



Horizon Shortfall Scheme

Terms of Reference of the Horizon Shortfall Scheme Independent Advisory Panel

The Horizon Shortfall Scheme ("the Scheme") has been constituted to address past issues regarding Post Office's point-of-sale accounting system, Horizon. The Horizon Shortfall Scheme Independent Advisory Panel ("the Panel") is a panel set up by Post Office to assess eligible claims.

A. Overriding Objective

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.

B. Definitions

4. The following definitions shall have the following meanings:
 - a. Consequential Loss means financial or non-financial loss that is not a Shortfall Loss.
 - b. Eligible Claim means an application that has been determined to be eligible for the Scheme in line with the Scheme's eligibility criteria and is identified to the postmaster as such in an eligibility letter.
 - c. Horizon Shortfall means a shortfall in stock or cash at a postmaster's branch compared with the amount of stock or cash indicated on Horizon for that branch, where the shortfall may have been caused by previous versions of Horizon or a breach of duty related to such a shortfall on the part of Post Office.
 - d. Shortfall Loss means the amount of a Horizon Shortfall that the postmaster has repaid or is regarded by Post Office as still owing.
 - e. Common Issues Judgment means the judgment handed down by Fraser J in *Bates v Post Office Ltd* (No.3: Common Issues) [2019] EWHC 606 (QB).
 - f. Horizon Issues Judgment means the judgment handed down by Fraser J in *Bates v Post Office Ltd* (No.6: Horizon Issues) [2019] EWHC 3408 (QB).

C. Composition and Governance

Membership

5. The Panel's members shall comprise representatives who are:
 - i. legal specialists;
 - ii. forensic accounting specialists; and
 - iii. retail specialists.
6. The Panel now consists of eight legal specialists (Michael Davie KC, Lord Edward Garnier KC, Lynne McCafferty KC, James Cross KC, Alex Charlton KC, Andrew Neish KC, Jessica Stephens KC and Benjamin Pilling KC); six forensic accounting specialists (Susan Blower, Kevin Haywood Crouch, Andy Cottle, Andrew Maclay, William Bowyer and Nishad Morjaria) and two retail experts (Sunder Sandher and Chris Mitchener). In addition, a legal specialist from 4 Pump Court and a forensic accounting specialist may be appointed as delegates should relevant members of the Panel be unable to attend Panel meetings.

Quorum & Voting

7. A Panel meeting will only be quorate when three Panel members comprising one legal specialist; one forensic accounting specialist; and one retail specialist are present (in person or remotely). For clarity this may include a delegate Panel member (as referenced at paragraph 8 below). For the purposes of this document, references to the "Panel" should be construed accordingly. If more than three Panel members are present, the three sitting Panel members that comprise the Panel for the purposes of that meeting will be declared and recorded at the outset of the meeting.

8. Each sitting Panel member shall have one vote each. Decisions as to the recommended outcome will be taken by a majority of two.
9. Post Office may appoint replacement Panel members with a similar level of qualifications and experience to sit on the Panel as a delegate Panel member.

Meetings

10. Panel meetings will be convened by the Panel members. Herbert Smith Freehills LLP ("HSF") shall have responsibility for the administrative arrangements for convening Panel meetings, including sending meeting invitations and providing meeting room facilities as required.
11. In respect of each Eligible Claim for consideration by the Panel, the Panel will be provided with the supporting materials necessary to consider the claim and determine a recommended outcome, a minimum of five working days prior to the Panel meeting at which it is to be considered.
12. Notice of each Panel meeting will be given to all those entitled to attend at least five working days before the meeting.
13. Meetings may be held in person or by telephone or other electronic means, so long as all participants can contribute to the meeting simultaneously.
14. The Panel will aim to convene on a weekly basis following the commencement of the Scheme, with ad hoc or additional standing meetings to take place as required and subject to the agreement of the Panel members.
15. One or more case assessors will attend each Panel meeting to present on the Eligible Claim they have reviewed, answer any questions from the Panel and share an initial recommendation. One or more representatives from HSF's London office shall, if the Panel so requests, attend particular Panel meetings to answer any more general questions the Panel may have about the Scheme.
16. In reviewing the claim, the Panel will follow the Assessment of Claims process as set out at paragraphs 23 to 27 below.
17. The case assessor will record for their respective claim:
 - a. the Panel's recommended outcome;
 - b. the brief reasons behind the recommendation as decided by the Panel at the meeting; and
 - c. a proposed draft letter to the applicant communicating the Panel's recommended outcome, the reasons for that outcome and the key documentation on which it was based, and provide this to the Panel for review within five working days of the meeting.
18. If the Panel is satisfied that the recommended outcome and associated reasons and documentation have been correctly recorded, the Panel will provide this recommended outcome and associated reasons to Post Office.
19. Upon receipt of the recommended outcome from the Panel, Post Office, acting through the Horizon Shortfall Scheme Approvals Committee, will review the Panel's recommendation and accompanying reasons, and communicate the outcome of the application to the applicant who can either accept it or reject it.
20. Postmasters who would like to take independent legal advice to enable them to consider the terms of the offers made to them will have a period of four weeks to do so. Post Office will contribute a sum of £1,200 inclusive of VAT towards the cost of such independent advice save that, in cases where Post Office offers to pay the applicant's claim in full (or largely in full), Post Office will contribute a sum of £400 inclusive of VAT towards such independent advice.
21. If a postmaster rejects the offer made to him or her, they have the option to trigger the Dispute Resolution Process.
22. Postmasters who trigger the Dispute Resolution Process will be asked to write to the Scheme setting out why they consider the decision reached in their case was wrong.
23. Post Office will engage with those representations in good faith following which it will either (a) affirm the original offer made; (b) make an alternative offer; or (c) refer the matter back to the Panel for a further decision, to reconsider the decision in light of the further representations made.

