

1 **Wednesday, 6 July 2022**

2 **(10.30am)**

3 **SIR WYN WILLIAMS:** Good morning, everyone. By the reaction

4 of one or two people so far in the distance that I can

5 hardly see them, I guess you can hear me. Is that

6 correct? Good. Thank you very much.

7 We're going to embark today on the first of two

8 days of hearings, dealing with various compensation

9 issues.

10 There's been some misreporting about the extent of

11 what's going on in the next two days. So can I be clear

12 that there are two days devoted to discussions about

13 compensation issues, and I use the word discussions,

14 because essentially what we're going to have are oral

15 submissions from lawyers about those issues. We won't

16 be hearing oral evidence.

17 With that introduction, I should just also explain

18 why the two days are split apart. As you'd imagine, to

19 get so many lawyers into the same room at the same time

20 is not an easy business. So to facilitate all the

21 lawyers who needed to be here over these hearings

22 I agreed that we would schedule them on a day when their

23 advocate of choice could come to present their

24 submissions, so that's why we're having a hearing this

25 week and a hearing next week. The short delay between

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1 Ms Gallafent QC on behalf of Post Office Ltd, from

2 Mr Mertens on behalf of UK Government Investments and

3 from Mr Stein QC on behalf of those core participants

4 represented by Howe & Co solicitors.

5 Your terms of reference, sir, require you, amongst

6 other things, to assess whether the commitments made by

7 Post Office Ltd within the mediation settlement,

8 including the Historical Shortfall Scheme, have been

9 properly delivered. The reference there to the

10 mediation settlement is a reference to the settlement

11 deed of 10 December 2019.

12 You had originally planned to address this issue

13 in phase 5 of your Inquiry, which is concerned with,

14 amongst other things, redress, access to justice, the

15 complaint review and mediation scheme, responding to the

16 scandal and compensation schemes.

17 In our concluded list of issues, we had isolated

18 the following issues in particular for consideration

19 within phase 5 of the Inquiry: issue 182, to what

20 extent, if at all, has Post Office Ltd properly

21 delivered upon the commitments which it made in the

22 mediation settlement to make improvements in its

23 relationships with subpostmasters and to bring finality

24 to all outstanding issues in respect of historic

25 shortfalls via the Historic Shortfall Scheme.

3

1 the hearings won't impede the Inquiry's work in any way.

2 With that introduction, I'm about to hand over to

3 Mr Beer QC who will open the proceedings.

4 I do have one announcement. I was told in no

5 uncertain terms that I should not make any cricketing

6 analogies. In fact, I can't avoid it. Because this

7 evening there is a cricket match starting at the Oval

8 and that may begin in terms of its preparation at around

9 about 3.30 to 4 o'clock. I am hopeful -- I am not

10 saying I am confident -- I am hopeful that by that time

11 the submissions will be more or less complete. But if

12 they are not, we will have to compete with various

13 things going on around the cricket ground. Now, I'm

14 sorry I had to raise the word cricket but I do not think

15 I can be criticised for so doing in all the

16 circumstances.

17 Mr Beer?

18 **Submission by MR BEER**

19 **MR BEER:** Thanks very much, sir. As you said, this is the

20 hearing of submissions by all participants on the issues

21 arising from the payment or non-payment of compensation

22 to subpostmasters at their families.

23 I appear as counsel along with Mr Blake today.

24 You will hear oral submissions later today in accordance

25 with the timetable that you have published from

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1 183, to what extent, if at all, has the creation

2 and implementation of the Historic Shortfall Scheme and

3 the interim compensation scheme provided an adequate

4 means for affected subpostmasters, managers, and

5 assistants to obtain financial redress for wrongs which

6 they have suffered.

7 However, phase 5 of the Inquiry is presently

8 scheduled to occur in February and March of next year.

9 In the course of your human impact hearings in London

10 between 14 and 25 February, in Cardiff on 1 and 2 March,

11 in Leeds on 9 and 10 March, in Glasgow on 11 and 12 May,

12 and in Belfast on 18, 19 May, you heard from a number of

13 subpostmasters and members of their families about the

14 devastating financial consequences that the operation of

15 the Horizon IT system had and is having on them, the

16 financial consequences that civil proceedings brought

17 against them by the Post Office had and is having on

18 them, and the financial consequences that wrongful

19 conviction for criminal offences (including in some

20 cases resulting in imprisonment) had and is having on

21 them. This included significant accounts of penury,

22 precarious financial arrangements, bankruptcies, debt

23 management plans, loss of credit ratings, loans for

24 significant sums of money, and second mortgages, many of

25 which continue to this day.

4

1 The evidence also touched upon the operation,
2 effectiveness and speed of past and present compensation
3 schemes offered by the Post Office.

4 In the light of that evidence, you decided that
5 you ought not to wait until early spring of next year to
6 hear the evidence about past and present compensation
7 schemes. As you put it in a public announcement, some
8 of these issues, "needed to be addressed sooner rather
9 than later". So accordingly, on 9 May, you announced
10 that you would be conducting these hearings and
11 thereafter gave directions for the making of written
12 submissions and a timetable for delivering oral
13 submissions from the recognised legal representatives of
14 core participants.

15 In terms of the factual background, although you,
16 sir, know the steps in the long and tortuous chronology
17 which brings us to this point in mid-2022, addressing
18 issues about the payment of compensation, to wronged
19 subpostmasters, there may be those listening or watching
20 the proceedings that do not. Therefore with your
21 permission I should like to spend a little time
22 detailing some of the background which brings us to that
23 point today.

24 For present purposes it is sufficient to begin
25 with the litigation that commenced in 2017 between

5

1 litigation funding, ATE costs and other costs or other
2 relief claimed in the action. That was called the
3 settlement payment.

4 By clause 3 it was provided that none of the terms
5 of the Settlement Deed were to be construed as an
6 admission of liability on the part of the Post Office in
7 respect of any of the various claims made by the
8 claimants which were the subject of the litigation.

9 Clause 4.1 provided that the terms of the
10 settlement set out in the deed were to be in full and
11 final settlement of all claims made by the claimants,
12 save for the claims brought for malicious prosecution
13 which were defined as being brought by "convicted
14 claimants".

15 Clause 9.4 and schedule 6 of the deed laid the
16 foundation for the establishment of what is now known as
17 the Historical Shortfall Scheme or the HSS.

18 Approximately £10.5 million of the £42 million set
19 aside as the settlement payment were shared between the
20 GLO claimants as compensation for the losses which they
21 claimed in the litigation, a very substantial proportion
22 of the settlement payment was therefore swallowed up in
23 litigation funding and other costs.

24 Accordingly, most if not all of the claimants
25 received a sum by way of compensation which was

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1 Mr Alan Bates and 554 other claimants against Post
2 Office Ltd, which is known as the group litigation.
3 That is because it proceeded under a group litigation or
4 a GLO.

5 In this litigation the claimants brought claims
6 for compensation for alleged losses consequent on
7 breaches of contract and other wrongful acts arising out
8 of decisions made by the Post Office in reliance upon
9 information generated by the Horizon IT system.

10 Those proceedings were brought to an end by a deed
11 of settlement dated 10 December 2019. During the course
12 of the litigation the managing judge handed down six
13 judgments, two of those judgments, the common issues
14 judgment and the Horizon issues judgment, were it is
15 reasonable to suppose critical to the decision made by
16 the Post Office subsequently to offer terms of
17 settlement of the litigation.

18 The deed of settlement contains terms that are
19 relevant to the issues that arise today, including by
20 clause 2.1 the Post Office agreed to make settlement
21 payments are they as called which in aggregate amounted
22 to £57.75 million. Of that sum £15 million was
23 earmarked for the legal costs of the solicitors and
24 barristers who acted for the claimants in the group
25 litigation, 42 million was paid over by way of damages,

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1 substantially less than the alleged losses which they
2 had claimed in the group litigation.

3 Pursuant to the deed the Historical Shortfall
4 Scheme was established in 2020. It is a remediation
5 scheme. Under its terms none of the claimants who had
6 been party to the Group litigation were eligible to seek
7 compensation under the scheme. The HSS was and is
8 intended to benefit all of those subpostmasters who
9 suffered loss as a consequence of Horizon but who were
10 not a part to the group litigation.

11 The scheme secondly identifies a number of
12 principles upon which compensation under it must be
13 assessed.

14 Thirdly, the scheme includes detailed provisions,
15 dispute resolution procedures for resolving how claims
16 should be determined in the event that an applicant and
17 the Post Office cannot agree upon the compensation which
18 should be awarded.

19 The scheme finally closed on 20 November 2020.

20 If you turn up in your bundle sir, tab 17, there
21 will be an update to these in a moment, you should see
22 figures published on 7 June 2020.

23 **SIR WYN WILLIAMS:** Sorry, Mr Beer. Is that occasional
24 banging disturbing you? Because if so I will try to get
25 something done about it.

8

1 **MR BEER:** Moderately.
 2 **SIR WYN WILLIAMS:** Somebody is going to try and suggest that
 3 they should bang when we're having a break.
 4 **MR BEER:** Thank you very much. I see somebody leaving from
 5 the back. Very kind of you, sir.
 6 You will see that at the foot of page 302 as at
 7 7 June there were of the applications which had been
 8 made 2,368 assessed to be eligible, 155 assessed to be
 9 non-eligible. Which means that by 7 June if one adds
 10 those two figures together, some 2,523 applications had
 11 been made, so the scheme closed 27 November 2020, by
 12 June 2022, 2,523 applications made.
 13 On 21 July 2021 the Secretary of State for
 14 Business, Energy, and Industrial Strategy announced that
 15 funds would be made available to the Post Office so that
 16 interim payments of compensation of up to £100,000 per
 17 person could be paid to subpostmasters whose convictions
 18 for dishonesty offences had been quashed. That
 19 announcement was made in a statement in Parliament.
 20 The announcement was followed up by a press
 21 release the next day, which we have in your tab 8A of
 22 the bundle. You will see it is dated 22 July 2021 and
 23 is a press release on behalf of BEIS. It is the second
 24 page of that, page 217, to which I should draw attention
 25 under the heading "Additional information", and it
 9

1 There remains the issue of final appointments for
 2 those whose convictions were quashed. On
 3 14 December 2021, the Minister, Paul Scully MP, made
 4 a further statement which is relevant to the payment of
 5 compensation to subpostmasters whose convictions had by
 6 then been quashed or would after then be quashed, and we
 7 have that behind tab 8B, the statement of 14
 8 December 2021.
 9 The relevant parts are the last two paragraphs on
 10 page 219 where the Minister said:
 11 "I am pleased to confirm that today the Government
 12 is making funding available to facilitate Post Office to
 13 make final compensation payments to postmasters whose
 14 convictions have been overturned. We are working with
 15 Post Office to finalise the arrangements that will
 16 enable the final settlement negotiations to begin as
 17 soon as possible. By providing this funding, Government
 18 is helping Post Office deliver the fair compensation
 19 postmasters deserve. With the Secretary of State's
 20 status as sole shareholder in the Post Office my
 21 department continues to engage actively with Post Office
 22 Ltd on this and will maintain strong oversight of the
 23 compensation process."
 24 On 21 March 2022 you requested core participants
 25 to respond to the Inquiry with written submissions on
 11

1 reads:
 2 "For final compensation the Post Office is
 3 proposing alternative dispute resolution arrangements
 4 which aim to facilitate the swift quantification and
 5 resolution of compensation claims. However, interim
 6 payments announced today do not prevent people from
 7 bringing civil claims through the courts."
 8 So the HSS had been set up. Then in July 2021 an
 9 announcement of the payment of up to £100,000 per person
 10 for each postmaster by way of interim payments, and
 11 a proposal by the Post Office it was said to set up
 12 alternative dispute resolution arrangements for
 13 compensation to be paid finally to those whose
 14 convictions had been overturned.
 15 As we understand it, in fact, no formal
 16 remediation scheme was constituted thereafter, and
 17 alternative dispute resolution has not occurred in
 18 relation to those whose convictions have been quashed.
 19 In practice, those whose convictions have been quashed
 20 have applied to the Post Office for an interim payment
 21 and, in the main, the Post Office has made such a
 22 payment within a very short time, i.e., promptly, often
 23 within weeks of the application being made. And the
 24 information that the Inquiry has received suggests that
 25 that interim scheme has operated well and effectively.
 10

1 the availability of compensation for three discrete
 2 subcategories of postmasters. I'm not going to outline
 3 them as matters have moved on more broadly since then.
 4 The next day, 22 March 2022, the Minister, Paul
 5 Scully MP, made a further announcement in Parliament
 6 which we have in our tab 8C, the relevant part of which
 7 is in the second paragraph, where he said:
 8 "The Government has long considered unfair the
 9 unequal treatment received by members of the GLO and
 10 their non-GLO peers, I am therefore pleased to announce
 11 that the Chancellor will make additional funding
 12 available to give those in the GLO group compensation
 13 similar to that which is available to their non-GLO
 14 peers."
 15 You received submissions in response to your
 16 request from the core participants represented by
 17 Howe & Co and Hudgell solicitors and on 9 May 2022 you
 18 issued a preliminary view in relation to compensation
 19 schemes for subpostmasters.
 20 On 30 June 2022, so seven days ago, the Minister,
 21 Mr Scully, made a further statement to the House and you
 22 have that behind your tab 8D. I'm not going to read it
 23 all out. The main elements of it were, firstly, in
 24 relation to the GLO claimants. He said, firstly, that
 25 the Government intended to make interim payments of
 12

1 compensation to eligible members of the GLO cohort who
2 were not already covered by another scheme totalling
3 £19.5 million.

4 Secondly, he said that the Government was working
5 towards delivering a final compensation scheme for the
6 GLO claimants and would be appointing Freeths Solicitors
7 to assess the data and methodology that they had
8 developed in relation to the 2019 settlement.

9 Third, that members of the GLO group would be able
10 also to claim reasonable legal fees as part of their
11 participation in the final compensation scheme.

12 Then, secondly, in relation to those who
13 convictions had been quashed, the Minister announced
14 that a number of subpostmasters had agreed to refer the
15 issues of non-pecuniary damages to a process of early
16 neutral evaluation to be conducted by Lord Dyson.

17 So your request to core participants invited
18 submissions on 12 issues and they are set out in tab 2
19 of your bundle, which I would invite you to turn up.
20 They are broadly divided into three categories: issues
21 arising from the existing Historical Shortfall Scheme;
22 issues concerning the compensation to be paid to those
23 subpostmasters whose convictions have been quashed; and
24 issues relating to the payment of fair compensation to
25 the Group litigation claimants.

13

1 195 to 202 you have the version that was extant from
2 June 2020. So that's the underlying material.

3 It seems to us that the four issues which you had
4 previously identified in your document asking for
5 submissions remain fit for consideration by you along
6 with an additional issue identified by core
7 participants. I will describe the four issues
8 previously identified and fill them out a little by
9 reference to the submissions and then turn to the
10 additional issue, and do the same.

11 Issue 1 is the heads of loss which are recoverable
12 under the HSS and the reasons for any exclusions. That
13 on its face raises two separate issues, the heads of
14 recoverable loss and reasons for exclusions from the
15 scheme.

16 Dealing with heads of recoverable loss first, you
17 will have seen that despite its name which suggests that
18 the focus of attention is shortfalls, the HSS in fact
19 allows in principle the payment by the Post Office of
20 much wider classes of compensation than the simple
21 repayment of sums of money wrongfully taken by the Post
22 Office from subpostmasters, or wrongly paid by
23 subpostmasters to the Post Office, or sums of money
24 wrongly treated by the Post Office as owing by
25 subpostmasters. That it includes, in principle, the

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1 I would propose to identify by reference to those
2 three categories the issues that we have identified as
3 your counsel team as arising in the light of all of the
4 written material that has been lodged by the core
5 participants. I should state in that regard that we as
6 your counsel team will not be making positive
7 submissions as to outcome on any of those issues.

8 So category 1 or category A, issues arising under
9 the Historical Shortfall Scheme. You have in front of
10 you, sir, the core material in relation to the operation
11 by design of the Historical Shortfall Scheme. So in tab
12 14 you have the Terms of Reference of the HSS; in tab 15
13 you have the Terms of Reference for the Independent
14 Advisory Panel to the Historical Shortfall Scheme; in
15 tab 16 you have the eligibility criteria for the
16 Historical Shortfall Scheme; in tab 17 you have
17 a document called "Consequential loss principles and
18 guidance for the Historical Shortfall Scheme"; in tab 18
19 you have a questions and answers document published by
20 the Post Office as to the operation of the Historical
21 Shortfall Scheme.

22 Then going back to tab 7A, please, you have two
23 versions of application forms under the Historical
24 Shortfall Scheme, and so from page 188 to 194 you have
25 the version that was extant from May 2020, and then from

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1 payment of much wider classes of compensation is not
2 clear from the Terms of Reference of the scheme at tab
3 14, which only refer to shortfalls, or the eligibility
4 criteria at tab 16, which again only refer to
5 shortfalls.

6 However, it is clear from the Terms of Reference
7 of the HSS Independent Advisory Panel at tab 15 that the
8 scheme does permit the payment of consequential losses,
9 and if I could invite you to turn that up please, tab 15
10 at page 285.

