

Post Office Horizon IT Inquiry

**On behalf of Core Participants
Tracy Felstead, Seema Misra, and Janet Skinner**

Submissions on Compensation

Introduction

1. These submissions are in response to the invitation dated 10 May 2022 and following our appointment by way of a s40 Award made by way of a letter dated 19 May. The Inquiry has kindly granted us an extension of time for these submissions to 22 June.
2. We address paragraphs 5 to 8 of the Invitation, because Mses. Felstead, Misra and Skinner are all seeking final compensation following quashed convictions (Category B). Each was convicted and served terms of imprisonment. They were all parties to the group litigation and therefore the terms of the settlement, which was (as will be submitted) wholly inadequate owing to the manner in which the Post Office conducted that litigation, the nature of the Deed of Settlement drafted on its behalf, and because the claimants' third-party legal funding arrangements, resulted in massively inflated costs as a direct consequence of the 'scorched earth' strategy the Post Office aggressively pursued in that litigation. Whilst Mses. Felstead, Misra and Skinner have, in consequence, each received an interim payment following application to Herbert Smith Freehills (HSF), instructed by the Post Office, it is our submission on their behalf that the current compensation process is shrouded in secrecy, and needs to be brought out into the light of public scrutiny.
3. In short, we submit that:
 - a. Compensation should be calculated and awarded according to fair and transparent principles, and different categories of claimant should be awarded

sums based on those principles rather than being restricted to specific and limited forms of legal redress, which arise from no more than (in these circumstances) quirks of fate consequent upon the history of the litigation so far. These principles should reflect the aggravated and exemplary damages that should be awarded to these claimants as a consequence of the litigation, as well as direct and consequential losses;

- b. These principles should be articulated, and applied transparently by BEIS and HSF, on the basis of publicised principles, criteria and process. The Post Office cannot become the final arbiter of individual claims;
- c. There should be provision for claimants to seek legal advice, and adequate funding to obtain appropriately qualified lawyers, together with reports from medical professionals and forensic accountants (if need be) to enable them to have some prospect of justice when pitted against the Global Law Firm retained by the Post Office. The proceedings, thus far, have demonstrated that the Post Office has greater firepower and ingenuity at its disposal, resulting in a continuing injustice.

The principles being applied to the calculation of final compensation

- 4. The principles that will be applied to the calculation of final compensation for those in Category B remain unsettled and unclear¹. An unacceptable flaw in the Settlement Deed confines their claims to malicious prosecution, which excludes certain (obviously causal) losses as being too remote. If the Settlement Deed is not amended the CPs fear that the Post Office shall exploit it (based upon its aggressive track record in previous civil and criminal litigation) to frustrate and prevent the award of fair compensation to those who fall into this group of victims. What is now required, it is submitted, is an almost extra-judicial approach so that the excesses of the GLO cost claims and the

¹ The submissions on behalf of the Department for Business, Energy and Industrial Strategy do not address the heads of claim or the approach to be taken in any, or any convincing detail. We endorse the submissions made at paragraphs 51-53 by Howe and Co. There is an urgent need for a transparent process.

aggressive tactics deployed by the Post Office, which contributed to them, cannot be repeated.

5. This group, as the Chair already knows, has experienced the full gamut of wrongs inflicted because of these infamous Post Office prosecutions:
 - a. First, the stigma of false suspicion, and scapegoating, often involving suspension from work;
 - b. Then the ordeal of the unfair investigation, and unjust trial which culminated in the torment of conviction – exacerbated by the torment of wholly unjustified confiscation and compensation proceedings that bankrupted some, and left others homeless;
 - c. The unforgettable trauma of wrongful imprisonment; and
 - d. The profound anxiety, even despair, attending their repeated attempts (decades long in some cases) to clear their names – aggravated by failures in the appellate process, the wider Criminal Justice System, and the Judiciary, to defend and uphold the Rule of Law. The Courts, which were enjoined to prevent the enormities they endured, instead became complicit in the injustices inflicted upon them.

6. The profound suffering to which Category B individuals were subjected cannot be overstated. It is not hyperbole to acknowledge that these worthy individuals were engulfed and overwhelmed by a terrifying, pitiless system, which was supposed to uphold their rights, but instead suppressed, and destroyed them. The truth they told, to their legal representatives and for some on oath before the Court, was dismissed, even derided. Their predicament, without exaggeration, was Orwellian or Kafkaesque and so their compensation should be calculated with the aim of achieving the fullest recognition of the disaster that befell them. In our submission, the wholesale denial of justice they suffered in the past should now be met by proper, practical, and purposive compensation awards in the present. They deserve a just attempt to make amends not fettered by technicalities or limited by anomalies arising from the history of the litigation so far.

