions are quashed by the Court of Appeal (Criminal Division) with the consequent possibility of unfairness between applicants.¹² Third, the Post Office have been at pains to point out that the refusal of an interim payment does not mean that the claim upon which it is based cannot be pursued as part of the claim for final compensation. I find it difficult to understand the logic of that position unless it is predicated upon the proposition that further and more persuasive evidence may become available in support of a claim. I say that because, stripped to its essentials, the reason why the Post Office has refused interim payments is because they assert that the convictions in those cases in which payments have been refused are supported by evidence independent of Horizon. If, as seems likely, all the relevant evidence relating to the convictions of Mrs Adedayo, Mr Kalia and Mr Patel was before the Post Office when they refused interim payments, on what basis can a final payment of compensation include a payment for malicious prosecution whereas an interim payment predicated upon proving that tort is refused?

94. I have one further concern in relation to the making of interim payments. On a literal interpretation of the Minister's announcement of 22 July 2021 only those whose convictions are quashed are eligible for interim payments. Persons who had been prosecuted for offences of dishonesty on the basis of Horizon generated evidence but acquitted either

¹² It is not appropriate in an Update of this kind to identify and detail the legal arguments underpinning this observation. However, such arguments are developed fully in the written submissions dated 4 April 2022 filed on behalf of the Core Participants represented by Hudgells.

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after a trial or upon the direction of the trial judge are not eligible for such payments. At the time of the Minister's announcement, this may have been understandable given that the rights to bring claims for malicious prosecution by those whose convictions were quashed had been reserved, expressly, in the Settlement Deed in the Group Litigation whereas acquitted persons who were Claimants in the Group Litigation had accepted payments of compensation which were in "*full and final settlement*" of their claims.¹³ However, BEIS has now agreed to make further payments to the Claimants in the Group Litigation. In those circumstances why should acquitted persons not receive an interim payment?

95. I turn to the issues raised in written and oral submissions regarding final payments of compensation for convicted persons whose convictions have been quashed. The prospect of the Post Office (funded by BEIS) making final compensation payments was first raised in an announcement to Parliament by the Minister on 14 December 2021.
96. To date, the numbers who have submitted claims for final compensation are small. In the written submissions made on behalf of the Post Office (dated 31 May 2022) the Inquiry was informed that 8 claims for final compensation had been received - of which 2 were fully quantified, 2 were partially quantified and 4 were unquantified. In their written submissions of 5 July 2022, the Post Office said that they had received 3 further claims and further information about a previously submitted claim. That state of affairs still subsisted when I was addressed by counsel for BEIS on 13 July 2022.
97. As I understand it there is no formal process for applying for a final payment under the Overturned Historic Convictions Scheme. Applicants simply submit their claims in as much or as little detail as they see fit and then a dialogue ensues between the applicants and/or their representatives and the Post Office. I am aware that there have been a series of discussions, including without prejudice discussions, between Hudgells acting on behalf of their clients and lawyers acting for the Post Office and/or BEIS concerning the principles which should underpin offers of final compensation under this scheme.
98. Just before the hearing on 6 July 2022 an announcement was made to the effect that Lord Dyson, a former Justice of the Supreme Court and the Master of the Rolls between 2012 and 2016, had been jointly instructed by Hudgells and the Post Office to carry out what is described as "*a neutral evaluation*" of the likely award of damages for non-pecuniary losses should the persons whose convictions had been quashed bring civil proceedings for malicious prosecution before the courts. It was stressed to me that although Lord Dyson's evaluation of these claims would not be binding, the clients of Hudgells on the one hand and the Post Office and BEIS on the other would pay very close attention to Lord Dyson's views. That is hardly a surprise given the status Lord Dyson enjoys in the legal and wider community.
99. The announcement made by the Minister on 14 December 2021 relating to final compensation payments was silent about whether applicants for compensation would recover legal fees reasonable incurred in advancing their claims. However, BEIS has confirmed that the Post Office will pay "*claims for reasonable legal costs incurred as part of any final settlements reached*" - see paragraph 32 of the written submissions of BEIS dated 31 May 2022. No doubt that is in recognition that these claims will include some of the most difficult to resolve.

¹³ It may be that acquitted persons who were not party to the Group Litigation were entitled to an interim payment, but no such persons have yet come forward as far as I am aware.

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100. It has also been confirmed by BEIS that persons who were prosecuted for crimes of dishonesty in reliance upon Horizon generated evidence but acquitted can also submit claims for final compensation in accordance with the announcement on 14 December 2021 provided those persons were not Claimants in the Group Litigation. Currently, however, prosecuted but acquitted persons who were Claimants in the Group Litigation cannot make such an application.
101. It is, of course, possible that the claims of all those whose convictions have been quashed will be settled to the applicants' satisfaction through a process of negotiation between their lawyers and those acting for the Post Office. That being so, it is tempting for me to allow that process of negotiation to continue without any kind of intervention from me. However, in my view, there are a number of factors which need spelling out and proper consideration at this stage.
102. First, although many of the persons whose convictions have been quashed are represented by Hudgells, as the numbers of persons with quashed convictions grow (with the consequence that there is the potential for negotiations occurring with a number of different firms of solicitors) how will information be shared, if at all, about the principles which have underpinned concluded settlements? Although every case is likely to have unique features, there are also likely to be cases which enjoy some or even many common features. In this context, for example, it may be thought to be very important that a consistent approach is taken to all claims in which a person has suffered imprisonment or has been made bankrupt. That can only happen if there is a sharing of information amongst all interested persons or principles upon which there is agreement between the Post Office and applicants are published. These issues were highlighted in the written submissions dated 22 June 2022 made on behalf of three persons who were (and are) represented by Hodge Jones & Allen and whose convictions had been quashed. It was strongly submitted on their behalf that final compensation should be calculated according to fair and transparent published principles which are applied in a transparent manner – points which were reinforced in the oral submissions made by Counsel.
103. Second, if settlements do not prove to be possible through negotiation how is the ensuing dispute to be resolved? Is an individual applicant going to be left with a choice of pursuing alternative dispute procedures or litigation in the courts or will there be a formal remediation scheme available or other defined dispute resolution process which can be accessed by persons whose convictions have been quashed? In her oral submissions on behalf of the (by then four) clients of Hodge Jones & Allen, Counsel was clear that her clients favoured a remediation scheme being put in place to deal with compensation payments should negotiations fail. The suggestion was made in writing on behalf of BEIS that a formal remediation scheme has not been pursued, to date, because this was not favoured by the Core Participants represented by Hudgells. It is true that in one email in the distant past (January 2021), Hudgells expressed the view that their clients would not participate in a "Post Office Scheme" but, in my view, that email was not intended to convey the impression that there was an objection to a formal remediation scheme which was sufficiently independent of the Post Office. Certainly, I did not understand Leading Counsel representing the clients of Hudgell to argue against a scheme which was sufficiently independent of the Post Office in his oral submissions to the Inquiry. Nor was there any objection to such a scheme from Howe+Co or Leading Counsel instructed by them on behalf of those of their clients whose convictions have been or will be quashed.
104. Third, should Claimants in the Group Litigation who were acquitted of Horizon related offences but who have valid claims for malicious prosecution become part of the

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negotiation process involving persons whose convictions had been quashed and should that also be the case for Claimants in the Group Litigation against whom judgments had been obtained in civil proceedings given that they, too, may have valid claims for malicious prosecution. Counsel who made oral submissions on behalf of Ms Nichola Arch (who successfully defended charges of dishonesty at the Crown Court) urged me to the view that Ms Arch should have a choice as to whether her claim for final compensation should be considered alongside persons whose convictions have been quashed or considered as part of any scheme for providing further compensation to non-convicted Claimants in the Group Litigation. No doubt the same point could be made on behalf of Mr Lee Castleton who was sued in the courts by the Post Office and against whom a judgement was obtained which, he says, resulted in his bankruptcy.

105. The process of resolving the claims of those who were wrongly convicted may still be in its early stages, but, even so, there is a strong argument to be made that contingency plans should be made now so that if negotiations fail there is a clear and smooth path from negotiation to dispute resolution.

106. On 3 August 2022 the Inquiry received a letter of the same date from the legal representatives of BEIS which explained that it was "*open to the provision of additional interim payments*" in cases involving persons whose convictions had been quashed where a final claim has been quantified and certain elements are agreed and/or hardship can be established. The Inquiry was also informed that the Post Office has made some additional interim payments to applicants who have provided a computation of their claims where parts of those claims are agreed, and it is considering making interim payments on hardship grounds in a number of other cases. This must be a welcome development for those applicants who have sought and are seeking further interim payments and those who might welcome such payments in the near future.

107. In Written Submissions dated 24 June 2022 those acting for Hodge Jones & Allen suggested that Herbert Smith Freehills should cease to act for the Post Office in the Overturned Historic Convictions Scheme; instead they should be instructed by BEIS. That had not been the stance they had taken in their submissions of 22 June. The reasons for this suggestion are set out in some detail but the core point relied upon appears to be that the Post Office and Herbert Smith Freehills, acting together, would not be able to deliver full and fair compensation or, at least, there is a genuine belief held by many sub-postmasters (including the clients of Hodge Jones & Allen) that they would not deliver such compensation. The written submissions of the Post Office could not address this issue because they were filed on 31 May 2022. In her oral submissions Leading Counsel met this point by asserting that the Post Office will not be the final arbiter of the claims being pursued by those who are currently seeking to negotiate a settlement within the Overturned Historic Convictions Scheme. In her words "*the final arbiter would be the courts*".

Further Payments to the Claimants in the Group Litigation ("Group Litigation Scheme")

108. On 22 March 2022 the Minister announced that "*the Chancellor will make additional funding available to give those in the GLO group compensation similar to that which is available to their non-GLO peers*". In the written submissions filed on behalf of BEIS on 31 May 2022 it was confirmed that the Department's intention was that Claimants in the Group Litigation would "*receive equivalent compensation to that available to SPMs who were not*

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part of the group litigation".¹⁴ In his oral submissions on 13 July Counsel used the word "similar" as opposed to the word "equivalent" and, accordingly, I take it that these words have been and are being used interchangeably and I proceed on that basis.

109. The written submissions of 31 May 2022 went on to reveal that there had been a meeting on 30 March 2022 attended by the Minister and representatives of the Justice for Subpostmasters Alliance ("JFSA") and Freeths LLP at which those present had agreed that there would be collaboration on developing compensation arrangements through weekly meetings of a working group comprising Departmental officials, JSFA representatives and solicitors from Freeths. Such meetings began on 7 April 2022 although no concrete proposals in relation to these arrangements had emerged by 31 May 2022 when the written submissions were filed.
110. By letter dated 30 May 2022 Freeths LLP wrote to the Inquiry setting out in brief information about their own involvement with BEIS and JFSA. They informed the Inquiry that it was their understanding that a scheme should be established to ensure that the "*GLO Claimants should receive financial redress on an equivalent basis to that available to those postmasters who were not part of the group litigation*".
111. On 30 June 2022 the Minister announced in Parliament that "*the Government intends to make an interim payment of compensation to eligible members of the GLO, who are not already covered by another scheme, totalling £19.5m*".¹⁵ He also indicated that in parallel the Department would be working towards delivering a final compensation scheme for Claimants in the Group Litigation and that the Department would be appointing Freeths LLP to "*access the data and methodology they developed in relation to the distribution of the 2019 settlement*" on the grounds that since Freeths LLP had acted for the Claimants in the Group Litigation they had "*vital knowledge and expertise*" which would allow the compensation scheme to be designed quickly. The Minister also confirmed in his announcement that the Claimants in the Group Litigation who participated in the Group Litigation Scheme would be able to recover reasonable legal fees incurred in furtherance their claims.
112. When I was addressed by Leading Counsel on behalf of the clients of Howe+Co on 6 July 2022 I was told that there had been discussions between Mr Enright of Howe+Co and officials of BEIS and that Mr Enright had been told that all legal representatives of eligible Claimants in the Group Litigation would be included in further discussions about the design of a compensation scheme.
113. By letter dated 12 July 2022 the legal representatives of BEIS informed the Inquiry that the representatives of JFSA had suggested to BEIS that the £19.5m set aside for interim payments to eligible Claimants in the Group Litigation should be distributed "*pro rata to their shares of the 2019 High Court settlement in the Bates and others v Post Office Ltd case*". The Inquiry was also told that this proposal was acceptable to BEIS and, accordingly, a contract had been concluded with Freeths LLP to deliver the payments. It was then anticipated that payments would be made "*within a few weeks*".