11 If one looks at paragraph 4A of the Terms of
12 Reference for the Independent Advisory Panel
13 consequential losses are defined to mean financial or
14 non-financial losses that are not shortfall losses,
15 shortfall losses being defined by paragraph 4D.

16 Then perhaps more significantly, it's also clear
17 from the consequential loss principles and guidance at
18 tab 17 that such consequential losses are in principle
19 recoverable. One can see that from paragraph 1.3 but
20 more significantly, from paragraphs 5.1 to 5.10 between
21 pages 291 to 295, one can just scan the headings there
22 which include claims for loss of earnings, loss of
23 profit, loss of property, loss of opportunity or loss of
24 chance, penalties, and increased costs of financing,
25 bankruptcy and insolvency, legal and professional fees,

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1 stigma and damage to reputation, and personal injury or
2 harassment. That a wide range, a very broad spectrum of
3 losses are in principle recoverable, providing that they
4 have been caused as a direct consequence of the Horizon
5 shortfall loss that is claimed.

6 So it seems from those documents that the issues
7 which may arise are not ones of principle or theory, or
8 drafting in relation to the terms of the HSS, but at
9 a more practical level, as to whether the operation of
10 the scheme on the ground is such that subpostmasters are
11 put in the best position possible to recover such
12 consequential losses under the HSS.

13 Aside from the provision of legal assistance, to
14 make and pursue claims under the HSS, an issue that
15 I will address in a moment, the other issues which
16 appear to arise include the following: both Howe & Co
17 and Huddell Solicitors who represent the vast majority
18 of subpostmasters in this Inquiry, state in their
19 submissions that in their experience when applications
20 have been made under the HSS by subpostmasters
21 themselves, heads of loss, especially these
22 consequential losses, have been routinely missed from
23 the applications, often meaning that significant sums of
24 money to which the subpostmasters are in principle
25 entitled have been left out.

17

1 defined to mean financial or non-financial loss that is
2 not a shortfall loss, which we have seen is obviously
3 correct by looking at the consequential loss and
4 guidance document -- sorry, consequential loss
5 principles and guidance document.

6 If we turn up the application form, which is the
7 next tab, using the May 2020 version, there is no
8 material difference between the May and the June version
9 in this regard, you will see from page 190 a series of
10 boxes for an applicant to complete, and on the second
11 page, on page 191, under the heading "Shortfalls", the
12 applicant is presented with the following statement:

13 "For each shortfall in respect of which you are
14 applying please specify", and then there are six
15 subparagraphs setting out the information that is to be
16 given in relation to the shortfall.

17 Then question 19 -- sorry, question 20, also
18 relates to shortfalls. Question 21 is about whether
19 there had been an audit into the relevant branch.
20 Question 22 concerns whether there was any other
21 investigation into the shortfall. Question 23 is
22 whether action was taken by the Post Office as a result
23 of the alleged shortfall. Then question 24 does ask the
24 broad question:

25 "Have you experienced any other losses that are

19

1 If that is right, you may wish to consider what it
2 is about the way in which the scheme is operated that
3 has caused such a result.

4 **SIR WYN WILLIAMS:** When you say it is missed out, if that's
5 the phrase you used, you mean it was never included in
6 the application form?

7 **MR BEER:** Yes.

8 **SIR WYN WILLIAMS:** Fine.

9 **MR BEER:** One point that is made, firstly, is whether the
10 application form itself was designed in a way which
11 actively encouraged subpostmasters to pursue these
12 claims for consequential losses or whether, like the
13 Terms of Reference and the eligibility criteria, the
14 focus is too on shortfalls.

15 The Post Office say in their submissions at tab 7
16 at page 172 to 173, it's the last line on 172:

17 "The HSS application form accordingly invited
18 postmasters to identify any such shortfall that the
19 applicant has repaid or is regarded by Post Office as
20 still owing [shortfall losses] as well as 'any other
21 losses claimed by Horizon shortfall', namely
22 consequential losses", and a cross-reference in
23 footnote 7 is given to the consequential loss principles
24 and guidance document.

25 It is said, continuing, consequential loss is

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1 directly related to the alleged shortfalls in respect of
2 which you would like to claim. If yes, please provide
3 the following details for each alleged loss: the nature
4 of the alleged loss, the dates of the alleged loss, how
5 the loss arose as a direct result of the alleged
6 shortfall, and the value/size of the loss."

7 Then there is a little box for a person to include
8 that information.

9 You may wish to consider whether that single
10 question, not mentioning consequential losses, not
11 mentioning the consequential loss principles and
12 guidance, has led to the issue that both Howe & Co and
13 Huddell Solicitors have raised. And, if so, what is to
14 be done about it?

15 The second issue is whether the facility within
16 the scheme for a payment to a subpostmaster in the
17 interests of fairness, even though they cannot discharge
18 the burden of proving on the balance of probabilities
19 that they have suffered a loss, is in fact operating in
20 practice as a sufficient mechanism to ensure that
21 subpostmasters are properly compensated.

22 We can see the operation of that facility, the
23 fairness principle, written into the scheme in a number
24 of places. Can I invite you to turn up tab 17 please,
25 which is the consequential loss principles and guidance

20

1 document.
2 Under paragraph 3.1 at the foot of page 289 under
3 the heading "Key principles", paragraph 3.1 is headed
4 "Burden of proof in relation to consequential losses",
5 and reads:
6 "3.1.1 The burden of proof is on the postmaster
7 to provide sufficient evidence in support of their claim
8 to demonstrate that on the balance of probabilities,
9 i.e. a greater than 50 per cent likelihood, (a) such
10 losses have been suffered, and (b) as a consequence of
11 a Horizon shortfall as such are found in the common
12 issues judgment or the Horizon issues judgment. This
13 means evidencing the fact that a loss was incurred, the
14 amount of that loss, and that the cause of the loss was
15 due to Horizon shortfall.
16 "3.1.2 where the subpostmaster is unable to
17 satisfy the burden of proof in relation to their claim,
18 their claim may nonetheless be accepted in whole or in
19 part if the scheme considers it to be fair in all the
20 circumstances."
21 Then under 3.2.3, which is under a cross heading
22 of "Evidence", the guidance document states:
23 "The need to provide evidence is particularly
24 important where a postmaster's claim relates to matters
25 which are known only to the postmaster. While the
21

1 So in those two places one can see that the scheme
2 and, in particular, the Panel are to be guided by broad
3 considerations of fairness, that the Panel's discretion
4 is not confined solely to heads of loss claimed, and
5 that the Panel may take into account any facts and
6 matters which it considers will produce a fair result in
7 the circumstances of a particular case.
8 In terms of the operation of the scheme in
9 practice, there is no information that we have seen as
10 the Inquiry, no data in particular, and no explanation
11 as to the approach that's been taken, as to the
12 frequency with which this facility has been used, i.e.
13 the fairness principle applied even though
14 a subpostmaster on evidence grounds has fallen short of
15 proving a loss on the balance of probabilities, nor
16 whether there are any examples of the initiative in fact
17 having come from the Panel to award a sum outside
18 a class of loss, a consequential loss claimed by the
19 subpostmaster, i.e. where the Panel has taken the
20 initiative and suggested to a subpostmaster it appears
21 on the facts that you have presented that there is
22 a category of loss or there are broader categories of
23 loss that you ought to have claimed. You should do so.
24 Or examples of where the Panel has made an award on the
25 basis of a broad consideration of what is fair, rather
23

1 burden is on postmasters to provide sufficient evidence
2 to demonstrate their claim for consequential loss, the
3 scheme will also consider any relevant evidence Post
4 Office holds when assessing the claim. Any key
5 supporting documentation relied upon will be shared with
6 postmasters when they receive the outcome of their
7 claims to enable them to consider whether they wish to
8 accept the offers made to them."
9 I will come back to that in a moment.
10 The second place in which we can see the fairness
11 principle described is in tab 15, of your bundle which
12 is the terms of reference for the Independent Advisory
13 Panel to the HSS. It is at page 287 and clause 30, this
14 reads:
15 "In formulating its recommended offer the Panel
16 may recommend the making of an offer to the postmaster
17 if, guided by broad considerations of fairness, the
18 Panel considers that doing so would produce a fair
19 result in all the circumstances of the particular case.
20 For the avoidance of doubt, in doing so the Panel's
21 discretion will not be confined solely to the specific
22 heads of consequential loss claimed by the postmaster
23 but will take into account at any facts and matters
24 which the Panel considers will produce a fair result on
25 the facts of a particular case."
22

1 than the application of the legal principles of
2 remoteness, causation, mitigation, and quantum.
3 So the question which arises is whether this
4 fairness facility is operating in practice in
5 circumstances where for the reasons described by the
6 subpostmasters it's very likely that a high number of
7 them have not retained records from a decade or two
8 decades ago that are necessary to prove to the relevant
9 standard the losses that they have suffered. That's an
10 issue that you may wish to explore in particular with
11 the Post Office.
12 Turning then to the reasons for exclusion. The
13 reasons for exclusion of certain classes of applicant
14 have been broadly explained in all of the submissions of
15 the core participants and I'm not going to rehearse
16 them. But an outstanding issue is the exclusion of
17 applicants who did not apply within the relatively short
18 window during which the scheme was open for
19 applications, which relatively short window was at the
20 height of the pandemic, and the approach that the Post
21 Office has taken after that closure of the window to
22 applications made out of time.
23 You will see in tab 7, at page 176, at paragraph
24 23, this is the Post Office submissions, the Post Office
25 say:
24

1 "The scheme was initially open to applications
2 from 1 May to 14 August 2020. This deadline was
3 subsequently extended by 15 weeks until 27 November 2020
4 in order to enable further applicants to apply following
5 an amendment to the scheme's eligibility criteria, as
6 well as to accommodate difficulties in making
7 applications due to the Covid 19 pandemic."

8 Then this:

9 "Since closure of the scheme to applications, Post
10 Office has received in excess of 170 applications to
11 date, all of which Post Office is actively considering
12 how best to address", so you may wish to consider the
13 approach that the Post Office is taking to applications
14 made out of time and whether that statement, which is
15 "We're still thinking about it", is adequate in the
16 circumstances.

17 Issue 2, sir, under this first category is whether
18 there has been delay and, if so, the causes of delay in
19 processing applications under the HSS. As we said,
20 after the 15-week extension period to 27 November 2020
21 the scheme was closed.

22 In terms of the number of applications made and
23 the awards made, if we can go back to tab 19, please,
24 which we looked at earlier, this time look at the second
25 page, page 303. Again, these are figures to 7 June this
26 25

1 issue that may arise for your consideration is what is
2 the cause of the delay that 19 months on only 50 per
3 cent of eligible claimants have had payments made to
4 them.

5 Sir, issue 3 is the provision which has been made
6 for applicants to obtain independent legal advice in
7 respect of their claims under the HSS and whether it has
8 been adequate. Sir, you know that the scheme makes
9 provision for the payment of a figure of either £400 or
10 £1,200 in respect of legal fees. That figure is
11 dependent on whether the Post Office offers to pay the
12 claim in full, in which case the former figure is paid,
13 or whether it does not, in which case the latter figure
14 may be paid.

15 The scheme makes no provision for any other forms
16 of assistance, for example, fees for medical evidence to
17 be obtained to support a claim for consequential losses,
18 or forensic accountancy services, again, to prove on the
19 balance of probabilities that losses which are
20 consequential on a shortfall have been suffered.

21 You may wish to consider whether this approach is
22 adequate in circumstances where, firstly, the nature of
23 the consequential losses claimed are in many instances
24 likely to be complex; where the scheme, secondly,
25 requires losses to be evidenced by a range of
26 27

1 year, so these are figures 19 months after the closure
2 of the scheme, it shows that settlement offers of the
3 eligible claims have been made in 1,483 cases, i.e.
4 63 per cent, and payments have been made in 1,135 cases,
5 i.e. 48 per cent, so less than half.

6 Last night the Post Office filed some additional
7 submissions to update these figures amongst other
8 things. The 63 per cent has gone up to 65 per cent,
9 i.e. the number of eligible claims in which offers made,
10 and payments have been made in -- sorry, that's 67 per
11 cent, not 65. Payments have been made in 52 per cent of
12 eligible cases as opposed to the previous figure of
13 48 per cent. So still at around the half figure, and
14 we're 19 months after the closure of the scheme.

15 Now, those numbers, those figures, obscure perhaps
16 the human stories that sit behind them. You may recall
17 Mr Baljit Sethi who I asked questions of in the human
18 impact hearings. He told you, sir, that although he had
19 received standard form acknowledgements from the Post
20 Office after he had made the claim, he waited for just
21 under two years before he received any substantive
22 reply. That was a couple of days before he gave
23 evidence to you.

24 There were other accounts of delays in any contact
25 at all from the Post Office in the HSS. So, sir, the
26 26

1 contemporaneous and other documentary material, material
2 which a lay person may not be used to collecting,
3 organizing and presenting; where, thirdly, the scheme
4 self evidently applies legal concepts such as
5 remoteness, causation, mitigation, and quantum that may
6 be unfamiliar to people; where, fourthly, further
7 difficult issues may arise in claims that arise
8 following bankruptcy, where the trustee-in-bankruptcy
9 must be involved and the consequential losses that are
10 properly recoverable may be complex; where, fifthly, tax
11 advice it's likely to be necessary in relation to
12 different elements of payments made under the scheme.

13 No provision is made for the payment of legal
14 costs when the dispute resolution procedure within the
15 scheme is triggered, including where a good faith
16 meeting is required or if the case goes to mediation.
17 The point has been made by the subpostmasters that by
18 contrast the Post Office has appointed a law firm to
19 operate the scheme on its behalf and to prepare the
20 analysis which is then passed to the Independent
21 Advisory Panel, i.e. which appears to form the basis of
22 the material on which the Independent Advisory Panel
23 makes its decisions.

24 In its submissions of last night, the Post Office
25 stated that it has contributed to the legal costs of 45
26 28

1 applicants. If that is correct that means that it has
 2 made a contribution in 45 out of 1,242 cases in which
 3 the payments have been made, a tiny proportion. It
 4 follows that no appointments have been made in some
 5 1,100 or so of the cases -- sorry, 1,200 of the cases in
 6 which compensation payments have been made.
 7 In the same submissions the Post Office says that
 8 it's currently considering whether contributions to
 9 legal fees or other professional costs can be made
 10 available and that it will update the inquiry in due
 11 course.
 12 You may wish to consider whether that is
 13 satisfactory in circumstances where the scheme has been
 14 operating for 2 years and according to the Post Office
 15 figures, half of the eligible applicants have already
 16 been paid a sum of money and only 45 of them have had
 17 their legal fees paid.
 18 Issue 4, is the provision which has been made for
 19 interim payments pending completion of the procedures
 20 under the HSS. You will have seen that Hudgell & Co
 21 suggest that the Post Office has refused to make interim
 22 payments under the HSS in respect of losses which are
 23 agreed whilst other species of loss are investigated,
 24 and that Howe & Co have suggested that the making of an
 25 interim payment under the scheme, such as the HSS ought
 29

1 showing for example, a terminal illness or old age, but
 2 instead where some losses have been agreed and payment
 3 of that sum should be effected, whilst argument
 4 continues over other losses.
 5 Sir, those are the four issues that arise under
 6 the first category.
 7 Howe & Co have raised an additional issue over the
 8 operation of paragraph 3.2 of the consequential loss and
 9 principles guidance. That is tab 17 at page 290.
 10 I mentioned it to you earlier. Tab 17, page 290, and
 11 it's 3.2.3 which I read out earlier. The point made on
 12 behalf of Howe & Co is that subpostmasters are provided
 13 under this scheme with the evidence that the Post Office
 14 possesses at the stage and only at the stage when "they
 15 received the outcome of their claim", i.e. they received
 16 evidence from the Post Office after they had formulated
 17 a claim and after receipt of an offer.
 18 So the burden is on the postmaster to prove his or
 19 her claim without the material that the Post Office
 20 itself possesses. It's suggested by Howe & Co that such
 21 material as to the Post Office possesses as is relevant
 22 to the claim that is made, ought to be disclosed at the
 23 outset or at least in the course of the process and not
 24 at its end.
 25 Can I turn more briefly to consider categories 2
 31

1 not to be seen as controversial or novel, but instead
 2 the norm.
 3 You may wish to consider whether this approach of
 4 generally not making interim payments under the HSS has
 5 placed pressure on subpostmasters to accept early
 6 payments at undervalues or instead hold out for the
 7 possibility of a higher payment.
 8 If we go to tab 7 again, the Post Office
 9 submissions, at page 182, at the foot 182 and on to 183,
 10 it is said, as noted in some previous submissions,
 11 payments have been made on an interim basis prior to
 12 a final offer of compensation, so those applicants to
 13 the HSS whom Post Office understood to be in difficult
 14 circumstances, who could be irredeemably impacted by the
 15 time necessary fully to assess their claim and make
 16 a fair offer. To date Post Office has made payments on
 17 an interim basis to 25 applicants, including of
 18 circumstances of severe financial hardship, terminal
 19 illness, risk of personal hardship and old age.
 20 So interim payments made in 25 cases, and you will
 21 recall that as of 7 June 1,482 offers of settlement have
 22 been made, so interim payments in about 1.6/1.7 per cent
 23 of cases. There appears to be a difference of desire or
 24 of approach here. You may wish to consider whether
 25 interim payments ought to be made irrespective of
 30

