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GRO E HSFPostOfficeOC GRO

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Your ref

[Insert - if known]

[DATE \@ "dd MMMM yyyy"]

By email: [INSERT]

Dear [Claimant representative]

Your client: [INSERT]

Our client: Post Office Limited ("Post Office") Interim Payment Invitation and Redress Process

INTRODUCTION 1.

- 1.1 We understand that you act for [claimant] and refer to our [previous correspondence/ letter/ email dated XXX].
- 1.2 Post Office is committed to providing fair and timely redress to those whose convictions have been overturned. The purpose of this letter is to explain the framework which has been put in place to enable it to achieve that objective.
- 1.3 We should make clear at the outset that Post Office's proposals in respect of redress aim to provide redress on the assumption that a claim for malicious prosecution will be made out (although there are some alternative options, available at a Claimant's election). As such, and although no formal concessions are being made, it is not necessary for your client to spend time proving or compiling evidence on issues of liability in order to access the redress available. Post Office instead intends to focus on quantum, which it hopes will allow redress to be paid more quickly.

SUMMARY 2.

2.1 The framework for the provision of redress which has been put in place has several stages. This allows payments to be released in tranches, so that Claimants do not have to wait until their full redress package is agreed before being placed in funds. In summary, those stages are:

2.1.1 Interim payments:

- (A) Claimants are first invited to apply for an immediate, initial interim payment of up to £163,000 on account of non-pecuniary damages.
- Claimants with an immediate need for medical treatment can also ask (B) Post Office to fund the reasonable costs of that treatment in advance, so

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Letter to [Claimant representative]

that Claimants can access the medical support they need without waiting for their full claims to be resolved.

- (C) Post Office will consider further interim payments on account of pecuniary redress on a case-by-case basis, in light of the information and evidence which has been provided.
- 2.1.2 In relation to final redress, Claimants have a choice:
 - (A) They can either make a claim to recover redress for their actual losses, under the redress processes outlined below (the "Redress Processes"); or, alternatively
 - (B) They can accept the standing offer of the Department for Business and Trade ("DBT") to settle their claims for a fixed, up-front sum of £600,000 (the "DBT Fixed Sum Settlement"), which is available regardless of the value of their claim.

The merits of the two options will vary depending on the individual Claimant's circumstances and Claimants are encouraged to consider with their legal representatives which option is best for them.

- 2.1.3 For Claimants who wish to accept the DBT Fixed Sum Settlement, no claim needs to be made and the Claimant will simply be asked to sign a full and final settlement.
- 2.1.4 For Claimants who wish to follow the Redress Processes:
 - (A) A claim should first be made for full non-pecuniary redress (including damages for mental distress, loss of reputation, loss of congenial employment, loss of liberty, non-pecuniary personal injury, aggravated damages and exemplary damages). Lord Dyson has given helpful guidance on the value attributable to such claims in the context of an early neutral evaluation, as explained in more detail below. If fair redress cannot be agreed in light of Lord Dyson's guidance, it is open to the parties to agree to refer their dispute to a further early neutral evaluation.
 - (B) A claim should then be made for pecuniary redress. Post Office has, in consultation with Claimant solicitors, developed a Pecuniary redress Process. Under this process, any claims which cannot be resolved consensually may be referred to a Panel chaired by former Court of Appeal Judge Sir Gary Hickinbottom which is empowered to make recommendations as to how much redress should be paid on disputed issues.
 - (C) Upon submission of a full pecuniary claim (i.e. a schedule of loss and supporting evidence), Post Office will pay a further interim payment which would bring the payments and/or advances already received (including non-pecuniary redress) up to a total value of £450,000.
 - (D) As part of the pecuniary redress process, Post Office will endeavour to make proactive offers of redress for straightforward heads of loss, such as sums paid in respect of orders for compensation orders, confiscation orders and/or prosecution costs, where it has the information to do so.
- 2.2 Further details of each element of this framework are set out below.
- 2.3 It should be emphasised that no element of this framework is compulsory. Claimants are not obliged to participate and are free to pursue any alternative remedies which are



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available to them as a matter of law. However, it is Post Office's hope that this framework will give Claimants a clearer, more cost effective and swifter route to the recovery of fair redress than traditional litigation.