D. Assessment of Claims

24. The Panel will assess claims that:
 - a. are Eligible Claims;
 - b. have been investigated through the Scheme by Post Office; and
 - c. are presented to the Panel by a case assessor from HSF with an initial recommendation or recommended options based on legal principles alone.
25. The Panel will apply the principles and standards set out in Section E below when assessing Eligible Claims.
26. The Panel will independently assess and discuss each Eligible Claim presented to them and, at the Panel meeting, recommend an outcome to be given to Post Office. The Panel is not obliged to reach consensus on each claim; in case of disagreement, the majority view will prevail.

27. If the Panel considers that an Eligible Claim requires further investigation in order to allow the Panel to recommend an outcome, the Panel can refer the claim back to the investigation stage to undergo further investigation by Post Office with the assistance of the relevant case assessor. Where this is the case, the Panel will defer making a recommendation until such time as the case assessor has undertaken the further work and brought the Eligible Claim back to a later Panel meeting for assessment. Where this occurs, HSF and the Panel will use best endeavours for the same three members of the Panel to review the Eligible Claim when it returns.
28. If the Panel considers that it requires expert assistance in order to make a recommendation, the Panel may recommend to Post Office that such expert assistance be obtained at Post Office's cost. The Panel shall nominate three potential experts for consideration, of which the postmaster shall pick one.

E. Basis of Assessment

General Principles

29. The case assessor will compile the information gathered as a result of the investigation process, present it in a user-friendly format (accompanied with the relevant underlying documents) and provide an initial assessment and recommendation (or recommended options) based on legal principles (including the findings in the Common Issues Judgment and the Horizon Issues Judgment).
30. The role of the Panel is to consider the initial recommendation and to review it against their understanding of the application of the findings in the Common Issues Judgment and the Horizon Issues Judgment and the legal principles they consider relevant and arrive at a recommended offer to be made to a claimant in respect of their claim.
31. 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 the 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.
32. 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. For all Shortfall Loss claims and Consequential Loss claims which the Panel recommends be paid, either in full or in part, the Panel is authorised to recommend that interest be paid on the amounts in question at a standard rate of 3.45% (being the weighted average Bank of England interest rate for the period between 11 April 1999 and 14 August 2020 (2.45%) plus 1%), on such basis (simple or compound) and on such claim(s) and for such period(s) as the Panel thinks fit.

Horizon Shortfalls

34. 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 the Scheme the presumption is that the shortfall is a Horizon Shortfall.

Consequential Loss claims

35. The Panel should apply the Scheme Consequential Loss Principles and Guidance which are included at Appendix 1.
36. In relation to personal injury claims where insufficient evidence has been provided for a claim to succeed without further medical and/or expert evidence, the Panel may recommend the making of an offer to the postmaster which the Panel considers fair. The postmaster will then have the option of either accepting that offer or obtaining such further evidence and pursuing 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.

F. Review and Approval

37. This version of the Terms of Reference was approved by the Historical Remediation Committee (now called the Remediation Committee) on 20 June 2022. Any further amendments to the Terms of Reference shall be approved by the Remediation Committee.