1 and 3 or B and C. Category 2, back to tab 2, sir, final
 2 compensation for subpostmasters with quashed
 3 convictions. Issue 5 was the principles which are being
 4 applied to the calculation of final compensation
 5 schemes -- sorry, final compensation payments; issue 6,
 6 the mechanism which by which final compensation payments
 7 are being calculated; issue 7, the provision, if any,
 8 which is made for applicants to obtain independent legal
 9 advice in relation to their claims; issue 8, the
 10 procedures which are being adopted to resolve the
 11 disputes about the value of compensation payments.
 12 These are all about subpostmasters who have had their
 13 convictions quashed.
 14 These issues do not address the question of
 15 interim payments and that's deliberately so. That's
 16 because, as I mentioned already, the payment of sums of
 17 money to subpostmasters in this category of claim appear
 18 on the information received by the Inquiry largely to
 19 have worked well, with such payments generally being
 20 made promptly.
 21 In their May submissions the Post Office noted
 22 that of the 73 men and women whose convictions have been
 23 quashed, 69 had applied for interim payments and such
 24 payments had been made by the Post Office in 66 of them.
 25 The questions that we have instead raised relate to
 32

1 final payments. That's what questions five to eight
2 relate to.
3 The collective answer to all of those questions is
4 that there is no formal mechanism or scheme to value
5 claims or to administer claims. Instead, the claims are
6 being pursued through pre-action correspondence in the
7 hope that they will be resolved without recourse to yet
8 further litigation.
9 It's been said in the submissions both by BEIS and
10 the Post Office that the absence of a formal mechanism
11 or scheme was at the express request of the
12 subpostmasters themselves. Certainly in the submissions
13 of Huddell & Co there is no request for such a scheme to
14 be set up. Instead, the Huddell & Co submissions to you
15 focus on the merits of their clients' claims for certain
16 losses, a matter which I anticipate you will not wish to
17 address, the individual substantive merits of the claims
18 made.
19 However, there has been a further development in
20 that a number of subpostmasters represented by
21 Huddell & Co have agreed that the issue of non-pecuniary
22 losses, which it is said was causing a particularly
23 difficulty to assess and to agree, should be referred to
24 early neutral evaluation, a process which by a valuer
25 who is respected expresses a non-binding conclusion,

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1 proceeding satisfactorily.
2 Can I turn then to category 3, fair compensation
3 for the group litigation claimants. This raises issues
4 9 to 12 on your list, sir. These issues have been
5 overtaken by events. In particular, the announcement by
6 the Minister seven days ago about the payments by way of
7 interim payments to the GLO claimants with a fund of
8 £19.5 million set aside for that purpose and his
9 announcement that a new scheme for the payment of final
10 compensation was being developed. There are no details
11 yet available as to that scheme for the payment of final
12 compensation to the Group litigation claimants.
13 It seems to us that the issues which may arise
14 include whether the voice of all of the GLO claimants is
15 being heard and fairly represented in the development of
16 a scheme to administer payments, both interim and final,
17 for the group litigation claimants.
18 You will have seen that the Minister announced
19 seven days ago that the Government had engaged Freeths
20 Solicitors in the way that I have described and they
21 were of course the firm that represented the 555 GLO
22 claimants in the group litigation. It's fair to say
23 that the papers that the inquiry has received and some
24 of the evidence that it has seen, raise some issues as
25 to the extent to which all of the 555 GLO claimants knew

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1 non-binding view, on the likely outcome were the matter
2 before him or her to proceed to court, and it is has
3 been announced by the Minister, Mr Scully, and in the
4 BEIS submissions of last night that Lord Dyson has
5 agreed to act as the evaluator.
6 So rather than looking individually at issues --
7 **SIR WYN WILLIAMS:** Sorry, Mr Beer. Did you say BEIS
8 submissions of last night?
9 **MR BEER:** No, I meant Post Office of submissions of last
10 night.
11 **SIR WYN WILLIAMS:** I thought you were in advance of me
12 that's all.
13 **MR BEER:** No, the Post Office submissions of 8.59pm last
14 night.
15 **SIR WYN WILLIAMS:** I know we all work late but I was
16 thinking when could they have come.
17 **MR BEER:** Yes. So the issue rather than individually
18 looking at points 5, 6, 7 and 8 that you may wish to
19 explore, in particular with counsel for the Huddell & Co
20 core participants, who represent it seems 62 of these
21 claimants, i.e. the vast majority of them, is whether
22 they are content for the current approach to continue.
23 That's a polite way of saying whether they, in
24 fact, ask you to butt out. Whether they wish you to
25 stand back and not interfere in arrangements that are

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1 and understood in the course of and at the conclusion of
2 the litigation the extent to which any sums paid by the
3 Post Office would be lost in legal and other
4 professional fees, and issues as to the extent to which
5 their interests were represented in a structured and
6 transparent way by the JFSA.
7 The inquiry has not of course been a party to and
8 knows nothing about the negotiations which it seems have
9 taken place between BEIS on the one hand, the JFSA on
10 the other, and Freeths on the third part as to the sums
11 of money to be paid by BEIS, the scheme by which such
12 payments will be made on an interim and on a final
13 basis, or the principles that will apply under that
14 scheme to ensure fair and reasonable compensation for
15 all of the 555 GLO claimants.
16 In that regard, I would end by asking you look at
17 a letter written by Freeths Solicitors, which is in
18 tab 3 at page 21, a letter to the solicitor to the
19 Inquiry. It's the final paragraph about half way
20 through, where Freeths say:
21 "On behalf of individual GLO claimants who choose
22 to instruct us, we are consulting with BEIS and JFSA in
23 order to collaborate on developing a scheme and
24 associated arrangements that work in the interests of
25 those of the GLO claimants who will instruct us, so

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1 naturally Freeths Solicitors will only be acting in the
 2 interests of those of the GLO claimants who instruct
 3 us."
 4 It is apparent that a number of the GLO claimants
 5 are represented in the Inquiry by Howe & Co and so the
 6 issue that you may wish to consider with representatives
 7 of both BEIS and the Howe & Co core participants is what
 8 mechanisms have been put in place to ensure that the
 9 arrangements work in the interests of all of the GLO
 10 claimants and not those simply represented by Freeths in
 11 circumstances where issues have arisen in the past as to
 12 the openness, transparency and organisation of decision
 13 making in the group litigation itself.
 14 In short, this scheme, it is presumed, is designed
 15 to put right what went wrong at the conclusion of the
 16 Group litigation. It will be unfortunate putting it
 17 mildly if something similar was to happen again.
 18 **SIR WYN WILLIAMS:** Can I say now, Mr Beer, so that there is
 19 no misunderstanding about what's in my mind, that that
 20 sentence that you just focused on "on behalf of
 21 individual GLO claimants who chose to instruct us [past
 22 tense]. We are consulting with BEIS and JFSA in order
 23 to collaborate on developing a scheme and associated
 24 arrangements that work in the interests of those of the
 25 GLO claimants who will instruct us."
 37

1 of people here and when we have our break it's very
 2 tempting to have a chat with people. Let me tell you a
 3 story about a crusty old judge who used to walk into
 4 court dead on the appointed time regardless of who was
 5 there. On one occasion I wasn't there and got a rocket.
 6 So from now on, if you want to have a chat outside
 7 please do but I'm going carry on without you. All
 8 right.
 9 Ms Gallafent.
 10 Submission by MS GALLAFENT
 11 **MS GALLAFENT:** Sir, thank you. I would like to state at the
 12 outset that Post Office is grateful for the opportunity
 13 to make both written and oral submissions on the issues
 14 you identified in your invitation of 10 May as well as
 15 oral submissions on the matters set out in your
 16 provisional view on compensation issues relating to
 17 prosecuted subpostmasters of 9 May of this year.
 18 We are conscious that so far as your invitation of
 19 10 May is concerned, these hearings are only intended to
 20 cover points that you consider should be addressed
 21 sooner rather than later and are not intended as
 22 a substitute for the full hearing on the issues of
 23 financial and other sorts of redress which fall within
 24 phase 5 of the Inquiry's work currently scheduled to
 25 take place next spring. In these circumstances in
 39

1 I'm not quite sure how the past and the present
 2 fits together there.
 3 **MR BEER:** Yes, in particular where the --
 4 **SIR WYN WILLIAMS:** I am not asking you to answer. I am
 5 throwing it out so that that puzzle in my mind can be
 6 pondered on by those who may know the answer.
 7 **MR BEER:** That's why I focused on that sentence in
 8 particular, sir. Because, as I said, putting it mildly,
 9 it may cause concerns that the issues that unfolded in
 10 December 2019 have the potential to repeat themselves
 11 once again.
 12 Sir, those are the only points that I raise for
 13 your consideration.
 14 **SIR WYN WILLIAMS:** Thank you very much.
 15 Ms Gallafent, I think you are next up but I take
 16 it we'd all like a morning break so is this a convenient
 17 moment to have it?
 18 **MS GALLAFENT:** In your hands, sir.
 19 **SIR WYN WILLIAMS:** All right then, 10 minutes and then we
 20 will start again.
 21 (11.42 am)
 22 (A short break)
 23 (11.56 am)
 24 **SIR WYN WILLIAMS:** Before I ask Ms Gallafent to make her
 25 submissions, I appreciate that there is a large number
 38

1 particular we have not treated today's hearing as the
 2 appropriate point for Post Office to make its opening
 3 statement generally, which we look forward to making at
 4 the beginning of phase 2 in September.
 5 So far as the content of our submissions today are
 6 concerned could I make three preliminary points. First,
 7 in line with the position adopted in our written
 8 submissions we will primarily be focusing on the
 9 specific questions asked by you rather than other issues
 10 which may be raised in due course.
 11 Secondly, in line with the indication in your
 12 statement of 30 June of this year, we will be taking the
 13 opportunity to highlight the aspects of the written
 14 submissions made on behalf of other organisations and
 15 persons with which we agree or disagree, and seeking to
 16 explain the reasons for any disagreement.
 17 Thirdly as, sir, we expect you will have
 18 anticipated from our own written submissions, we intend
 19 to focus on sections of A and B of your invitation and
 20 that is questions 1 to 8 and leave section C to the
 21 Secretary of State for BEIS to address in due course.
 22 Can I start then with section A and Historical
 23 Shortfall Scheme. Before I address the particular
 24 questions, can I just make clear that we had not
 25 ourselves understood or anticipated that the first
 40

1 question concerning heads of loss, and which were
2 recoverable or not recoverable, would be read and
3 regarded as covering the rather wider question of the
4 functioning and application of the fairness principle
5 under the scheme and, in particular, the use of the
6 provisions under the Terms of Reference of the
7 Independent Advisory Panel when it comes to its
8 recommendations. We make no criticism in this respect
9 but we emphasise that is why, sir, you haven't to date
10 received data or analysis on the use of that fairness
11 principle.

12 Now, I can confirm that it is used regularly, and
13 we are happy to assist the Inquiry by providing some
14 data and analysis on that issue should it be of
15 assistance. But that is why we haven't done it so far
16 because we hadn't interpreted that issue in the way that
17 Mr Beer has indicated it may be read this morning.

18 Can I move on to then the particular question
19 which is asked about recoverable heads of loss. We're
20 grateful to Mr Beer for introducing in particular the
21 Terms of Reference of the Independent Advisory Panel and
22 the definition of shortfall loss and consequential loss,
23 consequential loss being there defined as financial or
24 non-financial loss that is not a shortfall loss.

25 Mr Beer also took you to, sir, the consequential
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1 a Horizon shortfall at the time which may be recoverable
2 as loss under the terms of the scheme, and any legal and
3 professional fees incurred by a postmaster in bringing
4 an application to the scheme. We say that simply
5 reflects the position in line with civil proceedings
6 generally, which is that the costs associated with the
7 bringing or making of an application or claim are
8 treated separately to actual losses flowing from
9 a relevant breach of contract or breach of duty that's
10 relied upon on which the claim is founded.

11 The second point we make in this context in
12 relation to expert advice, is that every case will be
13 assessed by three members of the Independent Advisory
14 Panel, comprising one legal specialist, one forensic
15 accounting specialist, and one retail specialist. There
16 is therefore a very significant degree of expertise
17 already built into the process.

18 Thirdly, where a panel considers that it requires
19 expert assistance in order to make a recommendation, it
20 may recommend to Post Office that such assistance be
21 obtained at Post Office's cost. That's paragraph 27 of
22 the Independent Advisory Panel's terms of reference.
23 That's, sir, for your note page 286 in the bundle for
24 today. So it's open to any applicant to raise the
25 question of expert assistance being required and if the

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1 loss principles and guidance and went through at
2 section 5 the non-exhaustive list of the types of loss
3 that can be claimed, assuming they meet the applicable
4 legal tests and noting there they must be linked clearly
5 back to Horizon shortfall.

6 It is suggested by Mr Beer that effectively the
7 question as to what is or is not recoverable by way of
8 a consequential head of loss is pretty much settled,
9 that nothing is ruled out. At the risk of perhaps
10 raising questions that no longer arise can I just
11 address a couple of points that are made in the written
12 submissions of other core participants.

13 The first one is in relation to expert advice, and
14 it is suggested by Howe & Co that the heads of loss
15 under the guidance are deficient in that there is no
16 provision to obtain expert guidance to support or
17 quantify claims under the heads set out in the guidance.
18 We'd make four points in response. This is a point
19 raised in relation to heads of loss.

20 The first is that the guidance itself, and we say
21 rightly, expressly delineates -- sir, for your note
22 that's paragraph 5.8.1, of course, the guidance itself
23 is tab 17, I do not suggest you need to turn it up --
24 but it delineates between a claim for legal or
25 professional fees incurred in relation to dealing with
42

1 Panel agrees then it can recommend it's obtained at no
2 cost to the applicant. So it would be unnecessary for
3 such an applicant in those circumstances themselves to
4 bring any claim or seek any reimbursement of any such
5 expenses. It would be Post Office who would be footing
6 the bill in that case.

7 Sir, you might like to note that the Panel in the
8 past has asked Post Office to obtain expert evidence on
9 generic issues, including cardiac and mental health
10 issues to assist it in adopting an approach to claims
11 generally.

12 The fourth point I make in this context is that
13 the Panel's Terms of Reference also provide and, sir,
14 you have already been taken to this provision at Section
15 35, in relation to personal injury claims, where
16 insufficient evidence has been provided for a claim to
17 succeed, without further medical and/or expert evidence,
18 the Panel may nevertheless recommend the making of an
19 offer to the postmaster which the Panel considers fair.

20 Now, this provision is designed to be advantageous
21 to an applicant. It enables an applicant who is not
22 potentially able to obtain expert evidence to prove and
23 support their claim, nevertheless to obtain
24 a recommendation from the Panel on the basis of
25 fairness.

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1 We're conscious also that an applicant may wish to
2 avoid the inconvenience and potential distress of
3 obtaining a report which may be a particularly acute and
4 sensitive concern in cases involving mental health
5 issues, but that the Panel has the power nevertheless in
6 the absence of such evidence to recommend an offer which
7 it considers to be fair.

8 In these circumstances we wouldn't agree that
9 there is any deficiency in the Historical Shortfall
10 Scheme in this respect.

11 The second head of loss that's flagged up again by
12 Howe & Co as potentially not being recoverable under
13 this scheme, is the question of aggravated and exemplary
14 damages, and what is said is that no reference to them
15 or provision for them in the guidance and the heads of
16 loss are therefore deficient.

17 Now, Post Office's response so far as aggravated
18 damages are concerned is that where an applicant has
19 identified aggravation or stress that Post Office caused
20 when having to deal with shortfall issues, however that
21 claim is described by the postmaster, that is something
22 that would be fully taken into account when assessing,
23 recommending and making offers in that particular case.

24 Compensation for aggravation would be taken into
25 account in the round rather than being characterised or

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1 a deficiency in respect of the question of aggravated or
2 exemplary damages either.

3 **SIR WYN WILLIAMS:** Well, Ms Gallafent, you put it very
4 elegantly but I think the reality is that you take
5 a great deal of persuading, POL I mean, not you
6 personally of course, that a claim for exemplary damages
7 should be entertained.

8 **MS GALLAFENT:** Under the --

9 **SIR WYN WILLIAMS:** Because you say there is a problem with
10 the legal principles which underpin the award of
11 exemplary damages.

12 **MS GALLAFENT:** We wouldn't say it's a problem with the legal
13 principles. We'd say they are the legal principles that
14 apply. That is what the Terms of Reference provide for
15 but of course we would carefully consider it were it to
16 be made. But I emphasised that the vast majority of
17 claims brought under the HSS by far are brought on the
18 basis of contractual obligations, so the question may
19 arise but not necessarily in claims that have been
20 brought so far.

21 **SIR WYN WILLIAMS:** So is this a fair representation of what
22 you are telling me: that if, as a matter of principle,
23 legal principle, a particular claim was made in which an
24 award of exemplary damages was possible as a matter of
25 legal principle, it would be carefully considered. But

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1 identified as such on the face of any decision as
2 aggravated damages. It would most likely be taken into
3 account when the Panel considers the issue of distress
4 and inconvenience.

5 The Panel's role of course is with a view to
6 recommending an offer which is fair overall, hence why
7 it isn't specifically identified as such necessarily.