3. INTERIM PAYMENTS

- 3.1 As noted above, Post Office and a number of Claimants took part in an Early Neutral Evaluation Process ("ENE") with Lord Dyson with a view to obtaining Lord Dyson's opinion on the appropriate level of non-pecuniary damages payable in a successful claim for malicious prosecution against Post Office.
- 3.2 In light of Lord Dyson's Evaluation, Post Office offers interim payments of up to £163,000 on account of non-pecuniary damages to any Claimant who was (a) convicted and (b) whose conviction has been overturned.

Interim Payment Application

- 3.3 If your client wishes to apply, they should complete the application form enclosed at **Annex**1 of this letter and return it via email to HSFPostOfficeOC GRO
- 3.4 It is important to ensure that offers of interim payments are made to the person holding legal title to the claim. In that regard, we would be grateful for your co-operation in ensuring that, where the claim may not vest in the convicted individual (for example because they are bankrupt or deceased), an appropriate form of authority is attached to the application. Please see **Annex 2** for additional information required in respect of estates subject to bankruptcy or insolvency, and **Annex 3** for representatives of deceased or incapacitated applicants.
- 3.5 While the quantum of any interim payment will primarily be based on the anticipated claim for non-pecuniary damages, it would nevertheless be helpful if the other information requested in the application form could also be provided where available as this will help Post Office take forward initial work in connection with the wider claim.
- 3.6 We cannot guarantee that all applicants will be made an offer of an interim payment as each case is considered on its merits. However, Post Office aims to communicate the outcome of the application within 28 days of receipt of the application form (or sooner if practical), provided that the necessary information has been provided. Typically, there are only delays where information as to legal title has not been provided, so we would be grateful for your co-operation in that regard.
- 3.7 The interim payment offer will need to be countersigned by or on behalf of the applicant. Payments are offered on a non-recourse basis, without admission of liability and as an advance on any sum for which Post Office may be liable in due course. Interim payments will therefore be deducted from the final sum paid in respect of non-pecuniary losses in due course.
- 3.8 In offering interim payments, Post Office aims to provide applicants who, on the face of it, have viable claims with swift, meaningful, interim payments in order to address the hardship they have faced and to start the process for recompense in a timely way. As such, Post Office does not propose entering into negotiations around the value of these initial interim payments in individual cases.

Top Up Interim Payment

3.9 You will see that on 26 February 2024, Post Office circulated the enclosed communication to Claimant representatives (the "February 2024 Announcement") which outlined changes to the provision of interim redress for claimants who wish to have their claims assessed via the Overturned Convictions Compensation Process. A copy of the February 2024 Announcement is attached at Annex 4.



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- 3.10 A Top-Up Interim Payment to a total value of £450,000 is now available upon the presentation of a Claimant's full or materially complete, and sufficiently evidenced pecuniary claim.
- 3.11 All payments and interim payments made prior to the Top-Up payment will be deducted from the £450,000 to calculate the value of the Top-Up to be paid. Full details of the claim and supporting information, documents and evidence are to be submitted via a schedule of loss.

Data Protection

3.12 In order to deal with your client's claims on your behalf, Post Office will need to process personal data. Please can you therefore review Post Office's Privacy Notice, which explains how personal data will be processed. The Privacy Notice is available on Post Office's website at https://www.postoffice.co.uk/privacy.

Medical Treatment

- 3.13 Claimants with an immediate need for medical treatment can ask Post Office to fund the reasonable costs of that treatment in advance, so that Claimants can access the medical support they need without waiting for their full claims to be resolved. The information necessary to do so is set out in the Pecuniary Principles, discussed further below.
- 3.14 Further, as communicated via the February 2024 Announcement, Post Office will make an interim payment of £12,000 (plus VAT) plus medical disbursements available to Claimants upon submission of a substantive and sufficiently particularised pecuniary claim.