¹⁴ See paragraph 38 of the Submissions.

¹⁵ I understand the phrase eligible members of the GLO to mean all the Claimants in the Group Litigation save for those whose convictions have been or will be quashed and who, therefore, fall within the Overturned Historic Convictions Scheme.

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114. The letter of 12 July also provided information about the process for designing a scheme for delivering final compensation payments. I need not recount what is set out in the letter at pages 2 and 3 since discussions between interested parties on a draft scheme have started but are still ongoing.
115. During his oral submissions on 13 July 2022, Counsel for BEIS emphasised that the Department would consult with all the legal representatives of Claimants in the Group Litigation before publishing a final compensation scheme. He re-affirmed, too, that the final compensation scheme would contain provisions relating to the payment of the reasonable legal expenses incurred by applicants to the scheme.
116. As I indicated earlier in this Update (paragraph 7 above) I was addressed briefly on 13 July 2022 by Leading Counsel for the Core Participants represented by Howe+Co. He told me that discussions had occurred between his instructing solicitor and an official of BEIS which had produced a tentative timetable for delivery of the interim payments to eligible Claimants in the Group Litigation. In short, the target for payment would be 3 weeks, approximately, from 13 July.
117. The letter from the legal representatives of BEIS dated 3 August 2022 is silent as to whether any interim payments have been made to eligible Group Litigation Claimants in accordance with this timetable. Additionally, the letter of 3 August makes no express reference to the tentative timetable for making interim payments mentioned at the hearing on 13 July. However, by letter dated 12 August 2022, the legal representatives of BEIS informed the Inquiry that interim payments to applicants had begun and that, as of 10 August 2022, 170 payments had been made. The Inquiry was also informed that many more interim payments would be made in the coming days, although difficulties remained in making such payments to persons who had been made bankrupt and in some "complex cases".
118. The letter of 3 August 2022 provides information as to the timetable for formulating a final compensation scheme. The letter suggests that an outline of the scheme will be sent to "GLO members" (which I take to be a reference to all eligible Claimants in the Group Litigation) in September this year. The timetable for finalising the terms of the scheme and implementing it thereafter will depend upon the reaction of the eligible Claimants in the Group Litigation to the outline of the scheme provided to them.
119. In her oral submissions, Counsel for the Core Participants represented by Hodge Jones & Allen suggested that those applicants for compensation whose convictions had been quashed and who had been part of the Group Litigation should be permitted, if they so choose, to seek final compensation payments under the Group Litigation Scheme as opposed to the Overturned Historic Convictions Scheme. In the letter of 3 August referred to above the legal representatives of BEIS explain why they oppose that suggestion.
120. The Group Litigation Scheme is still in its infancy. The written and oral submissions on behalf of BEIS explain the difficulties which have been involved in finding a legal basis for funding further compensation payments and which prevented an announcement about further compensation being made prior to 22 March 2022. I am prepared to accept that considerable thought and care was necessary to ensure a proper legal basis for making further compensation payments to the Claimants in the Group Litigation since, of course, a very large majority of the Claimants had accepted payments in full and final settlement of all their claims against the Post Office. To the credit of all those involved, a legal basis was found. That said, the issue which is of concern to me is whether prompt action has been

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taken since March 2022 and is being taken now to deliver the further compensation which has been promised. I return to that issue in my Conclusions.

121. In his oral submissions made on 13 July 2022 Leading Counsel for the clients of Howe+Co invited me to fix a date, this year, for a further hearing so that I can formally monitor the progress which is (or is not) being made towards providing further compensation payments to the eligible Claimants in the Group Litigation. I am not convinced that I should do that at this stage. If it becomes clear in the coming weeks that progress towards finalising a scheme and/or making payments thereunder is too slow, I will very likely determine that I should deliver to the Minister an interim report pursuant to section 24(3) of the Inquiries Act 2005 containing specific recommendations. Further, I might very well conclude, then, that I should convene a hearing at short notice.
122. The letter of 3 August from the legal representatives of BEIS takes issue with some of the contents of a letter written by Mr Paul Marshall to the Inquiry and dated 22 July 2022. The Inquiry did not disclose that letter to any core participant; however, Mr Marshall, himself arranged or authorised its disclosure to BEIS and other Core Participants.

Written Submissions by Mr Paul Marshall

123. Since the announcement that the non-statutory inquiry which existed prior to June 2021 was being converted into an inquiry under the Inquiries Act 2005, Mr Marshall has sent letters to the Inquiry from time to time and written submissions on various aspects of the Inquiry's work. In respect of the Compensation Issues Mr Marshall filed written submissions dated 31 May 2022 on behalf 6 named persons of whom 3 were Core Participants. On 23 June 2022 Mr Marshall filed what he described as a "Supplemental Submission" on behalf of 4 of those 6 persons. The letter of 22 July 2022 was sent on behalf of 5 of the 6 named people upon whose behalf Mr Marshall filed written submissions on 31 May 2022.
124. The written submissions filed on 31 May 2022 and 23 June 2022 have been made public - see paragraph 6 above.
125. In my view, the submissions of 31 May 2022 were focussed, in the main, upon 3 topics. They were (i) the principles to be applied in calculating final payments of compensation in respect of Claimants in the Group Litigation whose convictions had been quashed; (ii) the mechanisms and processes for determining those payments; and (iii) whether applicants for final payments of compensation would have access to appropriate legal advice and assistance at the expense of the Post Office.
126. The points made by Mr Marshall concerning topics (ii) and (iii) are sufficiently rehearsed above by reference to the written and oral submissions made by others.
127. I have considered with care what, if anything, I should say about Mr Marshall's topic (i). In short, I have concluded that I should say nothing except for the following. The principles underpinning the assessment of compensation in HSS are well known. The Post Office and BEIS subscribe to the view that all applicants in whatever scheme they apply should receive "equivalent" compensation. Self-evidently that does not mean they should receive identical amounts; it means that compensation for each applicant should be assessed by reference to agreed or determined criteria. Mr Marshall's elucidation of the principles which he considers should be applied to the assessment of compensation for his clients is without doubt of considerable interest to those who will have the task of negotiating their

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settlements. He raises arguments about the scope of the principles to be applied which, I have little doubt, will lead to a fierce debate either in negotiation or in dispute resolution procedures or litigation. I simply cannot persuade myself, however, that my terms of reference permit me to either to comment upon or seek to adjudicate upon the principles which should be applied in assessing compensation where that would involve considering a number of very detailed arguments on issues of law many of which might be hotly contested and disputed. On a more pragmatic level, of course, I certainly could not comment or adjudicate upon Mr Marshall's contentions without giving BEIS, the Post Office and UKGI the opportunity to rebut any arguments of Mr Marshall which they wish to contest. That would involve this Inquiry devoting a disproportionate amount of time to potentially controversial legal issues. The proper forum for Mr Marshall, or anyone else, who wishes to stretch or reduce the boundaries within which compensation should be assessed is the forum in which the amount of compensation is to be determined i.e. in negotiation and/or within the framework of the various schemes or in litigation. I am precluded by section 2(1) of the Inquiries Act 2005 from ruling upon or determining any person's civil liability. It would not be appropriate for me to seek to circumvent that statutory provision by making "recommendations" about or reaching "conclusions" upon the proper measure of compensation to be applied in particular factual circumstances.

128. Mr Marshall's submissions of 23 June 2022 are, as he himself describes them, supplemental. They are a detailed, and if I may say so, very interesting further examination of topic (i). However, for the reasons explained above I say nothing more about them.
129. Mr Marshall's letter of 22 July 2022 consists of written submissions by way of a commentary on aspects of the submissions made to me at the hearings on 6 and 13 July. Whereas I have been prepared to take account of new information (or the lack of it) which has come to my attention since the end of the hearings on 13 July it would not be appropriate for me to take account either of the written submissions made by Mr Marshall on 22 July 2022 or the response to those submissions contained in the letter on behalf of BEIS dated 3 August 2022. To rule otherwise would make it virtually impossible for me to complete this Update within a reasonable period of time as I promised all participants in the oral hearings I would do.

Conclusions

130. The commitment given by BEIS and the Post Office to provide compensation which is "*full and fair*" is not the traditional stance taken by a Defendant in our adversarial system of civil litigation. In the courts, Claimants are entitled, within proper legal limits, to maximise their claims and Defendants (within such limits) are entitled to minimise the amount they have to pay, if found liable. Negotiations to settle a claim are usually conducted with those parameters very much in mind.
131. However, all those who are entitled to claim compensation from the Post Office for wrongs they have suffered as a consequence of Horizon are entitled to expect that the offers made to them will be a genuine appraisal by the Post Office of what is full and fair compensation. Of course, there are bound to be cases in which the applicant and the Post Office have genuinely different views about what constitutes a full and fair settlement. The commitment by the Post Office to reaching a full and fair settlement does mean, however, that the Post Office should never attempt to reduce a claim to a sum below that which they regard as full and fair. Put more crudely, the normal negotiating tactics often found in hard

fought litigation in the courts should have no place in the administration of the schemes for compensation already in being and the scheme about to be brought into effect. I turn from those introductory words to my conclusions about HSS, the Overturned Historic Convictions Scheme and the emerging Group Litigation Scheme.

HSS

132. I welcome the commitment within the Scheme to providing fair compensation. The provision which allows fair compensation to be paid, even if that means ignoring legal principles usually applied in civil litigation, is a clear indicator that the mantra "*full and fair compensation*" is not just a form of words but a genuine commitment. In Phase 5 I will be able to judge whether the actions of the Post Office correspond with the words they use.

Delays

133. I am conscious that I am yet to hear detailed evidence which will allow me to reach definitive conclusions about the extent and causes of delay in formulating, implementing, and administering the Scheme. Nonetheless, both the Post Office and BEIS accept that there have been avoidable and, therefore, unwarranted delays associated with the Scheme. They acknowledge that a long period of time elapsed between the Scheme's opening and the arrangement of the necessary funding which would allow payments to be made to applicants. They accept, too, that the numbers of likely applicants to the Scheme was very significantly underestimated which meant that the Post Office could not fund the Scheme from its own resources and that there were, to begin with, insufficient personnel recruited to the Independent Advisory Panel. The numbers of applications considered has accelerated over time but in the early stages of the administration of the Scheme progress was comparatively slow. Post Office and BEIS have formally apologised for unnecessary delay in the implementation and administration of the Scheme.