8 So although applicants may not have expressly
9 characterised their claim as including a claim for
10 aggravated damages, a number of offers have included an
11 element reflecting just such a claim where it is
12 justified on the facts of the case.

13 The position for exemplary damages is potentially
14 slightly different in principle. Were any claim to be
15 made it would be carefully considered along with all the
16 other claims that have been made. That said, POL's
17 initial view is that as a legal matter a claim for
18 exemplary damages does not naturally sit within the
19 scheme. It can't, strictly speaking, be said to be
20 a loss incurred by an applicant, or a type of damage
21 that's typically available for a breach of contract
22 claim. However, the Panel can and does consider overall
23 fairness when recommending offers to applicants and, as
24 I have said, any such claim would be carefully
25 considered. We therefore do not agree there is

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1 if a particular claim was made in which, as a matter of
2 legal principle, exemplary damages was not to be
3 awarded, it wouldn't be carefully considered. It would
4 be rejected.

5 **MS GALLAFENT:** Well, the claim itself would be carefully
6 considered in either of those events to work out
7 whether, as a matter of legal principle, it was
8 recoverable or not. So that's my starting point. It
9 wouldn't be rejected out of hand at all.

10 Of course, were then the Panel to reach
11 a conclusion and a recommendation based on saying, well,
12 exemplary damages are not recoverable in the
13 circumstances of this particular case, then of course
14 that could be a matter which is taken further in dispute
15 resolution process. I'm not seeking to rule out the
16 award of those damages, but I'm simply flagging up what
17 we perceive to be the potential issues going forward,
18 and perhaps just to anticipate we do not take the view
19 that, as it were, exemplary damages have been missed in
20 previous cases because we do note that those are
21 primarily brought on a basis of a contractual obligation
22 and exemplary damages are not generally available for
23 a breach of contract.

24 **SIR WYN WILLIAMS:** And I should make clear, lest people
25 misunderstand what I am doing, I am simply seeking to

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1 understand what you are saying. I recognise the limits
2 of my Terms of Reference. Everyone should understand
3 that.

4 **MS GALLAFENT:** Thank you. Thank you, sir.

5 Sir, can I move on to another category of loss
6 which it is suggested is not covered, which is third
7 party losses. Again, Howe & Co have suggested that the
8 heads of loss should reflect suffering caused to
9 children and family members and others in caring roles.

10 Can I emphasise that the Panel has throughout sort
11 to take an applicant-friendly approach to compensation,
12 including for this issue. Whilst a family member's
13 distress and inconvenience is not technically
14 recoverable from Post Office for a breach of contact
15 claim, such as in the scheme, in a number of cases the
16 Panel has nevertheless taken distress and inconvenience
17 of family members or others into account by considering
18 and having regard to the indirect impact of that on the
19 applicant when they are making recommendations. In
20 other words, when they feel it is fair to do so, so
21 practically speaking it will be taken into account where
22 it is justified to do so, despite the fact that our
23 position is it is not technically recoverable.

24 For completeness, I would note that the Panel has
25 also made recommendations for compensation for distress

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1 Mr Beer noted that it doesn't there refer to
2 consequential losses. Indeed it doesn't, and we say
3 that the reason for that is simply because this form was
4 designed and anticipated to be completed by lay persons
5 rather than having to require explanation or advice from
6 a lawyer in order to understand the meaning of
7 consequential losses. So the description of losses
8 directly related to the alleged shortfalls we say is
9 adequate in all the circumstances.

10 A suggestion is made by Hudgells that this
11 question was, as they put it, potentially misleading
12 because it didn't signpost applicants to any of the
13 examples set out in the guidance. We do not accept the
14 form was misleading on this or any basis. It was
15 designed to strike a balance between being comprehensive
16 and being capable of being used by lay persons.

17 Now, the guidance was introduced on 1 October 2020
18 at which point Post Office wrote to all applicants to
19 the scheme at that stage to communicate that update and
20 the availability of the guidance. Post Office also
21 published a press release about the guidance. And
22 published it on the scheme website so any applicants who
23 hadn't applied by that point would be made aware of it
24 from the website itself.

25 So we do not say there is any fault or deficiency

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1 and inconvenience or personal injury for corporate
2 entities that are stress and inconvenience or personal
3 injury suffered by directors or shareholders.

4 Going back to my point which we do not consider it
5 to be technically recoverable, I will emphasise again
6 that it does not follow from the fact that claims may
7 not fall directly within the scheme that a claimant is
8 precluded from bringing a claim because of course it
9 remains open to a potential claimant to bring
10 proceedings in which the legal basis for any such claim
11 could be fully considered. Again, we therefore wouldn't
12 agree that there is a deficiency in the scheme in this
13 respect.

14 Those three points are, in our view, as it were,
15 the core points raised by other core participants on the
16 question of heads of loss themselves and what is or is
17 not recoverable. We do recognise that the submissions
18 from other core participants went rather more widely
19 than that and, in particular, the question of the
20 application form and question 24.

21 It's common ground that what was asked was, of an
22 applicant, whether they had experienced any losses that
23 were directly related to the alleged shortfalls in
24 respect of which they would like to claim and asked for
25 details of each such loss to be provided if so.

50

1 in not sign posting the guidance in the application
2 form. Sir, as you have heard from Mr Beer, the
3 application forms, of course, predate the guidance. But
4 POL took all reasonable and appropriate steps to flag up
5 the existence of the guidance to applicants and
6 potential applicants.

7 Moreover, of course, and you have been taken to
8 this part of the terms of the reference of the Panel as
9 well, they provide that the discretion of the Panel
10 making a recommendation is not confined solely to
11 specific heads of consequential loss claimed by the
12 postmaster but will take into account any facts and
13 matters which the Panel considers will produce a fair
14 result on the facts of a particular case. That's
15 paragraph 30. Sir, you have it that tab 15, page 287.

16 **SIR WYN WILLIAMS:** I just wanted to check that I had marked
17 it. I had.

18 **MS GALLAFENT:** I am grateful, thank you. We've already set
19 out in our submissions that we put in in May for the
20 purpose of these hearings the proactive approach that is
21 being taken to assessing consequential loss. That
22 includes not just a proactive approach by the Panel, but
23 a proactive approach by those, as it were, the case
24 managers by virtue of the very detailed bespoke process
25 for requesting further information.

52

1 We emphasise that the bespoke request for further
2 information is designed to identify and ask further
3 questions of an applicant only when they arise from the
4 key facts of the individual case, provided on the
5 application form, so the case manager will be prompted
6 by the application form to identify potential further
7 questions and those questions will be asked, and
8 sometimes there will be number of them asked. But that
9 is all aimed to elicit information which may assist with
10 a claim for consequential loss.

11 Now, were such questions to have been asked as
12 a matter of course on the application form, which seems
13 to us the logical consequence of what's being suggested,
14 then inevitably many of them would have been irrelevant
15 to any particular applicant for asking, for example,
16 saying do you think there are any stigma damages, do you
17 have any personal injury, and so forth.

18 Far from being of assistance we say that to have
19 effectively built in guidance or something akin to it
20 into the application form itself would have been
21 perceived as overly burdensome and a barrier to making
22 an application. We repeat, the guidance was available
23 and flagged up to applicants and potential applicants,
24 the form itself is not deficient in this respect.

25 We also note that where an applicant having
53

1 relevant and a higher or lower reduction is appropriate.
2 That's likely to depend on its view of there being a
3 greater or lesser degree of uncertainty on the question
4 of a particular element of consequential loss.

5 We say it is not just unnecessary but it would be
6 inappropriate to constrain the Panel's discretion in
7 this context, i.e. to say you must only ever reduce
8 shortfall losses by 10 per cent rather than 20 or 30 per
9 cent, or whatever it might be. That would inevitably
10 lead to unfair outcomes in some cases and overly complex
11 rules, we say, to attempt to deal with every potential
12 permutations of circumstances.

13 The second suggestion made is that credit has been
14 given in some cases for heads of loss which haven't been
15 claimed, such as the time taken to deal with Horizon
16 shortfalls. I would again emphasise that the Panel does
17 not seek to hold applicants to and strict legal pleading
18 requirement. It will recommend an offer where it feels
19 it is fair to do so and in those cases where credit has
20 been given, that is because, on those cases, the Panel
21 feel on the facts its appropriate to do so, even though
22 it hasn't been claimed.

23 There is also, finally, a suggestion that there is
24 an absence of a consistent explanation as to how loss
25 for distress and inconvenience is quantified. The
55

1 received an offer credibly says they did not appreciate
2 that they needed provide information earlier, which
3 would include matters of consequential loss, this would
4 be taken into account in the post offer process. So the
5 door is not closed in those circumstances to raising
6 a matter of consequential loss even after the offer has
7 been made.

8 Another point that is raised, this time by
9 Huddell, is that the guidance itself, the consequential
10 guidance, should be supplemented to ensure greater
11 clarity and consistency in decision making. We don't
12 accept that's necessary, not least as it's very clear
13 that every case will turn on its own facts, but it might
14 help to assuage concerns for me to address directly the
15 three examples given by Huddell who obviously represent
16 a large number of the applicants that is suggested to
17 give rise to inconsistent decision making.

18 First, its alleged that there is a difference
19 between the level of reduction applied to shortfall
20 losses where there is an absence of paperwork. Huddell
21 identify that as being between 10 and 30 per cent. We
22 don't say that reflects something requiring greater
23 guidance. The fact that is that a change or a
24 difference of the level of reduction simply reflects on
25 the particular facts of that case the Panel feels are
54

1 answer to that is each offer letter explains the factors
2 taken into account, for distress and inconvenience.
3 There is not a separate loss to be quantified but it's
4 a matter that goes into fairness of the offer overall.
5 So, again, we say so far as the suggestion that greater
6 guidance is required, we say that that is not the case
7 and there is not a deficiency in that respect.

8 Can I move to other points that are not directly
9 linked to the first question but are raised in this
10 context. The first, and Mr Beer lagged flagged it up,
11 is in relation to late applications to the scheme. That
12 is after the closing date from November 2020.

13 In our May submissions we noted that the Post
14 Office was actively considering how best to address
15 those applications. At the time in 2020 the Post Office
16 went to very considerable lengths to bring the deadline
17 to the attention of all potentially eligible
18 postmasters. It extended the initial 10-week period for
19 applications by a further 15 weeks, which took it to
20 November 2020, to take into account both the numbers of
21 applications that had already been made and the Covid 19
22 situation pertaining at the time.

23 Nevertheless it is common ground that, for
24 whatever reason, a number of postmasters didn't apply at
25 the time and I can confirm that Post Office has now
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1 received as at today's date a total of 186 applications
2 made after the deadline passed.
3 Post Office remains keen to ensure and wishes to
4 ensure that compensation is delivered to everyone
5 affected and it is sympathetic to those who could not,
6 for justifiable reasons, apply to the scheme in time.
7 It remains the case that it is considering how best to
8 deal with such applications.
9 **SIR WYN WILLIAMS:** You can see that I'm pondering that,
10 Ms Gallafent.
11 **MS GALLAFENT:** I can indeed, sir.
12 Sir, may it assist if I put it in this context: in
13 our May submissions we made very clear that we do not
14 act alone, that Post Office is part of a wider mechanism
15 of governance and one of the reasons for the delay in
16 relation to the HSS scheme itself more generally are
17 questions of funding, so we cannot act unilaterally, if
18 I can put it that like. So the position remains that we
19 are carefully considering the position and remain
20 committed to ensuring that compensation is delivered to
21 everyone affected.
22 **SIR WYN WILLIAMS:** Well, there are two aspects to that that
23 I'll just float my thoughts about. One, the governance
24 aspect. It surprises me that an issue of this kind
25 would take quite so long.

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1 close at a pretty slow pace.
2 **MS GALLAFENT:** Sir, I hear what you say.
3 Can I pick up then, before I move off from
4 question 1, can I pick up three further points not
5 directly related but relevant we say.
6 The first is an issue raised by Hudgell in
7 relation to independent legal advice. That is whether
8 it be more appropriate for the Independent Advisory
9 Panel to have its own independent legal advice rather
10 than offers being made on the basis of legal advice and
11 analysis prepared by Herbert Smith Freehills.
12 Post Office doesn't consider this would be
13 necessary. There are five Queen's Counsel on the Panel.
14 The Panel is free to accept or reject the analysis and
15 advice given by Herbert Smith Freehills. As we
16 previously indicated in the May submissions, there have
17 been no cases where Post Office has offered an applicant
18 less than the Panel has recommended. That remains the
19 position to date.
20 Moreover, were the Panel itself to consider that
21 it wished to take independent legal advice, then it
22 would be open to it, to recommend to Post Office that
23 such advice be obtained at Post Office's cost. Just as
24 it is under section or paragraph 27 of the Panel's terms
25 of reference in relation to any other expert assistance.

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1 The second is should POL be the final arbiter of
2 this in any event? In effect, it's akin to a limitation
3 provision, though I accept that there are differences,
4 I am not going to press that. But in most scenarios in
5 which a time limit is applied in one way or another, it
6 might surprise someone to hear that the alleged
7 wrongdoer is the final arbiter of whether a time limit
8 should apply.
9 **MS GALLAFENT:** Could I put it like this, sir: the terms of
10 reference for the scheme provided for a deadline which
11 was, of course, subsequently extended. That principle
12 was one of the principles that had been discussed and
13 agreed as part of the deed of settlement with
14 representatives of postmasters. So in principle the
15 provision of a deadline was common ground.
16 We are not acting unilaterally in saying we will
17 not take in to account late applications. We are
18 considering and continue to consider how to ensure that
19 compensation is delivered to everyone affected.
20 It is not that we have shut the door on those late
21 applicants. Can I assure you, sir, of that. We
22 continue to aim to ensure that those applicants are
23 treated fairly.
24 **SIR WYN WILLIAMS:** Well, I think we can leave this with my
25 observation that the door is moving either to open or

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1 For the same reason we reject the suggestion that
2 the current scheme is not independent in the light of
3 the clear independence of the Panel and the procedure
4 followed thereafter, and I emphasise again no
5 recommendation has been rejected by the Panel and
6 a lower offer made, and some offers have been higher.
7 The second of the indirectly related issues to
8 question 1 is the evidential question. The way it was
9 put in the written submission of Howe & Co was that it's
10 unreasonable for the scheme to require contemporaneous
11 evidence of events from up to 20 years ago, particularly
12 in circumstances where postmasters may have been
13 deprived of access to their records at the point of
14 suspension and they may have been destroyed by Post
15 Office.
16 But we emphasise and, sir, as you have seen and
17 been taken to, the guidance on consequential loss makes
18 it clear that contemporaneous evidence is not required,
19 it is not a bar not to have it, but greater weight may
20 be placed on it as well as the factual evidence that is
21 undisputed or verifiable. That's what the guidance
22 says. Of course, where an application is concerned
23 about the Panel's approach to an alleged lack of
24 contemporaneous evidence, that's a matter that can be
25 raised as part of a dispute process.