4. THE DEPARTMENT FOR BUSINESS AND TRADE'S OFFER

- 4.1 On 18 September 2023, DBT announced¹ that Claimants with overturned convictions would have the option of settling their claims for redress for the DBT Fixed Sum Settlement (the "September 2023 Announcement").
- 4.2 This is a fixed sum payment of £600,000 which can be accepted in full and final settlement of all the Claimant's claims against Post Office, without the need to make a claim and regardless of the value of the Claimant's actual loss.
- 4.3 The DBT Fixed Sum Settlement is optional. Claimants who do not wish to accept it are not obliged to do so and can instead advance claims for the actual value of their pecuniary and non-pecuniary losses under the Redress Processes (see 6 and 7 below) or indeed any other available mechanism if they prefer.
- 4.4 Claimants are encouraged to take legal advice as to whether accepting the offer of the DBT Fixed Sum Settlement is best for them.
- 4.5 The DBT Fixed Sum Settlement offer is subject to contract and its precise terms are subject to ongoing review and consultation. However, in summary:
 - 4.5.1 The offer is inclusive of interest.
 - 4.5.2 Any redress payments made to date (for example interim payments) will be deducted from the £600,000 before payment is made. Redress payments received as a result of the settlement of the Group Litigation brought by Alan Bates in December 2019 will not, however, be deducted.
 - 4.5.3 DBT will make a sum of up to £20,000 available to Claimants to take legal advice so that they may consider whether this option is suitable for them. The £20,000

Press Release: "Government announces £600,000 of new compensation for every wrongfully convicted Postmaster" 18 September 2023, available at https://www.gov.uk/government/news/governmentannounces-600000-of-new-compensation-for-every-wrongfully-convicted-postmaster [accessed 12 February 2024]



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cap is inclusive of counsel's fees and disbursements, but exclusive of VAT and expert costs. Costs will be reimbursed provided that they are reasonably incurred and will be assessed if not agreed. A quote or estimate for any anticipated expert costs should be supplied so that these may be agreed in advance.

- 4.6 As regards the time period that Claimants will have to accept the DBT Fixed Sum Settlement offer, Post Office understands from DBT the position to be as follows:
 - 4.6.1 The DBT Fixed Sum Settlement offer is intended to be an alternative to full assessment.
 - 4.6.2 Accordingly, once a claimant asks for his or her claim to be assessed it will no longer be open to the claimant to accept the £600,000 DBT Fixed Sum Settlement.
 - 4.6.3 A claimant will be treated as having elected to go down the full assessment route by taking the step of presenting a non-pecuniary or a pecuniary claim. As such, claimants should only submit non-pecuniary or pecuniary claims for assessment if they do not wish to accept the DBT Fixed Sum Settlement offer.
 - 4.6.4 Claimants will <u>not</u> be precluded from accepting the DBT Fixed Sum Settlement offer by either (a) applying for and accepting the initial £163,000 Interim Payments which are offered when convictions are overturned; or (b) accepting any proactive offers made by Post Office, including in respect of HMCTS costs or confiscation/compensation/shortfalls, will not preclude claimants from accepting the Up Front Offer.
- 4.7 If you have any questions about the DBT Fixed Sum Settlement, we suggest that you raise these directly with DBT, as they are best placed to provide any clarification that may be required. If at any point your client wishes to take steps as part of the overturned convictions process and remains unsure as to whether doing so will preclude them from accepting the DBT Fixed Sum Settlement, we suggest contacting us first so that we can obtain clarity as needed.

5. THE REDRESS PROCESSES

- 5.1 Claimants who do not wish to accept the DBT Fixed Sum Settlement offer will need to make claims for their actual non-pecuniary and pecuniary losses.
- 5.2 Post Office encourages Claimants to focus on their claims for non-pecuniary damages first as these can usually be dealt with more quickly.

6. NON-PECUNIARY DAMAGES

- 6.1 Non-pecuniary losses are losses which are not financial in nature and include mental distress, damage to reputation, loss of liberty, loss of congenial employment, personal injury, aggravated damages and exemplary damages.
- 6.2 As the circumstances of these claims are so unique, guidance on the appropriate levels of non-pecuniary damages was obtained through the ENE with Lord Dyson acting as Evaluator.
- Because the ENE involved the evaluation of a number of test claims, details of which are private to the Claimants concerned, it was set up to be confidential and was conducted as a without prejudice process. However, the parties to the ENE did agree that a copy of Lord Dyson's Evaluation can be made available to future Claimants and their solicitors (in a suitably redacted form) on the proviso that it is kept confidential. We think it would be of significant benefit to you and your client to have sight of Lord Dyson's Evaluation to assist you in formulating your client's non-pecuniary claim. To enable us to provide this to you,



[Claimant representative]

please could we ask your client to sign and return the undertaking at **Annex 5** and you to sign and return the undertaking at **Annex 6**.