134. I accept that the pace of making offers has quickened considerably during this year and, perhaps, for some months before that. I have drawn attention to the numbers of offers of compensation which have been made since the time of my first Progress Update – see paragraphs 47 and 80 above.

135. The Post Office's target of making offers of compensation by 31 December 2022 in 95% of the applications which have been identified as eligible under the Scheme is an ambitious one but, the target having been announced, the Post Office will, no doubt, strive to accomplish it. The target set by BEIS of making offers in 100% of such case by 31 December is, obviously, even more difficult to achieve. I am concerned that the fulfilment of these targets should not be achieved at the expense of a proper and thorough appraisal of individual applications before an offer of compensation is made. There is a balance to be struck between speed of decision-making and ensuring that offers which are made are full and fair.

136. I know of no proper explanation for the delays in determining whether those applications which were made after 27 November 2020 should be rejected or accepted into the Scheme. The better part of 21 months has now elapsed since the apparent closure of the Scheme. On any view, that is more than enough time to formulate principles and/or criteria by which judgments could be made about whether to reject or accept an application. On the basis of the exchanges I had with Leading Counsel for the Post Office and with Counsel for BEIS, I cannot help suspecting that there may be tension between how the Post Office wishes to approach this issue and the stance which BEIS and/or HM Treasury wish it to

adopt. On any view, however, the delay in determining many if not all of these applications is wholly unacceptable and it remains largely unexplained.

137. I am also very concerned that under the Scheme it is the Post Office which makes the definitive and final determination as to whether a late application is accepted or rejected. The Independent Advisory Panel is not involved in this part of the decision-making process. I regard that as an obvious flaw in the Scheme. In my view, any applicant whose claim is rejected by reason of it having been made after 27 November 2020 should have the right to have that decision reviewed by the Independent Advisory Panel and the Scheme should be amended accordingly.

Independence Issues

138. I am not persuaded that I should characterise the process for determining the offers of compensation payments to applicants as lacking in independence. It is true that the first assessment of what offer should be made is undertaken by a case assessor who is an employee of the solicitors retained by the Post Office and that the final determination of any offer to be made is undertaken by the Post Office itself. However, the role of the Independent Advisory Panel should not be underestimated. The Panel is comprised of distinguished professionals with considerable expertise. In my view, it is overwhelmingly likely that the members of the Panel can assess objectively the recommendation of the case assessor and adopt that recommendation as their own only when they consider that to be the justified course on the basis of all the information before them. Further, there is a means of checking that all relevant information has been put before a panel whose decision may be called into question since all the information provided to individual panels is disclosed to applicants if such disclosure is sought. I appreciate that the Post Office retains the power to depart from a panel's suggested settlement offer. However, it had never done so by 13 July 2022 notwithstanding that offers have been made in approximately 66% of the cases admitted as eligible under the Scheme.

139. The acceptance rate of the offers which have been made so far is very high. No doubt, in part, that is because many of the cases determined have been lower value cases. However, the acceptance rate is an indicator that offers are being put forward in good faith and with proper regard to the overriding consideration that compensation payments should be full and fair.

140. In any event, if an offer is not acceptable to an applicant, he/she need not accept it. If any offer is rejected there follows what might be called a discussion phase in which, no doubt, each side puts their point of view as to the merits of the offer in question. If the discussion phase fails a mediation takes place and, if that fails, the parties head for the county courts (the Small Claims Track) or arbitration depending upon the amount involved. Ultimately, there is a process open to an applicant in which a person or body other than the Post Office determines the amount of compensation to be paid. In my view this is a sufficient safeguard for applicants provided, of course, they are able to obtain legal assistance when appropriate – as to which see paragraph below 146 to 149 below.

141. Subject to the proviso mentioned in the preceding paragraph, I do not consider there is any basis for criticising, as lacking in independence, the basic structure of the process leading to the making of offers of compensation or the processes in place for determining an award of compensation should an applicant reject an offer in settlement made by the Post Office.

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Criticisms of the Application Process

142. I turn to the criticisms which have been made of the application form and the lack of appropriate guidance to an applicant faced with the form. However, first this should be set in context. The vast majority of the persons completing the application form will be relatively mature in age and will have accumulated business experience as a sub-postmaster. Many will have considerable experience of running a small business apart from a Post Office branch. Of those lacking in much business experience, very many will have been employed in responsible occupations prior to running a Post Office branch. All this means that most, if not all, applicants to HSS will be mature people with considerable experience of reading and digesting formal documents.
143. In the main, I do not consider it likely that the application form would have been unduly difficult to understand for a lay person having the experience I have described above. However, without hard evidence (which will become available in Phase 5) I cannot reach a definitive conclusion one way or the other.
144. I say now, however, that I do have reservations about how Question 24 would have been understood in the absence of guidance as to its meaning. On any view, it is most unfortunate that the Guidance was not made available to would be applicants to the Scheme until sometime in September 2020, at best.¹⁶ All those applicants who applied for compensation before the initial specified closing date of 14 August 2020 will have done so without any proper guidance as to how Question 24 should be answered. In my view that was a flaw in the process. I am satisfied that the Guidance should have been published and clearly sign-posted as soon as the Scheme opened. Without the Guidance, this aspect of the application process was not "*user friendly*".
145. Whether the failure to issue the Guidance at the proper time had the effect of causing applicants to omit legitimate heads of claim can only be determined after hearing evidence. No doubt that issue can be examined in Phase 5 together with any other evidence tending to show that applicants failed to present all their legitimate claims for whatever reasons.

Legal Assistance

146. I understand why, at the outset, BEIS and the Post Office were hopeful that the Scheme could function appropriately without the need for applicants to be represented by lawyers. The very low take up of such funds as are available for legal advice in relation to the offers made by the Post Office is, in my view, a clear indicator that in the lower value claims legal assistance was probably unnecessary given the experience of most applicants. However, it is clear to me that appropriate legal assistance and advice in respect of most of the claims yet to be determined is likely to be essential. BEIS has readily conceded that in the Overturned Historic Convictions Scheme and the Group Litigation Scheme applicants are entitled to be paid the reasonable costs of engaging a lawyer to assist them with all aspects of their claims. In my view fairness to the remaining applicants within HSS demands that the fees allowed for advising on offers which are made henceforth should be increased to levels commensurate with the work reasonably carried out by an applicant's lawyer. Further, if an applicant wishes to engage a lawyer, in all cases in which an offer is rejected the Post Office should fund the applicant's reasonable cost of obtaining legal advice,

¹⁶ I appreciate that the document published by the Post Office and entitled Questions and Answers has a short section which purports to explain the scope of the Scheme. However, the questions within that section which refer to losses other than a shortfall loss are perfunctory and of no particular assistance to applicants.

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assistance and representation as the dispute resolution process unfolds. In my view, from the point when an offer is rejected, applicants should be in just the same position in relation to payment of legal fees as they would be if they were applicants in the Overturned Historic Convictions Scheme or the Group Litigation Scheme. I simply cannot see why the remaining applicants in the HSS, many of whom having complicated and difficult compensation issues to resolve, should be treated differently, in terms of payment for legal services, from applicants within other schemes who have similar issues to determine.

147. It should also be borne in mind that in the dispute resolution phase the Post Office will, no doubt, be represented by very experienced lawyers whether it be Herbert Smith Freehills or some other firm of solicitors. Reasonable equality of arms demands that the applicants for compensation are also represented by lawyers with appropriate experience and expertise and fairness demands that such lawyers are reasonably funded by BEIS/the Post Office.
148. The provisions relating to the payment of legal fees for advice on offers are to be found in the IAP Terms of Reference (paragraph 19). I suggest this paragraph is removed from those Terms of Reference and new provisions are included in the Scheme's Terms of Reference which reflect the views which I have expressed in this section of the Update.
149. The provision of funds for instructing lawyers henceforth cannot, of course, remedy any instances of injustice which have already occurred. Whether there have been such instances already, e.g. leaving out of account legitimate claims, or accepting reductions in claims because of a lack of documentation, must await Phase 5. However, the provision of funds for legal advice and assistance going forward will provide a substantial bar to the possibility that, in the future, applicants will accept settlements which are substantially lower than the true value of their claims.

Interim Payments

150. I fully accept that in many cases the correct approach has been to reach a final settlement as promptly as possible. However, that may not be possible in a number of difficult and complex cases. How can the making of interim payments be justified for all eligible applicants in the Overturned Historic Convictions Scheme and the Group Litigation Scheme but yet there is a resistance to making interim payments to applicants within HSS except in very narrow circumstances? I appreciate that the Post Office and BEIS say that the making of interim payments might delay the agreement of final compensation payments, but that argument applies with similar force in relation to the other schemes.
151. Some applicants to HSS will now have been waiting for offers in settlement for more than 2 years after making an application for compensation. In my view, there is no good reason, even now that it is being said that all or substantially all offers of final compensation will be made by 31 December 2022, why applicants who can demonstrate a need for an interim payment or who have agreed certain aspects of their claim with the Post Office should not receive appropriate interim payments.
152. In my view, the Scheme's Terms of Reference should be amended to make express provision for the making of interim payments in cases where the personal circumstances of the applicant justify such a payment or when there are agreed and quantified heads of loss which can be paid over.

The Overturned Historic Convictions Scheme

153. On 23 April 2021 the Court of Appeal (Criminal Division) handed down its judgment in R v Hamilton and others in respect of appeals brought by sub-postmasters against their convictions for offences of dishonesty. The convictions of 39 people were quashed. On 22 July 2021 the Minister made an announcement to Parliament indicating that the Government would “*fund interim compensation of up to £100,000 for each postmaster who has had their Horizon-related conviction overturned*”. The Minister’s announcement went on to explain that applicants for interim payments would be required to complete an application form and submit the same to the Post Office and payment would be made within 28 days.
154. I am pleased to say that, in the vast majority of cases, interim payments have been made to those whose convictions have been quashed within 4 weeks or thereabouts of applications being made to the Post Office.
155. Interim payments were refused to 3 applicants - see paragraph 91 above. I have expressed my reservations about the decision making in these cases – see paragraph 93 above.
156. I am firmly of the view that the Post Office should not be the final arbiter of applications for interim payments. I do not understand either the Post Office or BEIS to dissent from that view. However, they both appear to indicate that if applicants wish to challenge a decision of the Post Office in relation to interim payments they should, individually, engage in formal dispute resolution such as mediation or arbitration or start civil proceedings in which they seek damages for malicious prosecution against the Post Office thereby permitting of an application to the court for an interim payment.
157. In my view court proceedings should be very much the last resort for a variety of obvious reasons, not least the expense involved. I am also of the view that individually instigated mediations or arbitrations are to be avoided if possible. Although the Overturned Historic Convictions Scheme is not a remediation scheme properly so called there is no reason why a person or panel cannot be appointed, now, to deal with all issues relating to interim payments which are disputed, in much the same way as Lord Dyson will make neutral determinations relating to the levels of final compensation for non-pecuniary loss. Even if, as with Lord Dyson, the determination of that person or panel is not formally binding on the parties, the likelihood is that the determination would be accepted, if, as I believe would and certainly should be the case, the applicants for interim payments and the Post Office are acting in good faith. Further, such a person or panel could and, in my view, should have an important role to play in disputes relating to final compensation payments – as to which see paragraphs 162 and 163 below.
158. There is also a need, in my view, to consider again one aspect of the scope of the Overturned Historic Convictions Scheme. BEIS has made it clear that the Scheme applies not just to persons whose convictions have been quashed but also to those who were prosecuted but acquitted unless, of course, the acquitted persons were Claimants in the Group Litigation. The total number of persons who were prosecuted but acquitted and who were not Claimants in the Group Litigation is unknown. I am not aware of such persons having been paid an interim payment although, for all I know that might have changed since the hearing on 13 July.
159. I am aware of a number of persons who were prosecuted on the basis of alleged shortfalls which they alleged were falsely generated by Horizon, who were acquitted of the

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charges brought against them and who went on to become Claimants in the Group Litigation. Some of those persons gave evidence in the Human Impact hearings and their evidence described how they have suffered substantially notwithstanding their acquittals. This category of acquitted persons is deliberately excluded from the Overturned Historic Convictions Scheme.