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The Post Office Horizon IT Inquiry

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1 That point is connected to the third point, which
2 is the sharing of supporting information held by Post
3 Office. This was an issue flagged up by Mr Beer as
4 well.
5 Howe & Co have suggested that a procedural flaw in
6 the scheme is that the sharing of supporting information
7 held by Post Office won't be until the point of
8 receiving the offer. They say that's a substantial
9 procedural flaw.
10 Can I just highlight first, the terms of reference
11 that you have for the scheme at tab 14. I don't
12 believe, sir, you were taken this particular element of
13 it, at paragraph 6, so it's page 283 internally,
14 paragraph 6 provides:
15 "Once an application has been made either party
16 may write to the other to request relevant information.
17 The parties shall cooperate with each other in providing
18 any other information which the other party may
19 reasonably request. Information obtained and provided
20 in relation to each application should be proportionate
21 to the circumstances of that application."
22 So there is express anticipation that an applicant
23 saying to Post Office, "I need this. Please provide me
24 with this", and Post Office can equally say of an
25 applicant, "Could you please provide the following
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1 **SIR WYN WILLIAMS:** It in the outcome letter.
2 **MS GALLAFENT:** Yes.
3 **SIR WYN WILLIAMS:** It is not in any prior guidance.
4 **MS GALLAFENT:** No.
5 **SIR WYN WILLIAMS:** So it's at that point.
6 **MS GALLAFENT:** Exactly, so taking different stages, at the
7 point of the application paragraph 6 of the terms of
8 reference emphasises the opportunity for the parties to
9 ask for information from each other. Then you get to
10 the point of the outcome letter and that is where the
11 applicant is expressly told -- there is a list of all
12 the contemporaneous evidence that Panel assessed and
13 it's told that it can -- the applicant is told what they
14 can ask for and obtain.
15 **SIR WYN WILLIAMS:** Right.
16 **MS GALLAFENT:** Yes.
17 **SIR WYN WILLIAMS:** Right. I am with you.
18 **MS GALLAFENT:** Thank you. We say there is not any prejudice
19 to an applicant as a result of disclosure not
20 necessarily having been made earlier, if it has not been
21 requested. Again, if the applicant feels that the
22 material has been misunderstood or is incomplete that
23 can be raised at the good faith meeting.
24 Can I leave, subject of course to any indication,
25 sir, from you that you would like to us to do a little
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1 matters and documents", so that's the starting point.
2 The second point is that number of postmasters
3 have made data subject access requests prior to or
4 during the course of making an application and, of
5 course, there they will be provided with all data that
6 falls within that access request.
7 Turning then to the outcome letter, the outcome
8 letter lists all contemporaneous evidence which the
9 Panel assessed to make the recommendation and it
10 expressly explains that the applicant can request a copy
11 of any or all of those documents and pieces of evidence.
12 Applicants can also request a copy of the Post Office
13 investigation report, the Herbert Smith Freehills legal
14 case assessment, and a record of the Panel assessment
15 and recommendation.
16 All of this data is provided in order to support
17 the applicant's consideration of the offer and, of
18 course, having considered it the applicant is free to
19 accept or reject the offer, following which a good faith
20 meeting can be held and, if necessary, disputes can be
21 escalated thereafter.
22 **SIR WYN WILLIAMS:** Sorry, this is my fault, but this
23 information about the documentation which an applicant
24 can obtain.
25 **MS GALLAFENT:** Is set out in the outcome letter.
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1 bit of analysis and data collection on the question
2 of --
3 **SIR WYN WILLIAMS:** Well, I think I will say now that rather
4 than going along trying to listen to you and formulate,
5 in inverted commas, rules and requests at the same time,
6 what may happen -- and I stress may -- is that if there
7 is any data that I require from any party before I make
8 a written report in whatever form it is following these
9 hearings I will do it in writing after the hearings
10 rather than trying to do it as we are going along.
11 **MS GALLAFENT:** I certainly wasn't suggesting that, sir. If
12 you were to indicate that you would be open to the
13 provision of such data then we will crack on with that
14 and get that ready. But I'm certainly not anticipating
15 that you need to, as it were, tell me precisely what you
16 would like at this stage. It might be more helpful,
17 frankly, for us to provide you with an indication and
18 then it might assist you in understanding what more or
19 less you would want from us.
20 **SIR WYN WILLIAMS:** Well, as you know, Ms Gallafent, people
21 write to me at all times of the day or night in this
22 Inquiry providing me with information. Far be it for me
23 to stop you from doing the same.
24 **MS GALLAFENT:** We shall endeavour to do it perhaps a little
25 earlier in the day on the next occasion, sir. Thank you
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1 for your patience with us.
2 Can I move then to the second of the questions
3 posed, sir, in relation to delay. I'm not going to seek
4 to repeat the explanation set out in the May submissions
5 about the process between setting up the scheme and the
6 position reached by the time of those submissions.
7 You have our submissions on delay and I'm again
8 conscious, sir, of your indication in the note of
9 30 June that you have those well in mind and don't
10 require us to go through them again.
11 I do though want to flag up the continuing
12 progress being made since those submissions which
13 demonstrates, we say, a clear and continuing positive
14 trajectory towards resolving all current applications.
15 Now, we provided an update in the late night note, as it
16 may become referred to, yesterday but in fact as of
17 midnight yesterday I can confirm that further letters
18 have been sent out during the course of yesterday, which
19 take the number of eligible applicants who have been
20 sent offer letters up to 1,659 out of 2,370, which takes
21 us to us a 70 per cent rate of offers from applications.
22 **SIR WYN WILLIAMS:** So I'm trying to make a note on the
23 relevant pages of my bundle, so this all starts on
24 page 302 and then goes over to page 303. That was as at
25 7 June I think it was. Then Mr Beer gave me further
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1 applicants with offer letters by the end of this
2 calendar year. You will see that again on page 302.
3 To date 115 applicants have formally engaged the
4 dispute resolution process. 31 of those, 27 per cent,
5 have now reached agreement on the amount of
6 compensation. Good faith meetings have taken place with
7 47 applicants, escalation meetings with seven
8 applicants, are there are a further 11 good faith
9 meetings scheduled for the coming weeks.
10 On delay there are a couple of particular points
11 raised by other core participants. The first is raised
12 by the National Federation of Subpostmasters who have
13 suggested it would be justifiable, sir, for you to ask
14 whether the non-renewal of a contract of the previous
15 head of historical matters resulted in there being
16 a significant period of time during which no individual
17 was responsible for driving the scheme forward.
18 The position is that the fixed term contract for
19 the previous head of historical matters ended on
20 23 July 2021. Prior to that, in May 2021, the
21 Government had announced that this Inquiry would be
22 moved on to a statutory footing. As a result, the Chief
23 Executive Officer of Post Office, Mr Read, revised the
24 structure of the then existing historical matters team
25 to ensure that Post Office was appropriately set up to
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1 figures based upon what your statement said last night.
2 **MS GALLAFENT:** Yes, that was at the end of June.
3 **SIR WYN WILLIAMS:** Now we're getting up to midnight on
4 July 5 or 6, whichever you prefer. Is that it?
5 **MS GALLAFENT:** That's exactly it.
6 **SIR WYN WILLIAMS:** Fine, right, so if you tell me that
7 I will make a note on this document.
8 **MS GALLAFENT:** 1,659, which takes the percentage of offers
9 to eligible applicants to come to 70 per cent.
10 **SIR WYN WILLIAMS:** All right.
11 The figure that Mr Beer gave me, obviously, for
12 payments made is the same today as it was last night, so
13 I don't need to worry about that.
14 **MS GALLAFENT:** Yes.
15 **SIR WYN WILLIAMS:** Right.
16 **MS GALLAFENT:** They would have been very speedy indeed if
17 they'd accepted it. Exactly.
18 You may note, just going back to page 302, of
19 course the information on progress and the anticipated
20 rate of progress to get us to 95 per cent by
21 December 2022 provides that the target was to reach 70
22 per cent by the end of July. We have actually reached
23 it on 5 July which is why I emphasise a clear and
24 continuing positive trajectory, and Post Office remains
25 on course to provide at least 95 per cent of eligible
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1 assist the Inquiry. That then resulted in
2 Mr Racalain(?) becoming Historical Matters Director in
3 January 2022.
4 However, in that period during which there was no
5 longer a head of historical matters before Mr Recalain
6 took up his post the historical matters team continued
7 throughout to focus on matters arising from the group
8 litigation including the Historical Scheme.
9 We wouldn't accept that any delay arose as
10 a result of the restructuring of Historical Matters
11 Scheme which was considered necessary and appropriate to
12 anticipate the needs of this Inquiry.
13 As I say, we've set out the reasons for the delay
14 in our May submissions and I don't repeat them here.
15 Hudgell also flags up the issue of bankruptcy
16 cases. We recognise and agree that bankruptcy cases are
17 extremely complicated and may well take longer to
18 resolve. We are actively working to resolve the
19 challenges posed by such cases, including the issue of
20 the costs of the Official Receiver or
21 Trustee-in-Bankruptcy. In the meantime, Post Office
22 expects that the first offer will be made to an
23 applicant in a bankruptcy case in the coming weeks.
24 Finally, Howe & Co have raised the case, and it
25 was identified by Mr Beer in his opening submissions, of
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1 Mr Sethi who of course was the first witness to give
2 evidence before you, sir, in the human impact hearings.
3 If the Inquiry were to consider it helpful and if
4 Mr Sethi were to consent we would be happy to provide
5 the Inquiry with a full timeline of the processing of
6 his application. But for today it may suffice for me
7 just to note that his application is one of the
8 particularly complex ones which has raised a number of
9 procedural issues in terms of representation.

10 So far as the request for information that he
11 received shortly before he gave evidence is concerned,
12 for the avoidance of any doubt, the timing of that
13 request was in no way connected with the fact of his
14 giving evidence. Rather, it reflected that his
15 application had reached the request for further
16 information, that is the proactive request for
17 information designed to elicit further information,
18 particularly in relation to consequential losses stage
19 of the process.

20 Mr Sethi helpfully responded at the end of March
21 and his responses are currently being considered under
22 the scheme in the usual way.

23 Finally, there is a question of tax implications.
24 It is not raised again in relation to the delay. But in
25 this context we have been asked to confirm what

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1 of enabling an applicant to consider an offer made to
2 them, or £400 where the offer is to pay the applicant's
3 claim in full or largely in full. So far as we are
4 aware no request for a contribution for legal advice has
5 ever been refused. So the figures that you have seen of
6 the number of contributions made we say reflects the
7 number of request received.

8 We do not consider that the absence of any
9 contribution to legal fees towards the making of the
10 application is itself unfair or inadequate. That's
11 suggested by Howe & Co.

12 This scheme has been designed to be simple and
13 user friendly, to avoid the need to incur such costs, as
14 set out in our May submissions. That's paragraph 39 for
15 your note.

16 In short, guidance is available to postmasters to
17 assist them in preparing an application. Sir, you have
18 seen a number of elements, key elements, of that
19 guidance.

20 Secondly, there is a presumption that a shortfall
21 was caused by a previous version of Horizon or a breach
22 of duty by Post Office in the absence of evidence to the
23 contrary.

24 Thirdly, Post Office has agreed not to take any
25 limitation defence in relation to claims brought under

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1 provisions we have made for dealing with tax
2 implications on certain pecuniary heads of loss. That's
3 a request by Hudgell that it made in relation to
4 question 2.

5 It's common ground that shortfall compensation
6 does not attract tax, but Post Office is obliged to
7 deduct tax for the other heads of compensation. It does
8 so at the basic rate of 20% in accordance with the
9 Income Tax Act 2007 section 874, which as is explained
10 in outcome letters may result in POL, in Post Office,
11 deducting less or more tax than the applicant is
12 actually liable to pay.

13 Post Office notes that it's the applicant's
14 responsibility to ensure the correct amount of tax is
15 paid and that they may want to seek independent tax
16 advice, and the letter also points applicants towards
17 resources they might look to for further information on
18 this particular issue. In these circumstances, Post
19 Office does not consider it necessary or appropriate to
20 offer any indemnity for scheme applications.

21 The third issue, if I may move on to the third
22 question, sir, in relation to independent legal advice.
23 It's availability. The Inquiry is obviously well aware
24 the scheme provides for a contribution currently of
25 £1,200 towards the cost of legal advice for the purpose

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1 the scheme.

2 Fourthly, as I have already identified the Panel
3 and case assessors act proactively to obtain further
4 information from applicants where appropriate.

5 Again, sir, as you are also well aware, the Panel
6 has a full discretion take into account any facts and
7 matters which it considers will produce a fair result on
8 the facts of each particular case, including but not
9 limited to applicable legal principles.

10 As we set out in our further note and as Mr Beer
11 emphasised as well as paying applicants the contribution
12 towards legal fees at the offer stage, it has also paid
13 contributions towards costs incurred by applicants prior
14 to them receiving a compensation offer in two cases, for
15 example, in relation to the costs of providing medical
16 records in support of a claim for personal injury.

17 So far as the Post Office phase is concerned, Post
18 Office does recognise that there may be some cases in
19 which the current provision may be insufficient to
20 support an individual applicant to resolve their claim.
21 It is currently considering whether contributions
22 towards further legal or other professional costs can be
23 made available to applicants to help resolve their
24 claims. We will obviously update the Inquiry as soon as
25 a decision has been reached on this issue.

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1 **SIR WYN WILLIAMS:** I mean, the impression I get and I do not
2 want to say this in any flippant sense, but many of the
3 offers which have been made and accepted are
4 comparatively easy to resolve. One is now getting to
5 the stage where there are likely to be much more
6 significant difficulties in resolving the applications.

7 **MS GALLAFENT:** Yes, and for the reasons we set out in the
8 May submissions that was because of the approach adopted
9 to the scheme by dealing with what we would characterise
10 as low value claims, and those were the ones that were
11 dealt with first. So the low value claim is a claim for
12 a shortfall up to £8,000, in some cases a claim for
13 distress and inconvenience, but not all, but not for any
14 other form of consequential loss.

15 So those block of cases were, I would entirely
16 agree, sir, they were on their face simpler to resolve
17 because of the presumption in relation to shortfall and
18 because of there being no issue in relation to
19 consequential loss apart from distress and
20 inconvenience.

21 It may assist, sir, if I then deal perhaps with
22 the statistics, because Howe & Co also suggested that we
23 should provide you, sir, with the percentage of
24 applicants who were and were not represented at the time
25 of the application, and the same percentages in relation

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1 **MS GALLAFENT:** Ten of them were lower value claims. That's
2 my lack of articulacy, I apologise. I'm standing too
3 far away from the microphone, ten.

4 **SIR WYN WILLIAMS:** I'm busily writing a note, even though
5 I have a contemporaneous transcript. It's the habit of
6 a lifetime.

7 **MS GALLAFANT:** It is, it is. I'm grateful, thank you.
8 I hope that provides some context in which the
9 otherwise quite bald figures of representatives being on
10 record and contributions being made, as to why perhaps
11 those figures are not quite so straightforwardly an
12 indication there has been any form of inadequacy when it
13 comes to legal costs at the point of offer.

14 Can I move to question 4, which is interim
15 payments. It's been suggested by Howe & Co that the
16 scheme should make provision for interim payments in all
17 cases, and it's unacceptable for Post Office to be able
18 to decide to whom such payments should be made. It is
19 not clear whether that suggestion is made in the context
20 of pre offer interim payments or post offer payments.
21 Can I address each of those in turn.

22 As Mr Beer indicated, payments have been made on
23 an interim basis, prior to an offer being made, to those
24 applicants to the scheme who Post Office understood to
25 be in difficult circumstances who could be irremediably

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1 to accepting offers under the scheme. It is suggested
2 it is instructive to examine the level of offer or award
3 made to unrepresented applicants as opposed to
4 represented applicants.

5 The position as at midnight yesterday is 1,300
6 applicants have accepted settlement offers. Of those,
7 two applicants had legal representation. 92 applicants
8 have rejected settlement offers and of those 13
9 applicants had legal representation. Can I put some
10 context on those statistics by virtue of the question of
11 low value claims, sir, that I was just alluding to.

12 Of the 1,300 accepted offers, just over half of
13 them, 678 for precision, were claims for shortfalls up
14 to £8,000 and no consequential loss, so potentially for
15 distress and inconvenience.

16 Of the 92 rejected offers ten of them were those
17 types of claims, what we have characterised as lower
18 value claims. So, sir, you anticipate entirely
19 correctly, which is there are more as it were rejected
20 offers where it is not a lower value claim
21 proportionately but there are roughly half and half when
22 it comes to acceptance of offers.

23 **SIR WYN WILLIAMS:** Sorry, can you repeat that? Of the 92
24 rejected, on the [draft] transcript in front of me, the
25 number has not come up after that.

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1 impacted by the time necessary to fully assess their
2 claim and make a fair offer. To date, 28 such payments
3 have been made, that includes circumstances of severe
4 financial hardship, terminal illness, risk of personal
5 hardship, and old age, where concerns have been raised
6 about the impact of the speed of progress on the
7 applicant. Some of those concerns have been raised by
8 the applicant. Others have been raised within Post
9 Office and a proposal for an interim payment made on
10 Post Office's recommendation.

11 Where such appointments are made, it is expressly
12 explained to the applicants that they would not need to
13 repay any of the interim payment in the event that the
14 final offer is made for less, or that accepting an
15 interim payment would in anyway adversely impact their
16 claim. It wouldn't.

17 So far as the position post offer is concerned,
18 other than potential hardship interim payments, Post
19 Office's priority is to seek to resolve applicants
20 claims in a manner which is fair in all the
21 circumstances of the case.

22 That will we say typically be achieved by reaching
23 full and final settlements with the applicants rather
24 than on a piecemeal basis through interim and part
25 payments. As I have indicated at this stage offers have

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1 been made to over two-thirds of applicants and of those
2 accepted by 80 per cent of those applicants.

3 There is a structured and clear plan to work
4 through the dispute resolution process with those who
5 formally engaged it and to provide, as I've indicated,
6 at least 95 per cent of applicants with offer letters by
7 the end of this year.

8 Our position is it would be an unhelpful
9 divergence of resource and cost to set up some form of
10 sub-scheme within the Historical Shortfall Scheme by
11 which applicants could then apply for and interim offers
12 be made to them other than on hardship grounds.

13 An additional factor for not making interim offers
14 is that the approach under the scheme is to reach an
15 overall offer, as you have heard me say on a number of
16 occasions, rather than break down the offer by
17 individual heads of loss. As already indicated it's
18 made on a number of applicant-friendly presumptions,
19 such as the presumption that a shortfall loss was caused
20 by Horizon. These presumptions would not apply were it
21 not possible to resolve the claim without the applicant
22 going to court. In that situation, it's entirely
23 possible in principle that a postmaster would not obtain
24 compensation in the same sum as the offer, which offer
25 of course is built on those applicant-friendly

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1 principles, and therefore potentially not in the same
2 sum as any interim payment which might have been made.

3 So we say that the position under the scheme is
4 significantly different from the approach to interim
5 payments in relation to postmasters whose convictions
6 have been overturned when its considered by Post Office
7 and BEIS that all such persons were likely to receive
8 greater sums than the up to £100,000 in due course for
9 their claims.

10 As for the suggestion that it should not be Post
11 Office which decides when an interim payment should be
12 made, were an independent body such as the Panel to
13 determine such requests, there would inevitably be some
14 further delay in the process for applicants generally,
15 in order to accommodate such cases going to the Panel
16 not once but twice. In those circumstances, we do not
17 accept that the absence of an express provision for
18 interim payments under the scheme is unfair or
19 inappropriate.