7. The principles for calculation of their awards should therefore acknowledge the following Heads of damage:

- a. Wrongful investigation
 - b. Wrongful prosecution
 - c. Wrongful conviction
 - d. Wrongful imprisonment
 - e. The conduct of the Post Office in the civil and criminal litigation
 - f. All direct and consequential losses, plus interest
8. Heads a. to e. should be considered with reference to the awards made in malicious prosecution and false imprisonment claims, taking into consideration aggravated and exemplary damages. Each of Mses. Felstead, Misra and Skinner have suffered significant damage to their mental and physical health, and to their family and personal lives, which the Inquiry has on record from their moving testimony during the Human Impact hearings. Moreover, final compensation awards do not need to and should not await the findings of this Inquiry to reflect aggravated and exemplary damages. The ruling in *Hamilton and others* has already found that the Post Office's failures of investigation and disclosure were "so egregious as to make the prosecution of any of the 'Horizon cases' an affront to the conscience of the court" (para 137). The rarity of any appeal to the Court of Appeal succeeding on grounds of abuse of process was made rarer still by this sweeping finding on 'Ground 2'. There can be no doubt that if Mses. Felstead, Misra and Skinner were to pursue claims for malicious prosecution, this finding would justify substantial awards for aggravated and exemplary damages.
9. We also agree with Mr Marshall's submissions that the inordinate delay in acknowledging wrongs must be reflected in compensation. This should be reflected as a discrete weighting under Head e. above, in addition to the inevitable increase to claims for direct and consequential loss under Head f. The reason for this was given by Lord Rodgers, as cited by Mr Marshall in his para 47: "when the authorities delay unreasonably, months or years of the defendant's life are blighted. He [she] cannot have them again; they are gone forever". While there was no finding with respect to delay in *Hamilton and others*, and final compensation awards should not await the Inquiry's findings on whether the delay was due to accident or design on the part of the Post Office, it is already absolutely apparent that the Post Office has caused significant delay "unreasonably". On any view, when the Post Office decided to stop prosecuting SPMs

at the end of 2013, a reasonable prosecuting authority would have ensured that any wrongful convictions secured prior to that were brought to light and swiftly redressed, by self-reporting to the DPP, the CCRC, and notifying those they had prosecuted on Horizon based evidence. The linked decisions to fight the group litigation with such tenacity, and then aggressively resist 'Ground 2' before the Court of Appeal were unjustified and exemplify the unreasonable attitude of the Post Office since at least 2013. That the Court of Appeal upheld 'Ground 2' was because of the unbending courage of Ms. Felstead, Misra and Skinner, who refused to take an easier and softer path, because they conceived it to be imperative that the iniquity (which nearly destroyed them) must be exposed.

10. Turning to consequential losses under Head f., unified principles should be applied to those in Category B alongside all other claimants, irrespective of whether they were convicted, and irrespective of whether they were a group litigant. We agree with Mr Marshall's submissions at his paras 23, 26 and 73, regarding the Government's acknowledgement that "further" compensation should be awarded to group litigants who were *not* convicted, and his argument that this should extend to those who *were* convicted. The absurd alternative is that Ms. Felstead, Misra and Skinner, who suffered the misfortune to be prosecuted as well as being convicted and imprisoned, would be in a less advantageous position than fellow group litigants who were not convicted. That would be particularly unjust, given that future claimants with overturned convictions who come after them will not have their compensation claims limited to malicious prosecution alone.
11. It would be a grotesque paradox, in our submission, if those who demonstrated the courage to participate in the group litigation, which made those subsequent claims possible for others, were themselves to be denied them. We contend that because their actions have, in essence, conferred these benefits on others, they, too, must receive them, and be treated equally.
12. We note and endorse Mr Marshall's submissions that calculating direct and consequential loss should be carried out with reference to claims in fraud. It is increasingly apparent that the senior management of the Post Office (especially those deputed to deal with risk management and insurance) must have been aware of serious wrongdoing, or at least significant concerns with the prosecutions that had been mounted by 2012. The obvious course would have been to have self-reported to

Government, and the CCRC. Instead, a ‘rear-guard’ action of extraordinary aggression, coupled with secrecy, and a lack of candour, persisted until very nearly 2021.

13. We would add that the principles to be applied for calculating damages should be concerned with both substance, and evidence/process. Lessons should be learned from the Cranston Review of the compensation scheme set up by Lloyds Banking Group following the HBOS Reading scandal². He found that the Bank acknowledged appropriate legal principles for providing compensation for direct and consequential losses, but the evidential standards required for proving loss were too high, particularly in the context of a process that was intended to be a quick and simple alternative to litigation in the context of admitted wrongdoing.
14. Direct and consequential losses should, of course, include sums received by the Post Office by way of compensation or confiscation post-conviction. Astonishingly, these amounts have still not been disgorged more than a year after convictions were quashed in *Hamilton and others*. There can be no justification for retaining these sums, and they should be returned with compound interest, or, in the case of funds received from confiscating and selling property, with reference to today’s valuations.