160. The only basis for that exclusion was that this category of persons had not reserved their rights to bring claims for malicious prosecution in the Settlement Deed which brought to an end the Group Litigation. They had accepted a payment of compensation in full and final settlement of all their claims.

161. The position has now altered. Claimants in the Group Litigation are now going to receive further compensation payments and, indeed, they are going to receive interim payments. The difficulty is that the interim payments which acquitted Claimants in the Group Litigation will receive will be calculated in such a way that it is very likely that the interim payments which will be paid to acquitted Claimants in the Group Litigation will be very substantially less than the £100,000 paid over to persons whose convictions have been quashed. While I accept that the trauma of conviction and sentence was a very significant factor in the decision to make interim payments at the level of £100,000 to sub-postmasters whose convictions had been quashed those who were acquitted are also likely to have been awarded very significant sums if they had successfully pursued their claims for malicious prosecution. In my view, acquitted Claimants in the Group Litigation should either be brought into the Overturned Historic Convictions Scheme (and then paid an appropriate interim payment) or, if there are thought to be legal difficulties with that course of action, paid interim payments in the Group Litigation Scheme which are properly reflective of the fact that they suffered the trauma of prosecution. If the latter option is thought preferable, I do not consider that there would be a need to disrupt the agreed formula for making interim payments described in paragraph 113 above. Rather, funds should be made available over and above the £19.5m so that appropriate interim payments can be made to acquitted Claimants in the Group Litigation. Given the overall sum which will be necessary to compensate all the victims of Horizon fully and fairly the making of a small number of enhanced interim payments at this stage would, in my opinion, cause no appreciable detriment to the public purse but would be of considerable benefit to the persons receiving the payments.

162. The process of making final payments of compensation to persons whose convictions have been quashed is in its early stages. I repeat my view that there should be contingency planning now as to how disputes relating to final compensation should be resolved if claims are not resolved by the process of negotiation. For my part, I cannot detect any valid objection from the submissions I heard and received to a formal remediation scheme as an intermediate step between negotiation and formal dispute resolution or civil litigation. Even if it is felt that a formal remediation scheme is not the answer, I can see no valid objection to an arrangement whereby a panel with similar powers to the Independent Advisory Panel under HSS is constituted rather than the parties going straight from negotiation to formal mediation/arbitration and/or civil litigation. In its response to the recommendations of the BEIS Committee the Government suggested that Post Office was aware of 708 Horizon related convicted sub-postmasters. To date less than 20% of those persons have sought to have their convictions quashed. If, in the future, substantial numbers of convicted persons come forward is it really being suggested that the way forward is negotiation and then dispute resolution or court with no intermediate step as in HSS?

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163. If the views expressed in the paragraphs above are acted upon any panel which is brought into being should also be given the responsibility for resolving disputes about interim payments – see paragraph 157 above.
164. If appropriate contingency planning occurs so that appropriate methods of resolving disputes are in place, I see no need for persons whose convictions have been quashed to have the option to have their claims determined within the Group Litigation Scheme. No doubt if no such planning takes place and, in any event if the need arises, I can return to that issue in Phase 5.

The Group Litigation Scheme

165. This Scheme is in its infancy. That being so, my conclusions can be expressed succinctly.
166. It is anticipated that the Scheme for delivering compensation to eligible Claimants in the Group Litigation will emerge following proper discussions and negotiations between the Claimants' representatives and officials of BEIS. Those discussions and negotiations should be undertaken within weeks and should not stretch over many months. The announcement that further compensation would be paid to Claimants in the Group Litigation was made nearly 5 months ago.
167. I welcome the agreement between JFSA and BEIS relating to interim payments for eligible Claimants in the Group Litigation. Although this methodology may not please everyone it is a straightforward way of delivering interim payments to all eligible Claimants. However, I also consider that Claimants in the Group Litigation who were acquitted of Horizon related offences should receive interim payments which take account of those circumstances – see paragraph 161 above. In my view the issues surrounding interim payments for that small number of people (as far as I am aware) should be resolved as soon as is reasonably practicable.
168. I also welcome the commitment to make final compensation payments to the Claimants in the Group Litigation which is equivalent to that available to sub-postmasters who were not part of the Group Litigation and the willingness to make available funds to pay the reasonable fees of lawyers engaged to promote and advise upon the claims put forward.
169. There is obviously a pressing need to administer the Scheme with expedition once it is constituted. I assume that the Claimants in the Group Litigation received their share of the available fund for compensation shortly after the conclusion of the litigation i.e. approximately 30 months ago. Self-evidently, there is a clear need to finalise and pay further compensation to these people as soon as that can be done justly

Sir Wyn Williams

15 August 2022



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Howe Co

Rob Brightwell
 Department for Business, Energy & Industrial Strategy
 1 Victoria Street
 London SW1 0ET
BY EMAIL ONLY

Email: d.enright **GRO**

15 July 2022

Dear Mr Brightwell

Subpostmasters' Working Group

Thank you for speaking with me on 11 and 13 July 2022. Thank you also for your invitation, dated 9 July 2022, to meet to discuss the development of a compensation scheme(s) and the proper delivery of that scheme. I have already indicated that we are willing to meet on these matters on behalf of our 153 subpostmaster clients. There are two issues I wish to raise now in order to facilitate the discussion of those issues with a view to amicable and satisfactory resolution on our clients' behalf.

1. Funding

In order to engage with BEIS meaningfully, and to provide our input based on instructions, work on our clients' behalf needs to be funded. We propose that BEIS expand the parameters of current Section 40 funding, to include work undertaken in relation to work associated with the development of the compensation scheme(s).

You will be aware that, following representations by this Firm in July 2021, the Inquiry advised that:

"...the Chair wrote to the Minister, Paul Scully MP, and requested that he amend the determination previously issued by the Minister under s40 of the Inquiries Act 2005 so as to qualify – in certain defined cases – the requirement in r21(2)(a) of the Inquiry Rules 2006 that requires the Chair to have regard to the financial resources of an applicant when making an award for legal expenses. You will appreciate, of course, that the power to disregard the means of such an applicant was not a matter within the Chair's gift, given the terms of r21(2)(a) of the Inquiry Rules 2006."

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In the Chair's letter of 24 August 2021 the Inquiry was "...pleased to report that the Minister responded promptly, and positively, to the Chair's request. I can confirm that the Notice of Determination has been amended to insert the following qualification and conditions"

In simple terms, the Minister promptly issued a Determination amending the terms upon which the Inquiry could grant Section 40 funding for core participants. A copy of the Minister's amended Notice of Determination is enclosed for ease of reference.

Work claimable under the current Section 40 award is limited, by paragraph 9 of the Inquiry's Costs Protocol relating to legal representation at public expense to:

9. Where the Chair determines to make an award, it will normally be limited to a recognised legal representative having a role in relation to some or all of only the following matters:

- *considering and relaying initial instructions from those they have been instructed to represent ("the client");*
- *advising the client in relation to the making of a witness statement, and/or otherwise providing evidence to the Inquiry, in accordance with any request made by the Inquiry under Rule 9 of the Rules;*
- *considering the material contained in the Inquiry Bundle(s) (or any limited Bundle in the case of an individual witness who is not a Core Participant) so far as is necessary properly to represent the client's interests;*
- *advising the client in relation to any warning letter issued by the Chair under Rule 13 of the Rules;*
- *making an opening statement, where permitted;*
- *representing the client during their oral evidence (and the evidence of others, should that be necessary);*
- *making an application for permission to examine any witness giving oral evidence in the circumstances specified by the Chair;*
- *making final submissions on behalf of the client, where necessary.*

A strict interpretation of this guidance might (without further guidance/clarification from BEIS) result in claims for costs, associated with the matters raised in your email of 9 July 2022, being disallowed on assessment.

My firm cannot agree to undertake significant and complex work on behalf of our large client cohort unless there is provision to fund that work. BEIS has confirmed to the Inquiry that it has contracted with Freeths Solicitors to act as BEIS's agents in relation to interim compensation, and that BEIS has committed to paying the reasonable legal costs of GLO claimants in pursuing final compensation.

However, that further/final scheme or arrangement has not yet been developed. Interested parties (including core participants in the Inquiry and GLO claimants) have not been consulted on proposals. There is a gap in which funding is not available, and that gap must be bridged. This work is clearly in the best interests of our clients, but goes to the heart of the Inquiry's terms of reference and the matters which the Inquiry is bound to investigate and bound to resolve in its recommendations and report.

The potential for narrow or unduly prescriptive interpretations of the costs guidance may prohibit our clients from accessing the legal representation they require to participate fully and properly with government on compensation.

We propose that BEIS (as the sponsoring department and the ultimate paying party in relation to Section 40 funding claims) provides the Inquiry Chair with the necessary guidance/latitude to allow claims for work associated with the development of this scheme.

It may be that the Inquiry solicitors may wish us to differentiate between work claimed in respect of the Inquiry and work claimed in respect of our engagements with BEIS. This type of detail can be agreed between the Inquiry and ourselves.

This proposal represents an existing and efficient method to provide our clients with funding. It has the additional benefit (to BEIS) that Section 40 funding is set at rates well below our standard rates.

Please confirm that the modest expansion of section 40 funding can be agreed in relation to this important work, and if necessary backdated to 11 July. Both BEIS and our clients wish to make meaningful progress and quickly, but this cannot be done without funding being agreed.

2. Compensation Trusts

As you know from our meetings, a very large number of our GLO core participant clients continue to contact us with a range of queries regarding interim and final compensation (currently this work is being conducted pro bono, that cannot continue). We will be able to provide BEIS with the benefit of our clients' thinking and the solution to practical problems about delivery of compensation arrangements, if issues on funding can be resolved quickly.

However, a number of our GLO claimants have contacted us specifically with concerns about how they can protect their entitlement to state benefit payments if they receive interim and final compensation. One such client is Mark Kelly, who has authorised me to share details of his circumstances, and the correspondence which he has received on this issue.

Mr Kelly is a very vulnerable individual. You may recall that when he gave evidence to the Inquiry, he did so with the assistance of a registered support dog. Mr Kelly emailed Freeths on 6 July 2022 in the following terms:

Following FAQ can you setup a trust so client can get a trust Bank account opened for interim payment to be paid into. Thank you, Mark.

He received the following reply on 14 July 2022:

Hello Mark

Thank you for your email. We cannot advise you about setting up a trust as this is not within the scope of our retainer – but we will be sending interim payments to your nominated bank account of choice if that answers your question?

*Many thanks
Freeths LLP*

Obviously this did not answer Mr Kelly's question.