20 Sir, I'm going to move now to section B dealing
21 with final compensation for postmasters with quashed
22 convictions. I note the time. I am very happy to press
23 on with section B then I have very little to say on C
24 and a couple of other points, but if you would prefer me
25 to break now and come back --

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1 **SIR WYN WILLIAMS:** I think my view is simply this,
2 Ms Gallafent, if you were to complete your submissions
3 within say 25 minutes that might be preferable, but if
4 that's not possible we'll have a break whenever it suits
5 you.

6 **MS GALLAFENT:** No, I'm confident I can do that.

7 **SIR WYN WILLIAMS:** Let's carry on until the end then.

8 Before we do, just a variation on the theme of
9 interim payments, which I don't think you touched on.
10 The suggestion -- and this might become more
11 a possibility as the more complicated cases are dealt
12 with -- that interim payments may be made about agreed
13 sums, not whether they need them, just if agreed, let's
14 get it over with and only discuss what's not agreed.
15 Have you got anything to say about that?

16 **MS GALLAFENT:** I do because that's goes back to the factor
17 I mentioned in relation to the applicant-friendly
18 premise of the offer. So when it's an agreed offer, it
19 will be made on the basis that, you know, the shortfall
20 of *(unclear)* Horizon, no limitation, et cetera. So
21 again it's a slightly different position to the position
22 under the final scheme or the interim or final scheme
23 for postmasters with quashed convictions, because
24 there's no such presumption. The approach under section
25 B, which I will come on to, is simply that the ordinary

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1 principles apply to compensation. Here the ordinary
2 principles do not apply, so that's why you might be able
3 to agree in principle a particular element of the offer,
4 say the shortfall or some element but I emphasise again,
5 offers are made in the round, so you might be able to
6 agree in principle and say, well, we accept this or
7 that, but it wouldn't follow that then were there to be
8 no agreement overall, that the applicant would actually
9 obtain through civil litigation a sum anything like the
10 amount that's been offered based on the
11 applicant-friendly principles. So I do say it raises
12 very different and difficult questions that simply are
13 not there in the scheme in relation to -- sorry, the
14 mechanism used in relation to postmasters with quashed
15 convictions.

16 **SIR WYN WILLIAMS:** All right. I will think about that.

17 **MS GALLAFENT:** I thought you might.

18 Section B then, final compensation for postmasters
19 with quashed convictions. Mr Beer also emphasised and
20 we say it is important to emphasise as well. There is
21 no formal remediation scheme such as that established by
22 the Historical Shortfall Scheme for the payment of
23 compensation to such persons. All claims are being
24 dealt with through without prejudice negotiations. We
25 say that is an important distinction, because a number

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1 of the submissions made by other core participants are
2 predicated on a scheme approach.

3 It's also important to emphasise that as at
4 3 July, Post Office has only received a total of six
5 largely fully quantified claims. So that's where we are
6 in terms of final compensation.

7 So far as the principles to be applied to the
8 calculation of final compensation payments are
9 concerned, some of those representing postmasters have
10 suggested that BEIS and/or ourselves should be invited
11 to clarify the approach to the general principles in
12 play in assessing liability and quantum.

13 I can confirm that Post Office agrees with Hudgell
14 Solicitors that the value of any individual claim must
15 be calculated applying the ordinary principles
16 applicable to the recovery of civil damages for
17 malicious prosecution. We also agree that such damages
18 may include aggravated and exemplary damages.

19 Mr Beer has already alluded to it but in applying
20 those principles it's the issue of non-pecuniary damages
21 that's proved particularly damaging in the negotiations
22 to date. There is case law in this area which indicates
23 what likely awards may look like but the current
24 circumstances of the particular postmasters involved are
25 unique, we say.

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1 parties reaching an agreed resolution on the
2 non-pecuniary aspects of those claims and we hope that
3 that guidance may also be of wider use.

4 In this context it's also important for me to
5 emphasise that in no circumstances will Post Office be
6 the final arbiter of individual claims. That's
7 a suggestion made by Hodge Jones & Allen. If the
8 parties cannot resolve the claims themselves, whether
9 with the involvement of early evaluation, mediation, or
10 some other process, then the final arbiter of individual
11 claims will be the court. But would I would like to
12 emphasise that Post Office remains wholly committed to
13 seeking a negotiated outcome to all claims to avoid that
14 outcome if at all possible.

15 We also note the suggestion made by Hodge Jones
16 & Allen that the settlement deed is flawed, insofar as
17 it limits GLO claimants to claims of malicious
18 prosecution. It should be amended.

19 Paul Marshall goes further. He argues and says
20 there are prima facie grounds for the view that Post
21 Office secured the settlement deed as a result of
22 misleading the claimants and the court. On that basis
23 he and Hodge Jones & Allen seek to argue the approach to
24 the calculation of direct and consequential loss should
25 be carried out by reference to the approach to claims in

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1 It is in order to find a way through that issue
2 that we agreed with a number of former postmasters
3 represented by Hudgell Solicitors that the issue of
4 non-pecuniary damages should be referred an early
5 neutral valuation. That of course is an expression of
6 a view on the likely outcome if the matter were to go to
7 court.

8 We emphasise that the fact that the process is
9 without prejudice and is confidential allows a more open
10 and less formal process in that respect. We're very
11 grateful that the very eminent senior judge Lord Dyson
12 has agreed to act as the evaluator for that process. It
13 is anticipated that the evaluation will be concluded by
14 the end of this month.

15 The outcome is not of course binding on the
16 parties. But it is hoped that it will allow these
17 issues to be resolved quickly.

18 We are also and separate to the early neutral
19 evaluation continuing to progress without prejudice
20 negotiations in relation to the first of two fully
21 quantified claims from the total of six that we have
22 largely quantified. Good progress has been made on
23 pecuniary loss claims to date. We anticipate that the
24 early neutral evaluation process to be conducted by Lord
25 Dyson will provide guidance that will facilitate the

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1 fraud.

2 I note Mr Beer didn't reference to this in his
3 opening, and I anticipate that's for the same reasons
4 that we say is simply isn't open to you, sir, to
5 consider it at this point. It goes way beyond the issue
6 identified in your invitation, which is the principles
7 that are being applied to the calculation of final
8 compensation payments, rather than the principles which
9 some of those representing postmasters suggest should
10 be.

11 It also doesn't appear to fall within the scope of
12 the Inquiry's Terms of Reference, but even were the
13 Terms of Reference to be amended in some way, it is
14 obvious that any such argument could be not be fairly
15 considered far less in some way any view given on it at
16 this point of Inquiry, prior to the Inquiry having heard
17 or considered any of the evidence in relation to the
18 conduct of the group litigation. That's a matter also
19 due to be heard next spring.

20 For the avoidance of any doubt, Post Office would
21 emphatically refute any suggestion that it behaved in
22 a fraudulent way or misled the GLO claimants or the
23 court in resolving those proceedings. The terms of the
24 settlement deed were negotiated and agreed in good
25 faith. But we do emphasise we say at this stage that

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1 one simply cannot consider or reach any view on those
2 submissions made by Mr Marshall and Hodge Jones & Allen
3 in that context.

4 On the question of disgorgement which is raised by
5 Mr Marshall and Hodge Jones & Allen again, they have
6 raised the issue of the inclusion of sums received by
7 Post Office by way of compensation or confiscation post
8 conviction as being included as direct and consequential
9 losses. I can confirm that claimants can claim any sum
10 Post Office received through post conviction orders for
11 compensation or confiscation as losses directly
12 connected to their wrongly conviction, so that is
13 claimable.

14 Moving to the mechanisms by which final
15 compensation payments are being calculated, to an extent
16 our response here overlaps with the question as to the
17 principles being applied, but three discrete issues have
18 been raised in this context.

19 First, Howe & Co have suggested that BEIS should
20 undertake -- will undertake -- sorry, that BEIS should
21 undertake, that it will undertake not to seek to claw
22 back any interim payment made to a postmaster. This is
23 a subject on which Post Office has been very closely
24 engaged with HMRC and we confirmed in our late night
25 note from yesterday that as of yesterday we had received

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1 of a postmaster's reasonable costs as part of the
2 negotiations.

3 Question 8 is about procedures adopted to resolve
4 disputes about the valuation of final compensation
5 payment. I have already highlighted in particular the
6 early neural evaluation process. But Post Office
7 remains open and supportive to the use of further such
8 processes or other alternative dispute mechanisms to
9 resolve other disputes in due course.

10 **SIR WYN WILLIAMS:** Ms Gallafent, when Mr Beer was addressing
11 me, he suggested that I might wish to probe with the
12 representatives of this category of claimants to what
13 extent I should involve myself at all. He put it rather
14 more elegantly, I should butt out of it perhaps.

15 **MS GALLAFENT:** He did.

16 **SIR WYN WILLIAMS:** What's the Post Office view about that?

17 **MS GALLAFENT:** Sir, in response to the questions that you
18 have raised, our position is that there is no need for
19 you to intervene on those points. There is nothing that
20 would give you concern from what we have told you about
21 the concerns that have been raised by the other core
22 participants, so that's our position.

23 **SIR WYN WILLIAMS:** Fine, all right.

24 **MS GALLAFENT:** The other position though that's -- the other
25 issue is the role of Post Office and this again it is

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1 confirmation from HMRC that the removal of the claw back
2 provisions will not affect the tax status on which the
3 payments are made. We wrote yesterday to all claimants
4 to communicate the position of HMRC in this regard, so
5 that concern has been assuaged.

6 Secondly, it is suggested that any disputes should
7 be referred to independent arbitration within an
8 appropriate arbitration scheme. That's also Howe & Co.

9 If particular representatives wish to raise that
10 option with Post Office they are obviously free to do so
11 and Post Office can assess with those claimants the best
12 way to resolve the cases. For example, arbitration or
13 early neutral valuation or mediation or even litigation
14 potentially were it to be regarded as being relevant for
15 precedential value.

16 Thirdly, Mr Marshall has suggested that Post
17 Office should make available to claimants data that it
18 holds on employees' pay bands over time. I can confirm
19 Post Office already proactively offers and provides,
20 subject to the provision of necessary data protection
21 consents, the remuneration data that it holds to
22 claimants with quashed convictions.

23 Question 7 is the provision for applicants to
24 obtain independent legal advice. As we indicated in our
25 May submissions, Post Office will consider the payment

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1 not a point flagged up by Mr Beer in his opening
2 therefore I anticipate it may not be a point that you
3 deal with directly, it's the role of Post Office in the
4 resolution of these claims.

5 In their initial submissions Hodge Jones & Allen
6 submitted that what was required was a transparent
7 process operated by BEIS working with Herbert Smith
8 Freehills. In an annex they now argue that Post Office
9 should terminate its continuing retainer of Herbert
10 Smith Freehills and they say Herbert Smith Freehills
11 should be retained by BEIS with a consequential set of
12 agreements about duties of confidence and the like owed
13 to Post Office. So they say that Herbert Smith
14 Freehills would be retained by BEIS for both final and
15 further compensation claims. Further, by which I mean
16 you have identified in category C fair compensation
17 claimants.

18 This argument again goes well beyond the
19 questions, sir, set out in your invitation and,
20 arguably, again beyond the Terms of Reference of the
21 Inquiry, but without prejudice to the position can
22 I make it clear the Post Office immediate view is there
23 is no justification at all for any such recommendation.

24 So far as final compensation for postmasters with
25 quashed convictions is concerned, it is clear we say

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1 from the information updates provided, that Post Office,
2 represented by Herbert Smith Freehills, is acting
3 promptly and reasonably in its approach negotiating
4 settlements with those that have brought fully
5 quantified claims and there is no reason to doubt that
6 it will continue to do so.

7 Certainly, we'd submit that the inherent and
8 obvious complications with any such rearrangement in
9 terms on legal representation and the entity with whom
10 negotiations take place, would very considerably
11 outweigh any perceived benefit, particularly in terms of
12 the speed of resolution of the claims.

13 Finally, can I just deal then with final
14 compensation, in that context where it's suggested that
15 Post Office shouldn't be involved, Post Office has made
16 it clear that it has not been asked by Government to
17 deliver this type of compensation. This is, sorry, the
18 further or fair compensation. But it will of course
19 cooperate to the fullest extent possible with any scheme
20 or mechanism set up for that purpose and any request for
21 support from Government in that matter. So we say it's
22 wholly premature to raise any issue as to Post Office
23 involvement in any further or final compensation scheme
24 or mechanism.

25 As for that scheme or mechanism, as I indicated at
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1 category 3 are concerned, so those are as it were the
2 public interest quashed convictions, paragraph 28 of
3 your provisional view, you indicated that fairness
4 demands that Post Office should not be the final arbiter
5 of whether an interim or a final payment should be made
6 to those postmasters.

7 Neither announcement by the Minister, neither the
8 December announcement nor the July announcement on
9 interim compensation, neither of those resulted in the
10 establishment of a remediation scheme such as HSS, so
11 ultimately the question of whether or not compensation
12 is payable falls to go to the court.

13 I confirm in the event of any dispute over payment
14 of compensation, whether on an interim or final basis,
15 POL, as with the scheme more generally, remains willing
16 to engage in mediation, arbitration, other forms of
17 alternative dispute resolution, to avoid if possible any
18 applicant having to bring civil proceedings.

19 I can also confirm that Post Office legal
20 representatives continue to liaise with the
21 representatives of the three named potential category 3
22 claimants set out in your provisional view on the
23 subject of whether they are or are not entitled to
24 compensation. Sir, we say that in no circumstances
25 would we be the final arbiter.

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1 the outset, we leave it to BEIS to address the Inquiry
2 on those matters but, of course, if there is any issue
3 arising following BEIS's submissions next week on which
4 the Inquiry would like to hear from us then we're very
5 happy to do that in writing after the hearing next week.

6 Of course, more generally we're very keen to
7 ensure that we listen carefully to the points to be made
8 by other core participants who follow us later today and
9 next week and we will seek to pick up any further
10 matters which we consider we haven't already adequately
11 addressed so we can offer clarification or assistance as
12 soon as possible thereafter.

13 Finally, and very briefly, can I deal shortly with
14 your provisional view on compensation issues relating
15 prosecuted subpostmasters. Just for the avoidance of
16 any doubt we can confirm, as set out in your document on
17 compensation issue dated 9 May, we agree with your
18 provisional views, subject to two points. The first is
19 we do not seek to make any submissions on BEIS's
20 position that persons in categories 1 and 2 were
21 eligible for claims for compensation under the December
22 announcement, that is predating the subsequent March
23 announcement. We have seen what BEIS says on the
24 subject. We don't say anything about that.

25 Secondly, so far as persons falling within
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1 I am going to glance over just to check that those
2 sitting behind me and behind me behind me, as it were,
3 have nothing further to add.

4 I am very grateful. Those are our submissions.
5 As I said, we stand ready to assist in any other way we
6 can on these subjects.

7 **SIR WYN WILLIAMS:** Thank you, Ms Gallafent.

8 All right. It's time for another break. Can
9 I ask just ask Mr Mertens because I think you are next,
10 some kind of rough time estimate?

11 **MR MERTENS:** Very short, it will be five or ten minutes.

12 **SIR WYN WILLIAMS:** Right. Well, Mr Stein, Mr Enright
13 predicted you wouldn't need a full two hours and I will
14 say no more than that.

15 **MR STEIN:** Thank you, sir.

16 **SIR WYN WILLIAMS:** Because of the likely timings this
17 afternoon it is now 1.08, according to this wonderful
18 machine I have in front of me, so I think we'll start at
19 2.05 and then we should finish comfortably before the
20 cricket begins. Thank you.

21 (1.10 pm)

(Luncheon adjournment)

22 (2.07 pm)

23 **SIR WYN WILLIAMS:** Yes, Mr Mertens.

24 Submission by MR MERTENS
25 92

1 **MR MERTENS:** Good afternoon. May I first of all thank the
2 Inquiry for having been given the opportunity to provide
3 written submissions in relation to today's issues and
4 also for being given the opportunity to address you
5 briefly today. I make these submissions on behalf of UK
6 Government Investments who I will refer to as UKGI.

7 As indicated in its written submissions, UKGI is
8 very grateful to the Inquiry for being able to attend
9 and participate in these hearings concerning issues of
10 compensation to subpostmasters and others. It
11 recognises that the issues that you have identified are
12 very important issues for the Inquiry to examine now,
13 and it's ready to work with the Inquiry to assist in
14 anyway that it can.

15 UKGI's role in relation to these issues is, as
16 described in our submissions, one of assisting BEIS with
17 its oversight of various of the arrangements that have
18 been put in place and providing challenge to POL on its
19 delivery of those arrangements, both at official level
20 and through the attendance of the shareholder
21 non-executive director on the Post Office board and
22 relevant subcommittee. It seeks to fulfil those
23 functions in light of the clear objective of achieving
24 full and fair compensation delivered as promptly and as
25 effectively as possible.

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1 bundle for today at tab 13.

2 UKGI's role in supporting BEIS is also reflected
3 in BEIS's written submissions for these hearings and, to
4 the extent that they bear on UKGI's role, it notes and
5 endorses their submissions.

6 UKGI, nevertheless, recognises that there is an
7 urgent and ongoing need to examine rigorously the
8 operation of the compensation arrangements in light of
9 the submissions of some of the Core Participants that
10 have been received, and of any interim conclusions which
11 the Inquiry may now decide to express in a report or any
12 other update following these hearings. Thank you for
13 the opportunity to address you.