- 6.4 For its part, Post Office has adopted Lord Dyson's recommendations in full and applies these in making offers for non-pecuniary redress to Claimants.
- 6.5 We will discuss with you further on a without prejudice basis how you can most quickly present your client's claim for non-pecuniary damages and explain the reduced levels of information and evidence which Post Office will need in order to make an offer.
- 6.6 It is hoped that, in light of the guidance offered in Lord Dyson's Evaluation, it will be a straightforward matter to reach agreement on the appropriate amount of non-pecuniary redress payable. However, Post Office is always willing to discuss your client's claim further with you and, if agreement cannot be reached (which we hope will not be the case), it is always open to the parties to agree a further Early Neutral Evaluation in respect of any specific issues which arise.
- 6.7 Once agreement has been reached on non-pecuniary redress, Post Office will ask your client to sign a settlement agreement which typically provides for payment of the agreed sum within 28 days. Post Office will also offer an interim payment on account of legal costs and expert fees.

7. PECUNIARY DAMAGES

Proactive Offers

7.1 Where it has sufficient information to do so, Post Office does endeavour to make proactive offers of redress for certain straightforward heads of loss such as (a) compensation, confiscation and prosecution costs orders paid at the time of the prosecution; and (b) payments which would otherwise have been made out of Royal Mail's Colleague Share Plan had the Claimant remained in post. We will write to you separately in respect of any such offers which Post Office considers can be made proactively in your client's case, but that obviously does not preclude your client from making their own claims in respect of such heads of loss should they wish to do so. Please provide us with details of any claims your client has in this regard.

The Pecuniary Process

- 7.2 Post Office has established an Overturned Convictions Pecuniary Compensation
 Assessment Process (the "Pecuniary Process") to offer Claimants a mechanism which it
 is hoped will provide a swift and straightforward route for the recovery of pecuniary redress.
- 7.3 The Pecuniary Process was established following a without-prejudice consultation process with solicitors who have represented Claimants to date. It is set out in the attached document entitled: The Overturned Convictions Pecuniary Compensation Assessment Process (Annex 7). However, in summary:
 - 7.3.1 Claimant representatives are first asked to present their client's claims and supporting evidence. To aid in that process, as part of its without prejudice consultation with Claimant firms, a set of proposals for a negotiated framework for redress have been developed with input from Claimant representatives, which Post Office intends to apply in making initial offers of redress going forward. Although these are neither fixed nor in agreed form, Post Office hopes that sharing its current thinking as regards redress in advance will assist new Claimants to formulate their claims, for example by signposting the concessions which Post Office is willing to make up front, explaining the approach which it proposes taking to typical heads of loss having taken into account comments from Claimant representatives and by identifying areas where particular evidence may be required.



Letter to [Claimant representative]

- 7.3.2 If claims cannot be resolved by agreement, Post Office has put in place an independent Panel chaired by Sir Gary Hickinbottom (nominated by the Claimant firms who participated in the consultation) to assist in the resolution of disputes. The other current panel members are Mr Mike Harper, an accountancy expert and Mr Stephen Bassett, a retail expert, who have also been agreed with Claimant representatives. A copy of the Panel Terms of Reference is attached at Annex 8. It is envisaged that the Panel will operate as an accessible and independent body who can help steer the swift resolution of disputes which arise in relation to pecuniary redress. A standard application form (the "Panel Application Form") (Annex 9) has been developed to facilitate the referral of disputes to the Panel and assist in the administration of the Panel.
- 7.4 Please note that the Pecuniary Process is not intended to replace Claimants' rights to have their claims determined in Court if that is what they wish to do.
- 7.5 We will write to you separately on a without prejudice basis to share more details of the consultation process with Claimant firms and the engagements which Post Office and existing Claimant firms have had with the Panel Chair to date. However, if you have any questions or consider that a discussion would be useful, please do let us know.

8. LEGAL AND OTHER COSTS

- 8.1 Post Office confirms that it will pay your client's reasonable legal and professional costs incurred in bringing their claims for redress. As part of the consultation, processes have been established for:
 - 8.1.1 The payment of such fees, including interim payments on account of costs.
 - 8.1.2 The pre-approval of expert fees.
 - 8.1.3 The resolution of any disputes in respect of costs.
- 8.2 Post Office has set up a process for the submission of bills or costs which includes a dispute resolution mechanism and will write to you separately in that regard.