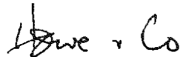
Mr Kelly and other of our core participant and GLO clients wish to set up a trust structure which would protect their entitlements to benefits after they receive compensation. The costs of establishing a trust of this nature is not high (approximately £720) but can be relatively significant for those in receipt of compensation, both in legal and other fees. Our clients consider that these are not costs that they should have to bear. We ask that BEIS agree to pay any charges or fees which our clients incur in the establishment of any trust structure.

Alternatively, we are aware that it is in government's gift to exempt certain payments, of monies from certain sources, from savings thresholds or other caps.

Given the unique situations our clients find themselves in, and the historic injustice visited upon them by a company wholly owned by BEIS, it is eminently possible and entirely justified for government to exempt those individuals from the rules surrounding the payment of benefits.

We look forward to receiving an early response.

Yours sincerely



David Enright JP
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Rob Brightwell
Department for Business, Energy & Industrial Strategy
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BY EMAIL ONLY

Email: d.enright@**GRO**

29 June 2022

Dear Mr Brightwell

SUBPOSTMASTER WORKING GROUP

Please bring this letter to the attention of the Minister, RT Hon Paul Scully MP.

We write further to your letter of 8 April 2022 and submissions by BEIS and others to Sir Wyn Williams on issues pertaining to compensation matters. In particular we seek clarity on what is described as the 'working group'. In particular, its makeup, methodology and how interested persons have and are to be consulted.

In our exchanges of correspondence, you will recall that we have raised serious and pressing issues for subpostmasters. Those matters include: immediate relief for subpostmasters; legal and legal funding costs associated with the Group Litigation; provision of legal and other expert advice; and BEIS's proposals for the development of a full and fair compensation scheme. In addition, we raised the extremely precarious financial situation which subpostmasters are facing, including bankruptcy.

Your letter of 8 April 2022 stated:

'We are currently working to develop arrangements for the further compensation for litigants in the Horizon Group Litigation Order case announced by the Minister on 22 March. Your letter raises the issues of provision for professional advice and treatment of bankrupt claimants. These points were already firmly on our agenda, but I am grateful for your thoughts on them, which we will take into account as our work develops.

I would be happy to have a further discussion with you once our work has progressed, if you would find that helpful.

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We note that since your letter of 8 April, neither we nor our clients have received a meaningful update.

Urgency of interim relief

We have repeatedly raised with you, on our clients' behalf, the pressing need for interim financial help in order to prevent further irreparable harm coming to our clients and their families. We have made clear in our correspondence both the widespread need for interim financial relief, as well as the extreme urgency of that need (for example in our letters of October and December 2021, and our letter of yesterday's date, as well as in our clients' submissions to the Chair regarding compensation). To reiterate, our clients are in dire need of financial help. It is vital that those that need that assistance receive it quickly. Our clients remain in financial dire straits; a great many of them remain in debt as a result of this scandal, and live under the constant threat of insolvency or repossession of their homes or other assets.

Working group

We would be grateful for a further meeting, as you suggest. Our clients have a direct interest in these matters, and on their behalf we would like to understand more about the working group, its makeup, methodology and how interested persons have been and will be consulted on any proposals which come from it.

As you are aware, the Chair of the Post Office Horizon IT Inquiry invited submissions on a number of matters including issued arising under the heading, "*Fair compensation for the Group Litigation Claimants*".

This firm, you will be aware, is not instructed by the JFSA. You are aware from our previous correspondence and from our submissions to the Chair that this firm acts for 153 SPM victim core participants, the overwhelming majority of whom were party to the Group Litigation. Our client group forms a very large body of individuals who have a direct interest in 'fair compensation for the Group Litigation Claimants', being as they are a large proportion of the claimants in that case. We have therefore made submissions to the Chair on the basis of our clients' instructions.

There is little, if any, tangible or meaningful information in the public domain, or contained in submissions of BEIS, regarding the questions raised by the Chair of the POHITI, which were:

C. Fair Compensation for the Group Litigation Claimants

- 9) The principles which will be applied to the calculation of further compensation payments;
- 10) The mechanism(s) by which further compensation payments will be calculated;
- 11) The provision (if any) which will be made for applicants to obtain independent legal advice in relation to their claims;

And

12) The procedure(s) which will be adopted to resolve disputes about the value of further compensation payments

BEIS made extremely brief submissions to the Inquiry on these important issues, forming just two paragraphs of your department's wider submissions:

38. As set out in the ministerial announcement on 22 March 2022 the Department's intention is that members of the group litigation will receive equivalent compensation to that available to those SPMs who were not part of the group litigation. At a meeting on 30 March 2022 between the Minister for Postal Affairs, the Justice for Subpostmasters Alliance ("JFSA") and Freeths LLP, it was agreed that there would be collaboration on developing compensation arrangements through weekly meetings of a working group comprising Departmental officials, JFSA representatives and solicitors from Freeths.

39. Those meetings began on 7 April 2022 and all four of the issues raised by the Chair in relation to compensation for the group litigation claimants are under discussion. The Minister will write soon to all members of the group litigation order to consult them informally on the shape of proposals emerging from the working group. Whilst no decisions have been made as at the date of these submissions being written, both sides share a strong desire to put in place arrangements and begin payments as soon as possible. The Department hopes to be able to provide a further update to the Inquiry at the hearing in July.

Those submissions provide no clarity for the Inquiry nor for our clients.

We accept your invitation to meet, so that we can discuss these matters with you. However, we would also ask you to set out in advance of the scheduled hearing on 6th July clarification of the following:

1. how the composition of the working group was determined;
2. how the Minister and the department determined that the membership of the group provided sufficient representation of interested persons;
3. the functions, constitution and practices of the working group;
4. how the Minister and the department has determined and/or will determine that *the shape of proposals emerging from the working group* fairly and properly reflected the needs, priorities and entitlements of the interested parties, to properly and safely ensure that interested persons *'will receive equivalent compensation to that available to those SPMs who were not part of the group litigation'*; and
5. the steps the Minister has taken in order to consult persons with a direct interest, consistent with the Cabinet Office Guidance on Consultation principles¹. Regarding consultation, BEIS' submissions state *"The Minister will write soon to all members of the group litigation order to consult them informally on the shape of proposals emerging from the working group"*. We consider that this proposed course of post hoc informal consultation on pre-established proposals, is mutually exclusive to the principles of proper and fair consultation.
6. what proposals does BEIS have to *'begin payments as soon as possible'*. We are at a loss to understand why BEIS has failed to answer the questions raised by the Chair in relation to

¹ <https://www.gov.uk/government/publications/consultation-principles-guidance>

compensation arrangements for the Group Litigation Order Subpostmasters. Many of our clients have understandably expressed frustration at BEIS' stance and lack of information. Our clients do not wish to hear BEIS proposals (such as they may be) for the first time at the hearing on 6 July. We would wish to discuss these matters with BEIS in advance of that hearing, so we can allay our clients' concerns and respond with the benefit of having taken instructions.

In order for the Inquiry to hold meaningful and productive hearings on 6 and 13 July there must be clarity, in advance, on all of these matters.

The core participant subpostmasters we represent before the Inquiry have a direct interest in these matters. As you will be aware, their complaints have been dealt with poorly and treated with disdain by Post Office Limited in the past. They are rightly concerned that BEIS' refusal to answer the questions posed by the Inquiry amounts to a continuation of a pattern of delays and obfuscation to which they have been subjected by POL, in some cases over decades.

It is therefore vital that our clients receive clarity on these issues in advance of the hearing on 6 July, so that they can properly give instructions to those who represent them. This will enable progress to be made at the hearings on 6 and 13 July.

We therefore accept your invitation to meet, and ask that this meeting occur prior to the hearing on 6 July.

We also ask that you provide us with a full written response to the matters set out above.

For the avoidance of doubt, this is an open letter.

Yours sincerely



David Enright JP
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Email: d.enright@**GRO**

27 June 2022

Dear Mr Brightwell

MUJAHID FAISAL AZIZ & SHAHLA AHMED – IMPENDING BANKRUPTCY

Further to your letter of 8 April addressing the issues we raised in relation to Litigant Subpostmasters. In your letter you advised that the issue of bankrupt claimants was already firmly on the agenda (of the GLO working group).

We seek an urgent update as to the provisions that are being made/have been made for claimants who have already declared bankruptcy and crucially also for those who are facing bankruptcy.

Our above named clients, and others we represent, are facing imminent bankruptcy as a result of debts accrued as a result of Horizon related matters and because of the delay in BEIS taking action in relation to the legal and legal funding costs of the Group Litigation and in compensating GLO Claimants adequately. As a result of delays on the part of BEIS our clients have no access to further compensation to meet the costs of the loans they have incurred as a direct consequence of the Horizon IT failures.

Our clients, Mujahid Faisal Aziz and Shahla Ahmed are facing bankruptcy imminently. They wrote to us on 16 June 2022 stating:

I am writing to you today in desperate circumstances as we are struggling financially. The people whom we borrowed money from while we were running the post office are asking for their money back. I and my mrs are in lot of stress as we don't know how to deal with this situation. We were

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under the impression that we would get something from the PO by april but that unfortunately didn't happen.

Is their any way we can apply for an interim payment at least as the bank is also chasing us. With the current inflation it is getting extremely difficult to pay rent and bills on time already, I have no clue how to deal with this situation. Please please please guide us as to what can we do. thank you

Our clients' situation is desperate. Without urgent action they will be forced into bankruptcy and will lose everything. This can be averted by immediate (we would say long overdue) action by BEIS. For example, you are aware that we have called for an immediate interim payment to be made on a number of occasions since October 2021.

Of course if no action is forthcoming and our clients are forced into bankruptcy, their claims against Post Office Ltd (and by extension BEIS) will naturally increase.

You will be aware that the Post Office Horizon IT Inquiry will be holding hearings on compensation issues including "Fair compensation for the Group Litigation Claimants". We will naturally be raising cases such as that of Mr Aziz and Mrs Ahmed in our submissions to the Chair.

Please confirm by return:

1. That agreement has been reached in relation to repaying the legal and legal funding costs the claimants incurred in Bates v Post Office Ltd, and when those monies will be made available;
2. That BEIS/POL has made arrangements to pay urgent interim compensation to Group Litigants who are in desperate financial circumstances, and how such interim compensation can be accessed;

Finally, the work of the working group is wholly opaque to those not at the negotiating table, including Mr Aziz and Mrs Ahmed. Your submissions to the Post Office Inquiry concluded in this way:

38. As set out in the ministerial announcement on 22 March 2022 the Department's intention is that members of the group litigation will receive equivalent compensation to that available to those SPMs who were not part of the group litigation. At a meeting on 30 March 2022 between the Minister for Postal Affairs, the Justice for Subpostmasters Alliance ("JFSA") and Freeths LLP, it was agreed that there would be collaboration on developing compensation arrangements through weekly meetings of a working group comprising Departmental officials, JFSA representatives and solicitors from Freeths.

39. Those meetings began on 7 April 2022 and all four of the issues raised by the Chair in relation to compensation for the group litigation claimants are under discussion. The Minister will write soon

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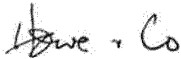
to all members of the group litigation order to consult them informally on the shape of proposals emerging from the working group. Whilst no decisions have been made as at the date of these submissions being written, both sides share a strong desire to put in place arrangements and begin payments as soon as possible. The Department hopes to be able to provide a further update to the Inquiry at the hearing in July.