14 **SIR WYN WILLIAMS:** Thank you, Mr Mertens. For those who may
15 not be as familiar as others with the aim and object of
16 these hearings, can I say in respect of UKGI that I'm
17 grateful for their explanation of their role and, for
18 present purposes, that is sufficient for me. But when
19 it comes to phase 5, I think it is, when there will be
20 a more detailed examination, including evidence, then
21 I would expect that UKGI would have a significantly
22 greater role.

23 **MR MERTENS:** Yes, of course.

24 **SIR WYN WILLIAMS:** Thank you.

25 **MR MERTENS:** Thank you very much.

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1 Since the hearings began on 14 February, UKGI has
2 followed the Human Impact Hearings and Focus Groups
3 closely. It's been concerned to hear in many of the
4 accounts that have been given, which are now reflected
5 in some of the submissions that the Inquiry has received
6 for these hearings, that compensation is not being
7 delivered effectively.

8 UKGI wants to ensure that it has as full an
9 understanding of these issues as it can so that it can
10 fulfil its functions most effectively. UKGI has
11 therefore referred each of the written submissions for
12 these hearings with care. It now attends these hearings
13 today and next week for the principal purpose of
14 listening, listening so as to hear clearly the
15 submissions made on behalf of all Core Participants,
16 including the responses that POL gives to the issues
17 that have been raised by others. In that way, the views
18 expressed by all concerned can be taken into account in
19 UKGI's delivery of its function of supporting BEIS, both
20 in terms of oversight and of challenge.

21 As indicated in UKGI's written submissions,
22 additional detail concerning its involvement in the
23 compensation issues and arrangements have been set out
24 in the Government's response to the BEIS Committee's
25 report on Post Office compensation, which appears in the

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1 **SIR WYN WILLIAMS:** The floor is yours. Mr Stein.

2 **Submission by MR STEIN, QC**

3 **MR STEIN:** Sir, good afternoon. Sir, as you know, I appear
4 with Mr Jacobs instructed by Howe & Co Solicitors.
5 Together we represent 153 subpostmaster,
6 subpostmistresses and Post Office manager Core
7 Participants involved in this Inquiry.

8 All of our clients have had lives devastated by
9 this scandal. All of our clients have had lives that
10 have been badly affected by the scandal. Within our
11 client group, we represent GLO litigants and I'll just
12 explain that, so that we all understand what I mean. If
13 I refer to "GLO litigants" that means the individuals
14 that were part of the group litigation that took this
15 matter and broke this scandal by taking that action at
16 the High Court.

17 We also represent those threatened with criminal
18 action, those who were wrongly convicted, those who were
19 cautioned, those threatened with civil cases, and those
20 who are hounded by the Post Office to pay sums of money
21 for which subpostmasters were not at fault.

22 So you will recall through the evidence that has
23 been heard through the Human Impact Hearings that each
24 one of our client families have been affected, their
25 partners affected, their children's lives affected, and

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1 generally the family life of those individuals derailed
 2 by the actions of the Post Office, Fujitsu and BEIS.
 3 So we have considered your statement of 30 June of
 4 this year where you have stated that once you have heard
 5 oral submissions, you will make a determination as to
 6 whether to proceed to an interim report pursuant to
 7 section 24(3) of the Inquiries Act 2005 or provide a
 8 non-statutory progress update.
 9 Can we strongly request that you issue an interim
 10 report. It is our submission that it will be important
 11 you, sir, as the Chair of this Inquiry, having heard the
 12 evidence from those people that have given evidence
 13 before you within the Human Impact Hearings, having seen
 14 all of the written representations that have been made
 15 by the various bodies and institutions, to make findings
 16 as to the position reached in relation to compensation.
 17 But the other value of an interim report will be
 18 that within that report you can set out your
 19 recommendations, recommendations which you will then be
 20 able to consider and review during the lifetime of the
 21 Inquiry.
 22 Now, we know the background to this. In relation
 23 to the GLO litigants, it is that they played a crucial
 24 role in exposing the Post Office Horizon scandal. We
 25 also know that in 2019 much of the monies paid over as
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1 would consider them, please, in such part of your
 2 recommendations as you would be prepared to consider.
 3 **SIR WYN WILLIAMS:** Mr Stein, will you give me those in
 4 slightly slower fashion because, for whatever reason,
 5 I'm not getting a simultaneous transcript now. I want
 6 to make a careful note of what you are saying.
 7 **MR STEIN:** Sir, not only will I do that but we will also
 8 undertake to provide it in writing so that you have
 9 those set out.
 10 There are six individual points that we ask you to
 11 consider making. Firstly, that significant interim
 12 payments are made immediately to all of those
 13 subpostmasters who are outstanding.
 14 Point 2, that as regards the recent press release
 15 from BEIS that they are making available 19.5 million as
 16 an interim payment fund, that you, sir, are provided
 17 with the principles to be used for the distribution of
 18 these funds amongst the GLO litigants. Sir, that would
 19 allow you to consider the fairness of payments amongst
 20 the litigants and make any recommendations as may be
 21 required.
 22 Point 3, that fairness demands that the
 23 Post Office should not be the final arbiter of whether
 24 an interim or final payment should be made in
 25 compensation claims made by any individual in categories
 99

1 part of the settlement were swallowed in legal costs,
 2 and we also know that the settlement described in its
 3 terms a reference to "litigation funders". So it is
 4 very clear that the Post Office has known for some time
 5 that a lot of the money that would otherwise have been
 6 paid over in a settlement was never going to go to the
 7 GLO litigants. One of the points that we make,
 8 therefore, in relation to this is the delay that has
 9 taken place.
 10 We have heard obviously on 22 March the Minister
 11 announcing that additional funding would be made
 12 available to give those in the GLO Compensation Group
 13 compensation that is similar to that which is available
 14 to non-GLO group members. One of the findings that we
 15 would ask you to make, though, is this, that since March
 16 of this year not one GLO group member has received any
 17 compensation.
 18 We do say that there has been obfuscation and
 19 delay in dealing with these matters as should have been
 20 appropriate by essentially what is a public body: the
 21 Post Office. We know it is privatised but it is owned
 22 by the Government. Therefore, an interim report setting
 23 out recommendations would provide a target list for the
 24 Government and for the Post Office to then follow.
 25 We ask for the following points to be made if you
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1 in A, B or C.
 2 Point 4, that BEIS should make provision for
 3 reasonable legal costs all in stages of compensation
 4 applications in all three categories that you have
 5 identified, and that claimants are provided with proper
 6 access to disclosure at all stages.
 7 Point 5, that of the principles that you have
 8 sought to discover for all compensation schemes, or
 9 proposed schemes, there needs to be transparent and
 10 disclosed settled precedents and comparables, allowing
 11 for legal advice to be given to the Post Office's
 12 victims at their individual category of claim and
 13 expected financial outcome.
 14 Finally, at point 6, a timetable be set out for
 15 the establishment of the GLO Compensation Scheme capable
 16 of being monitored and followed by all those involved.
 17 **SIR WYN WILLIAMS:** Can I just be clear with you, Mr Stein.
 18 That last point, point 6, is clearly related solely to
 19 I will call them the GLO claimants. You call them GLO.
 20 Point 1 to 5 apply to all categories, so that I'm clear,
 21 A, B and C.
 22 **MR STEIN:** Sir, yes.
 23 **SIR WYN WILLIAMS:** A, B and C, 1 to 5, 6 is specific to GLO.
 24 **MR STEIN:** Sir, yes.
 25 **SIR WYN WILLIAMS:** Okay.
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1 **MR STEIN:** Sir, we recognise, as has already been made in
2 passing comment this morning, this is not a court. This
3 is not the High Court. Your powers are limited to
4 making statements, recommendations, and putting forward
5 findings. It is, though, nevertheless possible for you
6 to set out what you would regard as being within the
7 range of reasonable responses that could be made by
8 setting out a timetable and, of course, that can then be
9 reconsidered if there is any attempt, if you like, or
10 any suspicion that such a timetable is not being
11 followed. It would be an indication, in other words.

12 The reason why we say that such recommendations
13 are required is because, in our submission, the approach
14 of the Post Office and BEIS to compensation replicates
15 past behaviour. We suggest that what is happening is
16 that the Post Office is continuing to attempt, and
17 actually succeeding, in siloing subpostmasters, keeping
18 them ignorant of what is happening in relation to
19 compensation claims as regards to one to another. There
20 is a limitation being provided on access to full legal
21 advice. The onus of proof point has been made already,
22 but the onus of proof point is that despite the fact
23 that many Post Office business papers and accounts were
24 removed, or over the years have gone, that the burden of
25 proof is nevertheless placed upon the applicants within

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1 assistance.

2 The interim report that we ask you, sir, to make
3 does not relate to recent events. The Post Office and
4 its sole shareholder (the Department for Business,
5 Energy and Industrial Strategy, BEIS) which monitors the
6 performance of the Post Office through UK Government
7 Investments, has been firmly aware of the failings of
8 the Horizon system for many years.

9 There were the two judgments by Mr Justice Fraser
10 in 2019 that demonstrated that the Post Office had
11 failed to ensure that its operating system, Horizon, was
12 fit and reliable for the purposes of its systems and as
13 a basis for any type of legal case. Nevertheless, the
14 Post Office throughout those proceedings fought the case
15 tooth and nail through the High Court, even seeking at
16 one stage to remove from Mr Justice Fraser from the
17 case.

18 Not one of the Horizon system. The Horizon system
19 is not a sentient being. The Horizon system did not
20 pick its victims. The Horizon system did not decide
21 which of the Post Office offices individual balances it
22 would disturb and infect with its bugs. The Horizon
23 system is a product of the negligence and lack of care
24 of the people who operated and owned it. In fact, we
25 suspect, as the Inquiry progresses we're going to find

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1 these schemes. We say that the collection of those
2 issues is causing the same problem that you have heard
3 through the Human Impact Hearings, that each one of the
4 subpostmasters in their individual post offices was left
5 in ignorance of what going on elsewhere without
6 information that would have assisted them in dealing
7 with the Post Office.

8 Now if, sir, you are able to follow that request
9 and put forward an interim report, it would assist in
10 providing us with a way forward because one of the
11 things that has been apparent this week, and indeed up
12 until today, is that the sands have been moving in the
13 background. We have heard very submissions coming in
14 late. The submission that you referred to as the one
15 last night, in fact, I think my instructing solicitors
16 received it at 8.30 this morning, as it was passed on by
17 the Inquiry -- we're grateful for that -- and so we
18 didn't even have it at the 9.50 last night that it
19 otherwise might have been available. We know that what
20 has been happening is behind the scenes letters have
21 been sent to many of the people that we represent and,
22 therefore, there is a problem that exists which is a
23 shifting sands of position that is hard to grasp, which
24 is why, sir, an interim report setting out what you
25 would regard as being the way forward would be of real

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1 that all post offices had some problems. The question
2 is: to what degree?

3 The Post Office should never have thought to
4 preserve its reputation at all costs by fighting the
5 High Court case. But what it did do, by doing so, was
6 at the cost of further harm to the lives, financial
7 health, and mental wellbeing of those we represent. The
8 Post Office is in, in effect, a public organisation and
9 should have immediately told the truth to its
10 Post Office workers. Instead, what has happened in
11 relation to compensation it has set about putting in
12 place complicated schemes run by corporate lawyers to
13 provide access to some compensation for some its
14 victims.

15 Sir, on 8 November last year I addressed you at
16 the first hearing of this Public Inquiry after it had
17 been put on a statutory basis. I set out then that many
18 ex-subpostmasters face imminent financial ruin and that
19 people will lose their homes unless something is done
20 urgently to assist them. I added then that some may not
21 survive the lifetime of the Inquiry due to
22 stress-related illnesses. Indeed, since the Inquiry has
23 started hearings in February of this year, I am sad to
24 say that I have been informed that another of those
25 affected by the Post Office in this scandal has died.