The mechanism by which final compensation claims are being calculated

15. We understand that HSF has administered the payment of interim awards, and they will continue to act for the Post Office in negotiating final compensation payments. We note that HSF negotiated the Settlement Deed, and acted with uncompromising determination on their client’s instructions, such that the Deed they fashioned on behalf of their client has left the group litigants inadequately compensated.
16. To give but one example, Ms Felstead received £17,000, and she has yet to have returned to her the £11,500 which was paid to the Post Office as “c ompensation” after her conviction in 2002. She has therefore received £5,500 net, so far, because of the hard-line commercial approach HSF adopted on behalf of the Post Office at the time of the settlement. The £17,000 sum itself is wholly inadequate. This paltry cannot begin to represent an acknowledgement of Ms Felstead’s ordeal by way of proper financial reparation. This wrongful accusation has marred her life - everything that has been inflicted upon her by the Post Office from the age of 19 to the present day as she

² https://www.cranstonreview.com/Content/Documents/The%20Cranston%20Review_v2.pdf

approaches 40 – has had a catastrophic effect on her mental health, self-esteem, and employability. Her quality of life and long-term prospects were devastated by the false accusation that resulted in her wrongful conviction. It will require the safeguard of transparency to reassure claimants that HSF have changed their approach to compensation since December 2019 when the settlement was negotiated. The example of the £17,000 arrived at in Ms Felstead’s case reveals a depth of unfeeling, and lack of understanding that still has the capacity to shock.³

17. Were it not for the delay that would inevitably ensue, we would be advocating in the strongest terms for the removal of HSF and the appointment of a suitable independent third party who would be responsible for the vital task of awarding and administering claims. However, such a course (desirable as it is) would bring with it further delay, disrupting a process already dogged by the Post Office’s inordinate obstruction over a number of years. We submit, therefore, that the appropriate course is to allow HSF to continue acting for the Post Office in this matter, but to stipulate that such acquiescence is dependent upon the publication of clear principles, or criteria that shall govern the process of compensation, and the redress of these grave wrongs. This is the basic remedy to ensure fairness, and to bring transparency to this process. BEIS, the Post Office and HSF must, we submit, agree and publish the principles and criteria upon which claims can be made.

The provision being made for applicants to obtain independent legal advice

18. There is no special provision being made for applicants to seek legal advice. This means that there is also no special provision being made for seeking and obtaining the appointment of medical professionals and forensic accountants to assist in the calculation of claims. Absent proper procedures for ensuring that claimants are enabled put their claims forward effectively, it will be hard (if not impossible) to gain trust and ensure fairness. There can be no equality of arms, and the mischief’s identified by Howe and Co. in its submissions at paragraph 14 [especially 14(5)] are extremely troubling. The whole process would be discredited, as it would promise redress, but in reality, be powerless to deliver it.

³ On behalf of Post Office, it is submitted, at paragraph 2, that, “At the outset, Post Office wishes to reiterate its commitment to righting the wrongs of the past.” This rings hollow when set against the known facts.

The procedures which are being adopted to resolve disputes about the value of final compensation payments

19. As we understand it, those currently seeking final compensation awards will be free to pursue ADR, arbitration or court claims, if claimants are not content with the compensation offered by HSF. In our submission, those avenues of further recourse must not be curtailed.

Conclusion

20. It is submitted that a transparent process, operated by BEIS working with HSF, is required. Compensation will be underwritten by public funds, even if they are channelled through the Post Office, and therefore public scrutiny should follow. Sunlight is the best disinfectant, and throwing sunlight on the compensation process is the only way we can be sure that final compensation payments will be full and fair.
21. These prosecutions were an affront to the Criminal Justice Process because of suppression of evidence, misfeasance, and material non-disclosure in hundreds of criminal trials. The scope and scale of this wrongdoing appears to be almost without precedent and may even amount to active criminality perpetrated by and on behalf of the prosecution, i.e., the prosecutor. The Post Office should play no further part in this process.
22. In the civil litigation [GLO] the Post Office's deliberate strategy of obstruction, conducted with the utmost aggression on its behalf (which was roundly criticised by the High Court) largely contributed to the £46,000,000 that needlessly haemorrhaged away in legal costs because of its conduct. It is hard to see this as anything other than a cynical ploy, deliberately exploiting its massive resources to its own advantage, which in turn historically echoed the 'juggernaut' role it adopted, that crushed all opposition in criminal proceedings.
23. To let the Post Office remain in charge of disclosure and discovery in such circumstances, allowing it to set a premium on contemporaneous documents in any negotiations concerning compensation (making the claimants' task more onerous) would be to countenance the errors, abuses, and derelictions of the past. The process must be manifestly independent and robust, not limited to recognised causes of action,

nor the vagaries of litigation. The Post Office cannot be relied upon to act fairly, and transparently, and ought to have recognised this long before now. It played hazard with the administration of justice, both Criminal and Civil over many years, inflicting incalculable pain, suffering and loss on the loyal and blameless victims of its arrogance.

24. Quite distinct from the litany of loss, the many lives ruined or shortened by its wrongdoing, the societal damage it has inflicted is no less immense, never forgetting the devastating personal tragedies for which it is responsible, for it has traduced the Criminal Justice System, and abused its position of power and resources in both jurisdictions. It has undermined the administration of Justice, shaken the public's confidence in it, and even brought it into disrepute.
25. For all the above, except insofar as satisfying appropriate financial awards by way of redress, it has forfeited any further role in this process. Those representing it, HSF, only remain, and would otherwise be objected to, because there has already been intolerable delay in achieving justice for the Post Office's victims, and time now is of the essence.

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