Those submissions are not sufficient for Mr Aziz and Mrs Ahmed, as it is likely that they will be forced into bankruptcy before they are even *informally* consulted.

Our clients need assistance now, and not at some indeterminate future date.

Please advise us as to what the Minister for Postal Affairs will do for our clients now?

Yours sincerely



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By email to D.Enright@beis.gov.uk GRO

8 April 2022

Dear David

LITIGANT SUBPOSTMASTERS' COMPENSATION

Thank you for your letter of 28 March to Minister Scully. I have been asked to reply.

We are currently working to develop arrangements for the further compensation for litigants in the Horizon Group Litigation Order case announced by the Minister on 22 March. Your letter raises the issues of provision for professional advice and treatment of bankrupt claimants. These points were already firmly on our agenda, but I am grateful for your thoughts on them, which we will take into account as our work develops.

I would be happy to have a further discussion with you once our work has progressed, if you would find that helpful.

Regards

Rob Brightwell
Deputy Director, BEIS Response to Post Office Horizon Inquiry

D
E GRO

From: Watts, Alan <[REDACTED]@GRO>
Sent: 14 December 2021 10:13
To: David Enright <[REDACTED]@GRO>
Cc: HSF Post Office OC <[REDACTED]@GRO>
Subject: Overturned Horizon Convictions – Ministerial Written Statement

Dear David

Further to our earlier correspondence, as you may have seen, the Government has today announced funding for final settlements for individuals who have recently had their Post Office Horizon-related convictions overturned. For your reference, please find a copy of the Written Ministerial Statement at this link: [Written Ministerial Statement](#).

I will be in touch shortly with further details of proposed next steps and you are, of course, free to communicate this information to your clients. In the meantime, please do not hesitate to contact me if you have any questions.

Regards

Alan

Your health and safety and the health and safety of our people, clients and other visitors to our offices is important to us. As part of our response to COVID-19, we ask that you please read and act on the information at this [link](#) before attending any events or meetings at our offices or that we host elsewhere.

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Our ref
2066/9100/31043642
Your ref
DE/POHITI
Date
02 December 2021

By email

Dear Sirs

Further compensation for sub-postmasters: Letter dated 25 November 2021

Thank you for your letter dated 25 November.

The position of our client, Post Office Limited ("**POL**"), remains as set out in our letter of 19 November. POL is willing to consider the position of your clients and, as we confirmed in our letter of 19 November, it is in discussions with the Government in relation to your clients' position. However, POL's position is that it is reliant on Government funding for any further compensation arrangements and so it is ultimately in Government's hands in that respect.

Yours faithfully

Herbert Smith Freehills LLP

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By email to [partners](#) **GRO**

20 December 2021

Dear Mr Enright

Compensation and redress for sub-postmasters

Thank you for your letter of 6 December to Minister Scully.

You will doubtless have heard the Minister say during last week's Commons proceedings that

"On the 555 who pioneered this work, I have said in my conversations with them and in correspondence that the settlement was full and final. However, I recognise what they have done and that none of this would have been possible without their work, and I will continue to work with them to see what we can do."

To help us advise the Minister about this it would be very helpful to meet you. We would be particularly keen to understand more fully

- your analysis of the categories of harm experienced by claimants in the High Court litigation both before and after the settlement was reached (building on the content of Schedule 2 to the Settlement Deed in *Bates and others*; page 3 of your letter of 22 October to Nick Read; and the material in the JFSA complaint to the Ombudsman);
- any quantification which you have undertaken for each category, and the basis of your calculations;
- how much help has been delivered through the settlement payment agreed in the High Court case, net of funders' costs; and
- the extent of disparities between different sub-postmasters under each of the preceding bullets.

We would welcome anything on these topics which you wanted to send us in writing in advance of a meeting.

Yours sincerely

Rob Brightwell
Deputy Director, BEIS Response to Post Office Horizon Inquiry

Howe+Co

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Your ref: 2066/9100/31043642
Our ref: DE/POHITI

25 November 2021

Dear Sirs

Legal and legal funding costs, holistic compensation and interim compensation for subpostmasters

We refer to the correspondence between us, and in particular your latest letter dated 19 November 2021.

Our clients are extremely disappointed that your client continues to fail to acknowledge or note the perilous financial circumstances being faced by our clients right now. You have been made aware of in correspondence (not least in our letters of 22 October 2021 and 10 November 2021) and also from "*media reports*" of the dire position of our clients. You say that your client became aware of the "*continuing sense of injustice amongst the claimants in the Group Litigation*" from media reports (see your letter of 4 November 2021). Our clients do not accept this, as they are aware that the issue of the legal and legal funding costs has been raised with your client and its shareholder repeatedly in correspondence. In any event your client has been aware of the serious unfairness for quite some time.

Your letter of 19 November 2021 indicates that your client is reliant on government to fund existing compensation arrangements, and that "*it is therefore not within POL's gift to determine the issues that you raise in your letter of 10 November*".

As a preliminary matter, we note that POL funded its defence of the Group Litigation, and the settlement sums, through day-to-day funding or discretionary spending. POL was not reliant on government to fund the proceedings which gave rise to payments of compensation, and it is not clear to our clients why POL is or should be reliant on government for payments of compensation now.

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In circumstances where, as you say, it is not within POL's gift to determine the matters we have raised on our clients' behalf, the obvious and sensible way forward is precisely that which we set out in our letter of 10 November 2021; i.e. a meeting with your government shareholder (BEIS) and your client.

We repeat that request: please provide dates in the next fortnight on which individuals with sufficient authority to make decisions are available to meet with us on behalf of our clients.

In this respect, our clients have not asked POL to resolve these matters unilaterally, as you claim. We are requesting an urgent meeting with your client's shareholder and your client to seek commitments and to agree a methodology for the provision in respect of the legal and legal funding costs of the Claimants in the Group Litigation and in respect of urgent and immediate financial redress, which our clients require and deserve. Thus any resolution will be made in concert with ourselves, on behalf of our clients, and with your government shareholder. It is not a request for POL to act unilaterally.

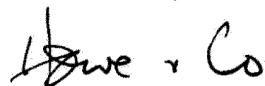
On the matter of so-called 'parallel correspondence', our clients reject the suggestion that they should cease raising these matters in correspondence. These matters are pressing and, thus far, your client and its shareholder have demonstrated no appropriate urgency. We are instructed to continue to raise this matter with your client until such time as our clients and other affected persons are adequately and fairly compensated, and POL ensures that the group litigation claimants are not, as you concede in your letter, "*unfairly disadvantaged*".

We reiterate the requests we have made in the past. We urge your client to cease prevarication, to turn its words into actions and to grasp and resolve this issue now.

Our clients cannot accept any further delay, which would exacerbate the harms which have been visited upon them by your client. If your client and its shareholder fail to act, more subpostmasters will be made insolvent, will lose their homes and/or will die without achieving the adequate financial redress to which they are entitled.

The responsibility lies with your client and its shareholder to ensure that this does not occur.

Yours faithfully

A handwritten signature in black ink that reads "Howe + Co". The signature is written in a cursive, slightly stylized font.

Howe + Co



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Strictly private and confidential

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Our ref
2066/9100/31043642
Your ref
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Date
19 November 2021

By email

Dear Sirs

Further compensation for sub-postmasters: Letter dated 10 November 2021

We refer to your letter dated 22 October, our response dated 4 November and your further letter dated 10 November.

You have requested to meet with us, Post Office Limited ("**POL**") and POL's government shareholder in order to discuss the provision of further "interim and holistic" compensation to postmasters, including the payment of your clients' legal and funding costs of the *Bates and Ors v Post Office Limited* group litigation (the "**Group Litigation**").

As you may be aware, POL is reliant on Government funding for the existing compensation arrangements, i.e. the Historical Shortfall Scheme (the "**HSS**") and the interim compensation arrangements in relation to the Overturned Historical Convictions ("**OHC**"). This will also be the case for any further financial redress to be provided to those affected. It is therefore not within POL's gift to determine the issues that you raise in your letter of 10 November. For its part, POL remains clear that the compensation provided must be allocated in a fair and consistent manner and that the claimants in the settled Group Litigation proceedings should not be unfairly disadvantaged. As we have previously indicated, POL has urged the Government to consider the point of which POL has been made aware that most of the Group Litigation settlement sum went to the claimants' legal advisers and litigation funders rather than to the claimants themselves, and POL will continue to do so.

We also note your remarks in your letter of 10 November in relation to the urgency of the need to redress the financial hardship faced by some of your clients. For the reasons set out above, this is not a matter that POL can resolve unilaterally.

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HERBERT
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Date
19 November 2021
Letter to
Howe + Co

We reiterate POL's concern to ensure that it does not risk pre-empting the work of the Inquiry in any way. Accordingly, we would not expect to engage in parallel correspondence on issues such as those raised in your letter of 10 November which impinge upon the subject matter of the Inquiry's investigations.

Yours faithfully

Herbert Smith Freehills LLP



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By email

Our Ref: DE/POHITI

Your Ref: 2066/31043642

10 November 2021

Dear Sirs

Legal and legal funding costs, holistic compensation and interim compensation for subpostmasters

Thank you for your letter of 4 November 2021.

Please provide a date, within the next 14 days, on which we can meet with you, your client and its government shareholder. The purpose of the meeting, as trailed at the preliminary hearing of the Public Inquiry on 8 November, will be to ascertain the progress that has been made on your client's *'discussions on the Group Litigation settlement figures'*. We expect those attending on behalf of your client and its shareholder to have concrete proposals for the immediate financial relief for subpostmasters whose lives have been so seriously affected by your client's conduct, including in relation to their approach to the claimants' legal and legal funding costs in the Group Litigation.

We observe that your letter of 4 November 2021 was marked *'Strictly private and confidential'*. As you are aware, our letter of 22 October 2021 was specifically written as an open letter that would be raised with the Chair of the Post Office Horizon IT Inquiry, as it was. Our open correspondence, where appropriate, will continue to be raised with the Chair of the Inquiry. There is no basis upon which you can claim that your letter, replying to open correspondence, can or must be treated as confidential.

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Your letter included the following statement:

Separately, whilst a settlement of £57.75 million was agreed in good faith between the parties in the Group Litigation, POL has been clear that it understands the continuing sense of injustice amongst the claimants in the Group Litigation since it came to light through media reports that around £46 million of the settlement sum was applied towards the claimants' litigation funders and legal advisors. POL has been in contact with the Government in this regard and will continue these discussions on the Group Litigation settlement figures.

As a preliminary matter, our clients do not have merely a 'sense' of injustice as you suggest. An injustice **has** been visited on them. This is acknowledged to an extent by the comments of Mr Read quoted in our letter of 22 October 2021. The judgments of the High Court in the Group Litigation and in the Court of Appeal in the criminal proceedings put this beyond doubt. Our clients are confident that the Inquiry will go much further in uncovering the true scale of the injustice visited upon our clients and other subpostmasters. Indeed you will be aware that Sir Wyn issued a direction to your client on 8 November 2021 seeking *a waiver of privilege in respect of legally privileged material relevant to the Terms of Reference*. This will undoubtedly include material relating to the Group Litigation.

Whilst our clients welcome the confirmation that discussions have taken place, as a departure from the stonewalling our clients have endured from government and your client until now, subpostmasters must be informed of the progress made in those discussions, the steps your client and government propose to take and when it is proposed to take those steps.