9. OTHER MATTERS

- 9.1 There are various matters which Post Office considers it would be helpful to confirm to you at this stage as follows:
 - 9.1.1 **Limitation periods**. To address any concerns regarding limitation periods or otherwise, Post Office is content to agree a general standstill (as it has done with other Claimants). Please let us know if your client would like to do this and we will provide a draft agreement for your consideration.
 - 9.1.2 **Post Office's records**. Post Office wishes to proactively provide Claimants with certain information it considers might assist with quantifying pecuniary claims. However, before Post Office can lawfully disclose personal data relating to your client it first must satisfy its data protection obligations which means Post Office needs consent from your client for the disclosure of their data to you. To facilitate the provision of future information, we would be grateful if you could provide your client with a copy of the data protection consent declaration enclosed with this letter and then kindly arrange for it to be signed and returned to us preferably by email (or alternatively by post) (**Annex 10**).
 - 9.1.3 HMRC records access.



[Claimant representative]

- (A) It is likely that your client's tax records will be key in respect to any assessment of loss of earnings/stigma damages as well as any loss of business-related claims.
- (B) To that end, a process has been established by HMRC to enable former convicted postmasters to access their personal tax records in an expedited manner (within 28 days of HMRC receiving requests).
- (C) HMRC has confirmed the process as follows:
 - (1) The Claimant or you on their behalf will need to send the form at Annex 11 directly to information rights unit GRO.
 - (2) The form will need to include:
 - (a) The Claimant's signature (electronic signature is acceptable). If the Claimant cannot physically sign, the form can be signed under a power of attorney.
 - (b) As much detail as possible to enable HMRC to provide the required records. You will note that the form automatically requests details from the Claimant's NIC records and any Self-Assessment tax returns. We ask that in each case, the Claimant also requests all available HMRC Tax Calculations (Form SA302) and/or any other income records and we have pre-populated the pro-forma at Annex 11 in this regard. Further details may also need to be requested e.g. if a retail business was operated through a company the company name, registered company number and any VAT registration number should also be provided.
 - (c) The period for which records should be requested is either the start of that Claimant's period in post as a subpostmaster or branch assistant (the relevant year) or 1999, whichever is later (we understand that HMRC records may be available from 1999 onwards). Again, we have prepopulated the pro-forma form in this regard.
 - (3) Assuming the Claimant would prefer that the data is sent to you as their legal representative, the third party details space on the form should be filled out with your details to authorise HMRC to send their data to you. Again, we have pre-populated this with your details on the pro-forma form.
- (D) We would be very grateful if, when presenting your client's claim, you could also please provide the form sent to HMRC and the response from HMRC responding to the request and providing the documents. This is intended to avoid the need for further requests and/or verification of what has or has not been requested or provided.
- 9.1.4 **Tax exemption**. HM Treasury has confirmed that redress payments made in relation to overturned Horizon-related convictions will not be subject to income tax, capital gains tax, National Insurance contributions, inheritance tax or VAT. This position was confirmed first by the Ministerial Statement UIN HCWS303 made by Richard Fuller MP (the Economic Secretary to the Treasury) on 23 September 2022 to the House of Commons. It was written into law in the Post Office Horizon Compensation and Infected Blood Interim Compensation Payment Schemes (Tax Exemptions and Relief) Regulations 2023, SI 2023/184.



Letter to [Claimant representative]

10. CONCLUSION

- 10.1 Post Office will await receipt of your client's interim payment application.
- 10.2 If it is helpful to discuss the interim payment process, the contents of this letter, or the redress arrangements in place for affected individuals more generally, please do let us know when a convenient date/time might be to do so and we can assist with any further queries you may have.

Yours faithfully

Herbert Smith Freehills LLP

Enclosures:

- Annex 1 Interim Payment Application
- Annex 2 Further Information for Insolvent or Bankrupt Applicants
- Annex 3 Further Information for Representatives of Deceased and Incapacitated Applications
- Annex 4 February 2024 Announcement
- Annex 5 Claimant Confidentiality Undertaking
- Annex 6 Legal Representative Confidentiality Undertaking
- Annex 7 Overturned Convictions Pecuniary Compensation Assessment Process
- Annex 8 Overturned Convictions Terms of Reference for the Independent Pecuniary Compensation Assessment Panel
- Annex 9 Without Prejudice Application to Independent Pecuniary Compensation Assessment Panel
- Annex 10 Data Protection Consent Declaration
- Annex 11 HMRC Form