



Department for
Business & Trade

Horizon Compensation Advisory Board

Report of fifth meeting held on 14 June 2023

Members present: Prof. Christopher Hodges (Chair); Lord Arbuthnot; Kevan Jones MP; Prof. Richard Moorhead.

Also present: Carl Creswell; Rob Brightwell; Eleanor Brooks; Beth White; Eleri Wones (first part of meeting) (all DBT).

Fairness of the HSS

1. The Advisory Board agreed that
 - Fair compensation should be delivered that puts victims in the position that they would have been in if the scandal had not occurred and properly reflects the significant harms that had been visited on their lives and reputations.
 - Legal or other related costs should be reimbursed in full, so that compensation payments were fully compensatory.
2. It recognised that Government already subscribed to those principles. Its concern was that they should be effectively implemented, and that postmasters and others should have confidence that they were being applied fairly. Officials informed the Board that Ministers would shortly be announcing their intention to fund top-ups to HSS payments to address the issue relating to tax. [*Post-meeting note: announcement to Parliament is [here](#)*].
3. The Board noted that offers had been made to 99.3% of postmasters who had originally claimed under the HSS, and that 82% of these offers had been accepted. However there had been public comment about the outcomes and handling of a number of cases perceived to have been unfair. Some of these had not yet completed the dispute resolution process within the HSS.
4. The Board have had a discussion with KCs from the HSS Independent Panel. The KCs had explained that the Panel had adopted a practice of 'acting as advocates for claimants' where it could see matters within a claim that were not addressed in the options presented by HSF, rather than as wholly disinterested arbiters, and had adopted a presumption in favour of applicants if there was a shortfall and no other explanation.
5. The Advisory Board believed that the Panel had been guided by principles of independence and professionalism, and by legal precedent so as to seek consistency between awards, in reaching decisions in individual cases.
6. The Board noted the difference in process between the HSS and GLO schemes. Under the HSS, the independent Panel recommended an offer. If the offer was not accepted there was a dispute resolution process managed by the Post Office, including referral back to the Independent Panel and then with independent mediation as a final stage. By contrast in the GLO scheme an initial offer was made by DBT followed, if necessary, by independently facilitated discussions. Only if these did not produce agreement was a case referred to an independent Panel. There was provision for review by a senior legal figure in the event of manifest error or irregularity. A broadly similar sequence was being envisaged for the new arrangements for compensation for overturned convictions.
7. The Board also noted the different remuneration arrangements for representation and the very high levels of cases without representation in the HSS scheme.

8. In the Board's view, having an independent Panel (and, if necessary, the Reviewer) in place at the end of the process to make final decisions on individual claims increased the trust which could be placed in the final settlement.
9. The Board noted that given the history of mistrust in the Horizon scandal born of adversarial litigation, many postmasters would lack confidence in the fairness of any compensation delivered under the auspices of the Post Office or its legal advisors. They also noted concerns about the administration of HSS, including issues in respect of the application form .
10. They concluded that if the Scheme was to be seen to be fair, individuals who were unhappy about the settlements which they had received needed to have recourse to an assessment which was wholly independent of the Post Office. This should come at the end of the process, on similar lines to the role of the GLO Independent Panel. **They recommended that the Minister should consider how such an appeal process could be introduced . It should focus on assessing whether settlements were fair based on the evidence provided, whilst allowing consideration of elements of a claim which had been missed or not included on the original form.**
11. The Panel discussed the differences in the extent and timing of legal advice in the schemes, which tended to suggest there may be merit in the concerns that unrepresented claimants have been disadvantaged under the HSS scheme. The Board noted that the HSS had been established under schedule 6 of the agreement between the Post Office and JFSA which had settled the GLO case. DBT's understanding was that, in the light of their members' difficult experiences in the High Court and elsewhere, the JFSA had argued for a process which did not expect postmasters to take legal advice in making applications. The Post Office had, however, provided support with the costs of legal advice to help claimants consider compensation offers. The HSS Panellists had also explained that they took the approach of scrutinising HSS applications with a view to identifying any heads of loss that had not been explicitly included. Nonetheless, claimants' lawyers had suggested that claimants who were unrepresented may have received smaller awards than those who had engaged legal advice.
12. The Board noted that many of the concerns about the fairness of settlements related to the overall treatment of individual postmasters by the Post Office over many years. They noted that the HSS had paid careful attention to legal principles and precedents in respect of loss of reputation, stigma, distress and inconvenience and related heads of loss, but that this had led to potential differences between different claimant groups. However they believed that the facts of some Horizon cases went beyond those of precedents, for instance in respect of damage to reputation irrespective of prosecution given the impact of any branch intervention or civil action, the prominence within the community of many postmasters, the length of time during which the individual suffered damage, and the consequences for family members and family unity. If such cases were decided by the Courts, there were good reasons for thinking that judges may well create new, more generous precedents, especially given the egregious and bullying behaviour of the Post Office during the course of the scandal – behaviour whose impact was increased by virtue of the Post Office's credibility as a Government-owned organisation. They were also concerned that the operation of some rules of thumb in the scheme (such as the 26 month guideline on termination and the starting points for assessing reputational harm) risked unfairness to some claimants.
13. The Board was therefore not convinced that the application of existing principles and precedents would lead to consistently fair results. They noted that postmasters who had been prosecuted by the Post Office would receive exemplary damages. Whilst such damages were intended to punish the Post Office, they also had the effect of acknowledging the sustained personal impact which its actions had had on individuals. **They recommended that the appeal process recommended above should put particular weight on securing a fair outcome in respect of the issues described in the preceding paragraphs.**

Overtured convictions

14. The Board noted that of about 900 people prosecuted by the Post Office in 2000-2015, to date only 86 convictions had been overturned. More were in the process of appealing and the Post Office had recently written to a further group to indicate that it would not oppose their appeals.
15. In the Board's view, postmasters would inevitably distrust any action of the Post Office or its advisors in reviewing cases, even if this were done with the utmost professionalism.
16. The Board believed that the criteria set by the Court of Appeal for Horizon cases were too tight, and that a significant number of miscarriages of justice could be outstanding. They also believed that the Court of Appeal's judgment was based on a limited understanding of the extent of problems with financial systems in the Post Office and with the extent of wrongdoing lying behind the "affront to public justice" finding. This led to a much wider and higher level of concern about Post Office prosecutions (and their review) with a number of critical documents not apparently disclosed and available to the Court.
17. The Board recognised that Government cannot challenge the decisions of the Courts. **They agreed that their Chair should write to the CCRC and its equivalents in other nations to strongly encourage it to propose a wider set of criteria in the light of the full range of cases prosecuted by or on behalf of the Post Office.**
18. **They also agreed to recommend that the Minister should**
 - a. **consider whether the Government or Post Office could do more to encourage postmasters to appeal their convictions;**
 - b. **arrange that a review of all Horizon prosecutions be undertaken, by a team independent of the Post Office and without any prior involvement, to identify appeals that should be reviewed as unsafe, based on a presumption of innocence; and**
 - c. **encourage the Post Office, when considering which potential appeals meet the Court of Appeal's criteria, to only resist appeals in which there remained substantial evidence wholly free of taint.**
19. **They agreed to look further at the issue of cases not yet appealed.**