Urgency

Representatives of your client, and indeed perhaps your firm, were present at the Inquiry's Preliminary Hearing on 8 November 2021. You will have heard the submissions made by our lead counsel in relation to (*inter alia*) the exceptional financial distress our clients are experiencing, the inadequacy of redress received by them to date, and the overwhelming moral case for your client to provide for the legal and legal funding costs incurred in the Group Litigation. As disclosure is made during the course of the Post Office Inquiry, at the very least the moral case for payment of the legal and legal funding costs will be strengthened further.

You will also have heard that the subpostmasters for whom we act are in dire financial circumstances, and urgently require assistance including reimbursement for all of their legal and legal funding costs in the first instance, in order to protect themselves against financial catastrophe. You will also have seen the press coverage of our clients' submissions, for example in the Telegraph, the Financial Times, the Evening Standard, the Independent, the Guardian and the Law Gazette. The financial hardship about which Mr Stein QC spoke was made clear to you in our letter of 22 October 2021. That financial hardship is real, is immediate, is continuing, and it must be remedied.

In terms of the pressing financial distress our clients have been caused by the actions and/or inaction of your client, we highlight the case of Mr Lee Castleton, who was present in the Inquiry

on 8 November, and of whom we are sure your client is aware. Mr Castleton's case has been widely reported in the public domain.

Prior to commencing his role as a subpostmaster in July 2003, Mr Castleton was employed as a stockbroker. As your client is aware, Mr Castleton suffered severe problems and was accused of large shortfalls because of the bugs and faults with the Horizon System. As a result of alleged shortfalls, your client brought proceedings in Scarborough County Court in 2005, claiming £27,115.83 and interest. Your client did not attend the hearing, and judgment was made in Mr Castleton's favour.

Subsequently, in 2006, your client appealed those proceedings in the High Court. Mr Castleton could not afford legal representation, whilst your client instructed a large legal team. In January 2007, relying on evidence advanced by your client, the Court found against Mr Castleton. It awarded your client costs in the sum of £320,000. Mr Castleton was forced to petition for bankruptcy and was declared bankrupt, on 23 May 2007.

Your client will be aware that Mr Justice Fraser made a referral to the Director of Public Prosecutions in January 2019 raising concerns that perjured evidence may have been used in the Post Office's civil action against Mr Castleton. You will be aware that there is an ongoing police investigation into this matter.

Fourteen years on, Mr Castleton is still bankrupt as a result of your client's actions.

Our client informed us at the hearing on 8 November that four weeks from now, he will be forced to sell his home. Mr Castleton cannot wait for your client to engage in further, unnecessary, prolonged 'discussions'. He and others need immediate relief now. The first and most obvious step, in order for your client to demonstrate its stated intention to address the injustice visited on Mr Castleton and other group litigants, is for an immediate commitment from your client to pay the legal and legal funding costs to Mr Castleton and other claimants in the group litigation.

Resources

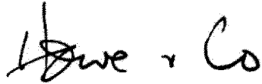
It is clear from your client's accounts to March 2021 that your client has made provision for significant monies to address the losses suffered by subpostmasters as a result of Horizon. Your client's 2019/2020 accounts show a provision of £153m in relation to the Historic Shortfall Scheme, and a recognition that the costs of that scheme could reach £300m. Your client's accounts additionally reflect a commitment from government to continuing financial support for the Historic Shortfall Scheme, and the assurances your client has received from government that adequate financial resources will be provided to ensure the scheme's operation and effectiveness.

Your client has acknowledged, in principle, the injustice done to our clients. Your client has made provision to repay the incurred losses of our clients. There is no reason for your client to deny or delay paying to subpostmasters the legal and legal funding costs of the Group Litigation, before moving onwards to implementing an interim compensation scheme and holistic compensation scheme, as referred to in our letter of 22 October 2021.

There are therefore no reasons why your client, at a minimum, should not undertake the steps requested above. We ask you to propose dates within the next 14 days when we can meet with you, your client and its shareholder to discuss the modalities of the payment of the legal and legal funding costs, and also to begin discussions in relation to interim and holistic compensation.

The repaying of the legal and legal funding costs is not and will not be an act of charity by your client. The fact remains that the level of legal costs and the terms of the settlement are a direct result of a deliberate and inappropriately aggressive litigation strategy, which has been criticised as lamentable by legal academics and which Fraser J criticised in extremely strong terms in his judgments. We are sure the disclosure within the Inquiry will expose the full extent of that strategy and who it was that promoted such an approach when very serious problems with Horizon were well known and documented.

Yours faithfully

A handwritten signature in black ink that reads "Howe + Co". The signature is written in a cursive, slightly stylized font.

David Enright JP
Howe + Co



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Strictly private and confidential

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For the attention of David Enright

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Our ref
2066/31043642
Your ref
DE/POHITI
Date
04 November 2021

By email

Dear Sir

Post Office Horizon IT Inquiry: Letter dated 22 October 2021

We refer to your letter to Mr Nick Read dated 22 October 2021 and our letter of acknowledgement dated 28 October 2021.

You have raised a number of queries about what you have described as “*an holistic reparations scheme for subpostmasters and other persons affected by the Horizon IT scandal*” and “*Horizon harm’s way payments*”, both of which you suggest are required to be established immediately, on the basis that compensation and other schemes established by Post Office Limited (“**POL**”) to date are wholly insufficient.

It is important to note at the outset that neither we nor POL would wish, in any way, to pre-judge the outcome of the ongoing Post Office Horizon IT Inquiry (the “**Inquiry**”). In these circumstances we have limited our response to your letter of 22 October 2021 to those points which POL consider should be addressed at this stage without pre-empting the Inquiry.

Providing fair compensation and resetting its relationship with all postmasters is a priority for POL, as part of its efforts to resolve past issues. As you are aware, following the full and final settlement of the *Bates and Ors v Post Office Limited* group litigation (the “**Group Litigation**”) POL set up a remediation scheme known as the ‘Historical Shortfall Scheme’ (the “**HSS**”) in order to resolve past issues with current and former postmasters who, in good faith, believe they may have been affected by shortfalls which relate to previous versions of Horizon (sometimes referred to as Legacy Horizon, Horizon Online or HNG-X). Following Government funding support being provided earlier this year, offers have been made and accepted in around a quarter of active and eligible applications to the HSS. While many applications are expected to be resolved much sooner, POL expects the overwhelming majority will have been provided with offers, following the independent advisory panel’s assessment, by the end of next year. The independent advisory panel comprises experts in law, retail and forensic accounting. Their role is to recommend a fair outcome for each eligible application to the HSS.

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HERBERT
SMITH
FREEHILLS

Date
04 November 2021
Letter to
Howe + Co

Further, since Government funding was announced in July 2021 and pending confirmation of final compensation, POL has also expedited interim payments of up to £100,000 to those whose convictions have been overturned where the reliability of Horizon data was essential to the prosecution (the "**OHC Interim Compensation arrangement**"). The vast majority of those eligible for such interim payments received the maximum amount.

Separately, whilst a settlement of £57.75 million was agreed in good faith between the parties in the Group Litigation, POL has been clear that it understands the continuing sense of injustice amongst the claimants in the Group Litigation since it came to light through media reports that around £46 million of the settlement sum was applied towards the claimants' litigation funders and legal advisors. POL has been in contact with the Government in this regard and will continue these discussions on the Group Litigation settlement figures.

POL notes that the issue of the extent to which (if at all) the creation and implementation of the HSS and the OHC Interim Compensation arrangement provided an adequate means for affected subpostmasters, managers and assistants to obtain redress for the wrongs which they have suffered falls within the scope of the provisional List of Issues published by the Inquiry and will therefore be the subject of investigation by the Inquiry. To the extent that the issues that you have raised fall outside the scope of the provisional List of Issues, it is a matter for the Chair of the Inquiry to determine whether it is appropriate to amend the Provisional List of Issues to cover any or all of these matters.

In these circumstances it would not be appropriate for POL or us to anticipate the Inquiry's work or comment on these matters at this stage, save to reiterate that POL fully supports the work of the Inquiry.

Yours faithfully

Herbert Smith Freehills LLP

Herbert Smith Freehills LLP



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Our ref
2066/31043642
Your ref
DE/POHITI
Date
28 October 2021

By email

Dear Sir

Post Office Horizon IT Inquiry: Letter dated 22 October 2021

This firm is acting for Post Office Limited ("POL") in relation to the Post Office Horizon IT Inquiry.

POL have passed your letter of 22 October to us. We will not be responding to you by your requested date of 29 October but will revert to you as soon as we are in a position to do so.

Yours faithfully

Herbert Smith Freehills LLP

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Nick Read – Chief Executive
 Post Office Limited
 Finsbury Dials
 20 Finsbury Street
 London EC2Y 9AQ
By email and recorded delivery

Our Ref: DE/POHITI

22 October 2021

Dear Mr Read

Holistic compensation and interim compensation for subpostmasters

As you will be aware, we act for 150 subpostmasters who are core participants in the Post Office Horizon IT Inquiry (**‘the Inquiry’**). We write to you directly as, according to the Inquiry Chair’s update, you have not retained solicitors. We write to ask for your confirmation that:

- (i) You have commenced work on an holistic reparations scheme for subpostmasters and other persons affected by the Horizon IT scandal;
- (ii) If you have not commenced that work, that Post Office Limited will start work immediately to establish a reparation scheme to adequately compensate subpostmasters; and
- (iii) Post Office Limited commits to providing a meaningful sum of interim compensation to all affected persons, within 28 days of application, in line with the scheme for interim payments for those criminally convicted, and who have had those convictions overturned.
- (iv) That any future holistic compensation scheme will not exclude claimants in *Bates and Others v Post Office Ltd*; and
- (v) That Post Office Limited (with the assistance of Government) will commit to returning to the Claimants in *Bates and Others v Post Office Ltd* the legal and funding costs they incurred in order to bring that claim.

On this last point, we remind you of your statement of 8 April 2021:

“...although the parties entered into a full and final settlement of the Group Litigation in good faith, it has only become apparent through various news reports since quite how

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much of the total appears to have been apportioned to the claimants' lawyers and funders. Should those reports be accurate, it is at least understandable that the claimants in those proceedings should continue to feel a sense of injustice, even in circumstances where they also agreed the settlement in good faith..."

We call on you to give force to that statement and to immediately take steps (from POL or Government funds) to return to the Claimants in Bates and Others v Post Office Ltd the legal and funding costs they incurred in order to bring that claim.

Background and POL actions in response to the Public Inquiry

Post Office Limited ('POL') caused our clients and other subpostmaster exceptional financial, reputational and personal health harms. The principle that POL is liable to compensate our clients and other subpostmasters is well established, as a result of the various schemes of compensation the POL has established or been forced to establish, as well as Ministerial statements, and from your own statements.

As you are aware, it remains the case that few if any subpostmasters have been properly or fairly compensated for the losses and harms suffered by them, inflicted by POL staff.

Our clients are confident that in his report(s), the Chair of the Inquiry, Sir Wyn Williams, will conclude:

- That, but for the efforts of our clients and other SPMs in taking the civil action against POL (Bates and others v Post Office Limited) exposed conduct that was '*appalling*' and led to the exposure of '*one of the biggest miscarriages of justice in our history*' [Hansard, Commons volume 693, column 372, 28 April 2021];
- that Post Office Limited is liable for the harms caused to subpostmasters;
- that those harms were avoidable or could have been significantly reduced by prompt and proper action by POL;
- that the conduct of POL in the course of this scandal exacerbated the losses and harms suffered by subpostmasters;
- that compensation and other schemes established by POL to date were wholly insufficient, and did not adequately compensate subpostmasters for the losses and harms suffered; and
- that the delay in addressing the disparity between harm and compensation has caused and continues to cause exceptional harm to the victims, and that that harm is continuing.

In the light of recent statements from you and from ministers, we assume that Post Office Limited has already commenced work on developing a national transparent and fair scheme to provide holistic and comprehensive compensation to subpostmasters and other affected persons. Please confirm whether this work has commenced, and, if so, provide us with the details of the individual(s) with oversight of that work so that we may engage with them on behalf of our clients.

If you have not commenced this work please confirm this by return. In circumstances where you have not yet commenced this obviously necessary work, we ask you to confirm that it will be commenced immediately. We await your proposals by return and the contact detail(s) of the individual(s) managing or overseeing this work.

Interim compensation – Horizon harm’s way payment

However, pending the implementation and creation of such a scheme, there is an urgent and pressing need for SPMs and other affected persons to receive interim compensation immediately to alleviate their current distressing circumstances. We call on you to immediately announce and implement a meaningful interim payment to SPMs and other affected persons.

The evidence demonstrates that the Horizon IT system was fundamentally flawed, and that it caused irreparable harm to thousands of subpostmasters, employed managers, and their families. Our clients, and other subpostmasters, have suffered exceptional financial losses, reputational harm and harm to their physical and mental health. Many live in reduced circumstances, many in exceptionally reduced circumstances, directly attributable to the deficiencies in Horizon and the conduct of Post Office Limited.

A large number of subpostmasters have been driven to the brink of insolvency. Many were, or are, insolvent. You will be aware that many subpostmasters died before their reputations could be vindicated, and before they could achieve restitution for the harms inflicted on them by Post Office Limited. By way of example, three subpostmasters were vindicated only posthumously in the Court of Appeal, as part of just one group of individuals who sought to have their convictions overturned (in *Hamilton & Ors*).

Unless Post Office Limited acts immediately, there can be no doubt that other subpostmasters will die during the course of this Inquiry, and before achieving the reputational vindication to which they are entitled, and before receiving the financial reparations which they deserve. It is also a fact that very many SMPs and other affect persons are currently living in greatly reduced and precarious circumstances as a result of POL’s actions and conduct.

You will also appreciated that very many other (if not all) subpostmasters, employed managers and other relevant persons experienced lesser, but still very serious consequences, as a result of the flawed Horizon system and POL’s actions in regard of it. This will include many affected persons using their funds on a regular basis to balance their account, where shortfalls arose as a result of the flawed system. They will have worked, for prolonged periods, under a cloud of concern, worry and fear that they might (like so many other SPMs of whom they would have been aware) be subject to audit, investigation, threats to their employment/contract, criminal action or civil suit. Those persons were also placed in harm’s way by POL’s flawed IT system; a flawed system they were required to operate. Causing SPMs to live under such a cloud of fear and threat was wrong and represents a serious harm that must be made good.

In the recently-established scheme for interim payments for those criminally convicted who have had their convictions overturned, you committed to providing a specific category of subpostmaster with compensation of up to £100,000 within 28 days of submitting a relatively short application form. We invite you therefore to immediately agree to establish an interim compensation scheme to provide meaningful initial compensation for subpostmasters, employed managers and others who were employed in the relevant period (as defined by the Inquiry, ‘*from the time of the first pilot of the Horizon IT System until 1st June 2021 (i.e. the date on which the Inquiry was established)*’).

Establishing such a scheme would not be novel or complex. There are multiple mediation and compensation schemes currently or recently in operation, related to the Windrush scandal, to child abuse in Northern Ireland, Scotland, and in the London Borough of Lambeth. All of those schemes are funded by government or government with contributions from other bodies who were responsible for harms suffered. Further, POL has currently and previously established a number of limited schemes including the mediation scheme, historic shortfall scheme and interim compensation scheme. As such, the process of developing a holistic mediation settlement scheme is not complex or unprecedented, and is a process POL has significant experience of. There is therefore no basis for Post Office Limited (along with government and other parties) to delay the creation and implementation of a similar scheme.

In respect of immediate aid for SPMs and other affected persons, a recent example is the Lambeth Children's Homes Redress Scheme, which includes harm's way payments (as well as full compensation) to eligible applicants who had been placed in 'harm's way'. Under that scheme the only criteria for a grant of (initial or harm's way) compensation is that an applicant:

- lived in fear of being abused, neglected or suffering cruelty while living in a Lambeth children's home
- experienced a negative impact on your childhood

By July 2021, 1,887 people have made applications to the Lambeth Scheme and more than £71.5 million has been paid out of the scheme. Applicants are also able to access independent, free and confidential counselling and specialist advice; as well as personal acknowledgements and apologies for harms suffered or being put in harm's way. The Lambeth "harm's way" scheme is not unique and is replicated in other current schemes.

The parallels between the victims in the Lambeth Scheme and the victims of the Post Office scandal are clear. Post Office Limited and BEIS implemented and imposed an IT system which was known to be, or should have been known to be, deeply flawed from its inception and implementation. As such, any SPM or other affected person who was required by POL to operate the Horizon IT System during the relevant period was exposed to risk, and placed in harm's way. Those harms obviously included the threat of prosecution, conviction, civil action, audit, investigation, allegation, intimidation, recoupment, reputational harm, etc.

In the circumstances, it is not open to the POL to maintain applicants for such interim compensation should have to evidence the actual harms suffered, unless for example they wish to seek fuller compensation, in which case naturally evidence would be required.

We therefore invite you to confirm that you will immediately commit to a scheme that includes a meaningful "harm's way" payment to SPMs and other affected person that will be payable within 28 days of application.

Such a step would go some way to ameliorating the pressing financial crisis that many SPMs are living under and to POL and Government beginning to make good on their statements of intention in relation to addressing the harms suffered by SPMs.

Post Office Horizon IT Inquiry

On our clients' instructions, we have and will continue to raise with the Inquiry the financial and other harms suffered by our clients, as a result of your IT system and your conduct in relation to its deficient operation. This will include the legal costs our clients had to incur in order to bring the civil action against POL, which exposed not only the flaws in the Horizon system, but also the use by and reliance on by POL of potentially perjured evidence in civil and criminal proceedings taken by POL against SPMs.

On instructions, we will be pressing the Inquiry for a full examination of the conduct, knowledge and actions taken by POL, BEIS (your owner), UKGI and your IT provider Fujitsu in relation to the development, implementation and operation of Horizon as well as the consequent actions taken by and roles played by POL and other parties in actions taken against our clients, other SPMs and other affected persons. Our clients have real concerns that this Inquiry may expose conduct, actions or lack of actions (at all levels in POL and other bodies/organisations) that may be even more serious than the matters referred to the Director of Public Prosecutions by Fraser J.

Our clients have also instructed us to press the Inquiry to fully examine and expose the paucity of response from Post Office Limited to the harms for which it is responsible.

You, Post Office Limited, and Rt Hon Paul Scully, Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), all have at various times acknowledged the harms caused to subpostmasters. You and they have made statements as to your commitment to righting the wrongs inflicted on subpostmasters.

In your paper 'Check Against Delivery of 8 April 2021 – Post Office: Future, Past and Present', you stated:

*'Our first test is to resolve the past once and for all. **We must ensure that all Postmasters affected by this scandal are compensated and compensated quickly.** Whether Post Office's treatment of its postmasters in relation to Horizon amounts to a large-scale miscarriage of justice is for the Court to determine, but I am clear where I stand. Our organisation's historic handling of this matter fell short. I am in no doubt as to the human cost of this. I have heard it in the testimony of those during civil and criminal proceedings, and in the submissions to Sir Wyn's inquiry. We have to accept that it is the Post Office that caused what for some has been very deep pain. Absent the possibility of turning the clock back, compensation appropriate to that pain must follow. And we need to face this reality. Post Office cannot deliver the future our Postmasters and customers deserve until we have come to a comprehensive and swift resolution that recognises the scale of our shortcomings.'* [our emphasis]

Thus far, those statements and commitments have been largely hollow. Our clients call on you to turn those words into urgent actions. We call on you to give force to your statement above and, consistent with that statement and this letter, to 'compensate and compensate quickly subpostmasters affected by this scandal.

This must include, using your own words, ‘all’ subpostmasters affected by this scandal. It must include those involved in the group litigation who your previous schemes, for example your Historic Shortfall Scheme, explicitly excluded.

As a result of POL’s aggressive stance and actions in the group litigation, although the claimants were successful, they achieved only a fraction of the compensation to which they were due. In your statement of 8 April 2021, you further stated:

“Similarly, and although the parties entered into a full and final settlement of the Group Litigation in good faith, it has only become apparent through various news reports since quite how much of the total appears to have been apportioned to the claimants’ lawyers and funders. Should those reports be accurate, it is at least understandable that the claimants in those proceedings should continue to feel a sense of injustice, even in circumstances where they also agreed the settlement in good faith. What if, anything, can be done on these two issues is not for the Post Office to determine or even within its gift”

This is an explicit recognition of the continuing injustice which the claimants in the civil proceedings are suffering. You will recognise that, but for their efforts and commitment, little if any of what we now know would have been uncovered.

You state that something must be done, and we call on you to do it. You suggest that it is not in the POL’s gift. That is not correct. Whilst, as a party to the proceedings you are capable of varying or revisiting the settlement with the agreement of the other parties; it would be more efficient and appropriate for you to make an ex gratia payment.

It is for to decide you whether that funding comes from POL’s funds, or from government, as you have done in the interim payment scheme. Whatever methodology you choose, this step is long overdue and must be taken now.

Conclusion

You will be aware that the Prime Minister, Boris Johnson, has rightly described the treatment and conviction of subpostmasters as ‘appalling’ and ‘one of the biggest miscarriages of justice in our history’. It is. We therefore call on you to confirm immediately that:

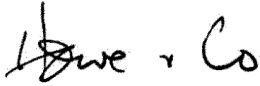
- (i) You have commenced work on an holistic reparations scheme for subpostmasters and other persons affected by the Horizon IT scandal;
- (ii) If you have not commenced that work, that Post Office Limited will start work immediately to establish a reparation scheme to adequately compensate subpostmasters; and
- (iii) Post Office Limited commits to providing a meaningful sum of interim compensation to all affected persons, within 28 days of application, in line with the scheme for interim payments for those criminally convicted, and who have had those convictions overturned.
- (iv) That any future holistic compensation scheme will not exclude claimants in Bates and Others v Post Office Ltd; and

- (v) That POL (with the assistance of Government) will commit to returning to the Claimants in Bates and Others v Post Office Ltd the legal and funding costs they incurred in order to bring that claim.

For the avoidance of doubt, this is an open letter and we will be raising it and the issues raised in this letter with the Chair of the Post Office Horizon IT Inquiry at the Preliminary Hearing on 8 November 2021 and throughout the life of the Inquiry.

We ask you to provide us with a substantive and positive response to this correspondence and these requests within 7 days. Please contact our David Enright by email at GRO.

Yours sincerely

A handwritten signature in black ink that reads "Howe + Co". The signature is written in a cursive, slightly stylized font.

David Enright JP
Howe + Co