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1 We don't, of course, forget such individuals as Marian
2 Holmes' husband Peter, a proud and distinguished
3 ex-police officer who went to his grave with a wholly
4 undeserved conviction recorded against his name.
5 The obfuscation and denial that I have referred to
6 has continued since the time of the High Court hearings.
7 On 1 December 2021, BEIS wrote to two of our clients and
8 told them a full and final settlement was reached
9 between the claimants in the GLO and the Post Office.
10 There is nothing further the Department can do at this
11 time.
12 On 6 December last year, Mr Enright, partner at
13 Howe & Co Solicitors, wrote to Mr Scully and stated
14 that:
15 "Neither you nor your Government's hands are tied
16 by the settlement in the Group Litigation. It is
17 entirely open to your department and your Government to
18 acknowledge the widely accepted fact that claimants in
19 the Group Litigation performed a vital public service."
20 Without their action, for which they paid a very
21 high price, the greatest miscarriage of justice in
22 British legal history would never have been uncovered.
23 In November, I asked you, sir, as Chair, to use
24 your wide powers to require the production of evidence
25 that the Inquiry believes is relevant to the terms of
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1 his five children.
2 Susan Hazzleton, who you will recall as you asked
3 questions in relation to her particular circumstance.
4 She says that she is [redacted] years old in December and she
5 still works four days a week as she can't afford to
6 retire, and she has just had to put her house on the
7 market.
8 Geoffrey Pound says.
9 "Our house and business were repossessed back in
10 2008. At [redacted] I would need to live until about 150 years
11 old to repay in full."
12 Shazia Siddiq:
13 "The ounce of dignity I thought was remaining is
14 being eroded daily. I am so tired. At the age of [redacted]
15 I feel like a pensioner. The effect of Post Office
16 Limited actions have destroyed me."
17 All these Core Participants are GLO litigants and
18 there are obviously many other examples that we could
19 provide. These are the very people who risked
20 everything to expose the scandal. Some you heard from.
21 Some, like Gareth Etheridge, received sums as little as
22 £1,800 from the Group Litigation, which is why we go
23 back to the point we're making in relation to
24 recommendations.
25 Sir, you've asked for the principles to be
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1 its reference and issues to compel the Post Office and
2 BEIS to disclose an up-to-date clarification on
3 compensation.
4 Of course, all of our clients have asked me to
5 convey their gratitude to you and your team at this
6 Inquiry for acknowledging and prioritising this
7 important issue through conducting these hearings today
8 and next week. But it may assist you to know that many
9 of our clients have found it helpful to give evidence in
10 the Human Impact Hearings, finding the experience
11 cathartic and giving them a degree of closure.
12 But the harm which the Post Office has caused to
13 our clients is ongoing and is made manifest in the their
14 desperate financial consequences. Let me give you some
15 examples of what has been said. Marion Drydale says:
16 "I have sold my jewellery, used my inheritance,
17 cashed in my pension. Every day is filled with
18 uncertainty, a dread of more bills I cannot pay."
19 Peter Worsfold says that he has still not been
20 able to repay his [redacted]-year-old mother for bailing him out
21 when the Post Office demanded money for shortfalls in
22 2002. He visits the supermarket at 4 p.m. when they
23 have put short-dated items out at reduced prices.
24 Faisal Aziz is on the verge of declaring
25 bankruptcy. He worries that he will not be able to feed
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1 expressed in relation to groups A, B and C. We need to
2 know, looking forward, what are the principles that are
3 going to be used in relation to the setting out of
4 compensation in the future for the GLO group.
5 Now, sir, we have had comment today about the
6 responses made in the institutions to this Inquiry. Can
7 we set out our disappointment at the responses from the
8 Post Office Limited and BEIS to the questions that you
9 have asked, particularly, may we say, sir, in relation
10 to the issue of fair compensation for the Group
11 Litigation claimants. You called, sir, for specific
12 answers at questions 1 to 12 on 10 May of this year,
13 nearly two months ago. Your direction was this, this is
14 on 9 May:
15 "Although the Minister's announcement of 22 March
16 2022 was no doubt very welcome to the claimants in the
17 Group Litigation, it is extremely important that effect
18 is given to the announcement as expeditiously as
19 possible. No doubt these two issues will be the subject
20 of detailed submissions at the hearing which I have
21 decided to convene."
22 On 10 May, you set out with considerable clarity
23 the questions you invited answers to as regards the GLO
24 litigants, setting them out of at paragraphs 9 to 10,
25 fair compensation for the Group Litigation claimants. The
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1 principles which we apply to the calculation of further
 2 compensation payments.
 3 10. The mechanism or mechanisms by which further
 4 compensation payments will be calculated.
 5 11. The provision, if any, which will be made for
 6 applicants to obtain independent legal advice in
 7 relation to their claims.
 8 12. The procedure or procedures which will be
 9 adopted to resolve disputes about the value of further
 10 compensation payments.
 11 Yet the Post Office responded in six lines at
 12 paragraph 58 of its written submissions to say that:
 13 "Until further information is released by
 14 Government, Post Office is unable to assist the Chair
 15 further in relation to issues 9 to 12."
 16 Well, BEIS went one better and responded in two
 17 paragraphs. At paragraphs 38 and subsequently 39 of
 18 their submissions dated 31 May, they have said that they
 19 convened a working group, that decisions have been made,
 20 and, whilst the Department has a strong desire to begin
 21 payments as soon as possible, the Department hopes to be
 22 able to provide a further update to the Inquiry at the
 23 hearing in July.
 24 So we are at a loss to understand why BEIS has
 25 failed to answer your questions. They were simple
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1 questions, setting out the need for simple answers,
 2 targeted at what is required by the Group Litigation
 3 individuals.
 4 Our clients do not wish to wait to hear BEIS
 5 proposals such as they may be on the next occasion that
 6 we meet in relation to this Inquiry.
 7 May I make a note now that, because of the
 8 timetabling (of which I make no complaint whatsoever),
 9 that we would ask if points arise that we need to deal
 10 with that we may need to then return to make some
 11 submissions in response after hearing from BEIS on the
 12 next occasion.
 13 Sir, what is more concerning is that on 30 June,
 14 instead of complying with your requests for information,
 15 BEIS decided to issue a press statement on its website
 16 entitled:
 17 "New Story 19.5 million interim compensation
 18 package for subpostmasters who helped uncover Horizon
 19 scandal."
 20 This is a terrible and heartrending scandal. It
 21 should not be an opportunity for a Government department
 22 to seek to score public relations points through the
 23 Media. Nor should BEIS seek to disregard the Inquiry
 24 process and embark on a frolic of its own, particularly
 25 when directed by the Chair to answer particular
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1 questions.
 2 The view that our clients takes is that BEIS has
 3 to be dragged kicking and screaming by my instructing
 4 solicitors Howe & Co and this Inquiry into finally
 5 agreeing to at least move in the right direction. Is it
 6 actually possible to believe that the Post Office and
 7 BEIS are so incapable of understanding, even now, that
 8 they have victimised their own staff?
 9 So what does this mean? Our clients are now
 10 aware, and this is all it means to them, that the
 11 Government announcement means that they may be receiving
 12 some interim compensation. Now, of course, this
 13 position should have been reached a very long time ago
 14 and we still have no clear time-frame for a matter that
 15 is urgent. This is not a gift. The people we represent
 16 are not a charity. They deserve adequate immediate
 17 compensation, as we have said many times, for their huge
 18 actual and reputational losses.
 19 The BEIS news story says that Ministers are to
 20 provide a 19.5 million interim compensation package to
 21 the postmasters who played a crucial role in exposing
 22 the Horizon scandal. The news story contains next to no
 23 detail. There is nothing setting out the date by which
 24 that will be set out. My clients do not know who will
 25 be eligible, what the application process is, and the
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1 basis upon which the funds will be apportioned. These
 2 matters need to be clarified so that the representatives
 3 of the Core Participants and my instructing solicitors
 4 and others can consider them and comment upon them, if
 5 necessary, on the next occasion.
 6 May I also add at this point that the lack of
 7 trust between my client group and the Post Office,
 8 Fujitsu and BEIS is so extreme that they doubt the
 9 reality of the interim compensation package and, given
 10 the track record of the Post Office and BEIS, who can
 11 blame them? Put it this way: there are not many
 12 ex-subpostmasters who are holding their breath.
 13 Sir, as you know from the hearings, some people
 14 who are before you and before this Inquiry, are facing
 15 ruin, absolute ruin, right now staving off people coming
 16 to their door demanding money. So we do ask for a
 17 commitment from BEIS to making immediate -- looking this
 18 up to make sure we know what it means. It mean do at
 19 once, instantly, get this done, hardship payments to
 20 those SPMs who are facing hardship as a consequence of
 21 the scandal.
 22 We've heard Ms Gallafent today speak about
 23 hardship payments in relation to the Group A group or
 24 class A group. But what we would respectfully invite
 25 you to accept, sir, is that this appears to have been
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1 done at the will of the Post Office when it feels that
 2 it should do so in particular circumstances that it's
 3 notified of. No system, no settled way ahead, no
 4 application process.
 5 Now, aside from our criticisms of the delay and
 6 the BEIS failure to follow your directions, the
 7 announcement of 30 June may represent some progress but
 8 it needs to be made reality now, not at some later
 9 stage. We need a timetable and we need that now.
 10 May I set out then and move on to the particular
 11 positions in relation to the points that you have asked.
 12 Sir, you have made it very clear that you have read all
 13 the written submissions and that indeed we interpret, in
 14 fact, the need of this Inquiry for these particular
 15 hearing purposes as being more directed towards the
 16 institutions to see what they are saying about it as
 17 well as the points that we make on their submissions.
 18 Sir, can we set out our concerns with the HSS.
 19 I wonder who came up with that title? Our first point
 20 is this in relation to the burden of proving losses:
 21 Post Office Limited and BEIS as responsible for this
 22 scandal. They should not be treating the issue of
 23 compensating victims as anything akin to litigation or,
 24 indeed, what appears to be adversarial litigation. The
 25 HSS scheme requires that SPMs, subpostmasters, establish
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1 all applicants for compensation, to bear a burden of
 2 producing documents which Post Office Limited have
 3 seized and destroyed, in effect directing hurdles that
 4 no horse could jump.
 5 It is no answer, we suggest, to our concerns for
 6 Post Office Limited BEIS to rely on the statements in
 7 the guidance to the effect that where the postmaster is
 8 unable to satisfy the burden of proof in relation to
 9 their claim, their claim may nonetheless be accepted in
 10 whole or in part if the scheme considers it to be fair
 11 in all the circumstances. What does that mean? What
 12 are the principles being used for such a determination?
 13 Essentially, this has been, and remains, an
 14 enormous and far-reaching public scandal. Our clients
 15 should not have to go cap in hand to the perpetrators of
 16 that scandal when applying for compensation to ask for
 17 indulgences or some form of largesse.
 18 The heads of loss within the HSS scheme. Whilst
 19 the heads of loss in the HSS are non-exhaustive and
 20 generic, it is problematic that they do not reflect the
 21 full range of harm caused by the Post Office in this
 22 scandal.
 23 Now, Post Office Limited states at paragraph 11 of
 24 its written submissions that there is no form of loss
 25 that cannot be taken into account. This approach is
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1 causation and prove each and every loss, preferably with
 2 contemporaneous evidence.
 3 Many people we represent, and I'm sure many people
 4 who have suffered at the hands of the Post Office,
 5 endure victim fatigue and some may well be suffering
 6 from undiagnosed PTSD. This system that is put forward
 7 is a system in which people who are already finding it
 8 difficult to manage their lives and look after their
 9 families then have to go through this rather difficult
 10 process. You will remember that the evidence is that in
 11 many, if not most, cases the Post Office seized the
 12 paperwork of subpostmasters and their records when
 13 suspending them.
 14 The Post Office now seeks to place the burden on
 15 subpostmasters to produce the very records that POL (the
 16 Post Office) took from them. This is wrong-headed and
 17 badly thought out and we'll look at the details been
 18 moment.
 19 Ms Linnell (Kay Linnell will be, we suspect, an
 20 important witness in the later phases of this Inquiry)
 21 tells us that during the mediation scheme a senior
 22 Post Office official told Sir Anthony Hooper during the
 23 mediation scheme that Post Office Limited destroys all
 24 records after six years. If that is right, then Post
 25 Office Limited requires HSS applicants, and presumably
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1 wrong. The scheme should be tailored to reflect the
 2 consequences of Post Office's actions and include:
 3 suffering to children and family members; the roles that
 4 family members have played in caring for traumatised
 5 subpostmasters; and the fact that many subpostmasters
 6 have been required to work long into what would
 7 otherwise have been a planned retirement, and, sir, you
 8 have heard evidence that relates to such matters.
 9 Well, the administration of the compensation
 10 scheme has been described by Post Office Limited. They
 11 say it's designed to be simple and user-friendly to
 12 avoid the need to incur costs of legal representation.
 13 Well, we suggest that the scheme is neither simple nor
 14 user-friendly. It's beset with problems. You will
 15 recall the evidence of Mr Sethi, the Inquiry's first
 16 witness, who received a request from the HSS for answers
 17 to 68 questions which included a number of sub-accounts,
 18 which brought the total to approximately 100 questions.
 19 Mr Sethi expressed considerable frustration while giving
 20 evidence that he has being asked to consider questions
 21 in relation to matters that had occurred some 20 years
 22 previously, in respect of which much of information was
 23 still being held by the Post Office.
 24 Nor, we suggest, is the scheme necessarily being
 25 administered fairly. Subpostmasters have said that they
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1 received offered from the HSS that have been derisory.
 2 Fiona Elliott gave evidence on 19 May 2022. Ms Elliott
 3 said that she had lost just over a £1 million but had
 4 been offered instead £24,000. BEIS's assertion at
 5 paragraph 21 of their written submissions is that --
 6 sorry, the Post Office Limited is on track to issue at
 7 least 95 per cent of offers by the end of this year.
 8 It seems to us, and even having listened to
 9 carefully to what Ms Gallafent has said today, that
 10 given the difficulties and the restrictions in
 11 application process, that there may well be a number of
 12 people who have already had offers, and in fact accepted
 13 them, through settlements, that could well have put
 14 forward further matters that relation to consequential
 15 losses. It's a matter of grave concern, we suggest that
 16 at paragraph 25 of the Post Office Limited's written
 17 submissions that they are saying that the vast mortality
 18 of offers have been accepted. We say that those offers
 19 may well have been made within a scheme where applicants
 20 are not able to receive legal advice or disclosure in
 21 relation to their possible claims. It is quite likely,
 22 we say, that there will be many subpostmasters who
 23 received offers in a similar derisory way to that
 24 received by Ms Elliott and who, in the absence of legal
 25 advice, have accepted those offers.

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1 aware of any previous scheme where an abuser institution
 2 awards punitive damages against itself.
 3 The further disturbing feature of the HSS scheme
 4 you've already dealt with today in discussion with
 5 Ms Gallafent and Mr Beer, Queen's Counsel, is that there
 6 is a denial before an application is made of access to
 7 documents disclosed by Post Office Limited at those
 8 initial stages. We have submitted in our written
 9 submissions that there is therefore a substantial
 10 procedural flaw in the HSS scheme. We say that that is
 11 wholly unacceptable.
 12 Now, as to legal representation during the
 13 compensation process, we saw in the BEIS news story of
 14 30 June a comment that is made there which says,
 15 "Postmasters will be able to claim reasonable legal fees
 16 as part of participating in the final compensation
 17 scheme." Well, we hope that the wording of the
 18 Ministerial Statement reflects acceptance by POL and by
 19 BEIS that postmasters simply cannot be expected to
 20 embark upon a complex procedure involving detailed and
 21 historic claims without legal representation and access
 22 to experts, if necessary.
 23 It is important to highlight (although the data is
 24 still not, we suggest, entirely clear) that it appears
 25 that when we were drafting these oral submissions we

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1 There's a danger, we suggest, of there being
 2 a scandal within a scandal about the compensation and
 3 the way it is being handled by the Post Office.
 4 Sir, you have questioned already the sign or the
 5 lack of sign of independence in the running of the
 6 scheme. At paragraph 31 of the submissions filed on
 7 behalf of Post Office Limited, it is stated that HSS
 8 claims will be first assessed an assessor from Herbert
 9 Smith Freehills and then by a team of reviewers at
 10 Post Office. The assessment is then reviewed again by
 11 the case assessor before being looked at by a so-called
 12 Independent Advisory Panel. Ultimately, it is the
 13 Post Office which decides the outcome with the benefit
 14 of the Panel's assessment and recommendation.
 15 We suggest, and we agree with the provisional view
 16 that you have set out, that fairness demands that the
 17 Post Office Limited should not be the final arbiter of
 18 whether an interim or final payment of compensation
 19 should be made in accordance with the Minister's
 20 announcements in July and December last year, and that
 21 any disputes should be determined therefore by an
 22 independent person. In particular, it would be
 23 inappropriate for Post Office Limited to play any part
 24 in the determination of aggravated or exemplary damages
 25 which will be claimed by subpostmasters. We are not

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1 worked it out as being 4 per cent of applicants to the
 2 HSS scheme were legally represented. In fact, having
 3 looked at the documentation again and considered what
 4 has been said for us this morning, it looks as though
 5 it's 3 per cent of those applying to HSS have had some
 6 type of legal representation.
 7 Now, it may be therefore useful to briefly go to
 8 the application form itself. Sir, can I take you to the
 9 bundle, please. At page 192 -- you have been directed
 10 to already by Mr Beer -- sir, this is a form that we
 11 learn from Ms Gallafent -- and I hope I quote her
 12 correctly, just after midday today -- this is designed
 13 not to refer to the consequential losses and that is
 14 done to help lay persons who are making an application.
 15 Well, therefore it seems we're being told that it
 16 was quite deliberate that this form didn't have a
 17 reference to consequential losses. You've been directed
 18 to paragraph, I think, 24 by Mr Beer. Can I take you to
 19 paragraph 193. Sorry, page 193 which is paragraph 29.
 20 In the bundle, page 193 and it's paragraph 29 of the
 21 form. Let's see what it says here.
 22 "Please provide an explanation as to why you
 23 believe you have not been treated fairly by the
 24 Post Office. In doing so, you should set out what you
 25 would like the Post Office to do to remedy the situation

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1 and why."
2 Well, there are a number of answers to that I'm
3 sure that many of my clients would like to give in
4 relation to what the Post Office can do with itself.
5 But otherwise, why is the Post Office setting out there
6 a suggestion of what has happened as a result of the
7 unfair treatment but it is not dealing in any way with
8 the consequential losses and the effect upon and the
9 stigma of having been dealt with by the Post Office in
10 a particular way or regarding people's character or what
11 has happened to them by way of their own experiences,
12 their mental health or their medical health.
13 We have also been directed to the guidance that is
14 set out at page 303 as being guidance that might assist.
15 It doesn't take but a moment to look at the pages that
16 have been referred to already to realise that these are
17 complex matters, dealing with heads of loss, in terms of
18 loss of earnings, loss of profits, loss of property,
19 loss of opportunity, loss of chance (these are legal
20 terms), penalties, general or increased costs of
21 financing, bankruptcy, insolvency, and so on.
22 We listened carefully to Ms Gallafent who did her
23 very best in, we would suggest, rather difficult
24 circumstances to defend the Post Office's actions. This
25 form is wholly inadequate. It is not that it doesn't
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1 individuals to perform with, one would hope, the
2 facility of a trained lawyer and that, we suggest, is
3 continuing unfairness.
4 Now, it is quite clear that Post Office Limited
5 views the compensation process as litigious. I mention
6 Ms Elliott again, Fiona Elliott. She applied to the HSS
7 and on 26 June Ms Elliott attended a good faith meeting,
8 accompanied by Mr Enright, a partner at Howe & Co who is
9 handling these matters, and that was because she had
10 rejected an offer that had been made to her. Now,
11 attending at that meeting, which was conducted by
12 a barrister instructed or employed by Herbert Smith
13 Freehills, it was pure good fortune that Mr Enright was
14 present. At the start of the meeting, it was explained
15 to Ms Elliot that the meeting was to be conducted on
16 a without prejudice basis. Well, it seemed to us, on
17 her behalf, that a good faith but without prejudice
18 meeting is absurd and this, yet again, has all the
19 trappings of litigation.
20 We hope that Post Office Limited and BEIS accept
21 that the provision in the HSS scheme, which probably is
22 going to be asked for or attempted to be replicated in
23 the other schemes, for legal assistance of perhaps three
24 hours work and only after an offer has been made is
25 wrong, it is untenable, it is unfair, and designed to
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1 make much by way of reference to consequential losses:
2 it makes no reference to it.
3 We take away our legal qualifications and put
4 ourselves in the position of the distressed
5 subpostmaster who is trying to deal with such a form in
6 awkward circumstances such as this thinking about, no
7 doubt, the time that they've got to get it in otherwise
8 that door is going to be closed. What we say is, in
9 effect, a form that appears to be designed not to help
10 lay people make the application but, in fact, to avoid
11 particular types of losses.
12 You will have seen, sir, that the HSS scheme only
13 provides for contribution of 1200 or 400, depending on
14 the scope of the dispute, taken in relation to an offer
15 in relation to legal costs or legal expenses. And POL
16 (Post Office Limited) states in its written submissions
17 that it's made payments of legal expenses in 35 cases
18 where requested to. This should have been built into
19 the scheme. People that are making such applications
20 that really have to be told, as we learned today from
21 Ms Gallafent, that what they should do is look at this
22 application form and look at guidance, make sure that
23 they put in a separate document setting out their answer
24 to these heads of damages in relation to consequential
25 damages. The Post Office is essentially asking for
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1 disadvantage subpostmasters.
2 Now, we understand that Post Office Limited and
3 the Department of Business are considering using Freeths
4 Solicitors to assist eligible subpostmasters in relation
5 to compensation claims that were brought in the Group
6 litigation. Now, we can provide some further update in
7 relation to that as being contact to clients of ours by
8 Freeths in a letter that's essentially called Freeths
9 facts. Again, going back to the fast-moving pace of
10 matters, this is yesterday. Freeths write to
11 subpostmasters:
12 "Please note that you are not obliged to
13 reinstruct Freeths. If you do not instruct us, this
14 means that we will not be able to represent you in stage
15 1 of the process and we will not be able to pay your
16 interim payment to you."
17 Freeths, therefore, have already acknowledged --
18 and, sir, you've considered the wording of their
19 communication to the Inquiry already -- that not all
20 individuals will necessarily be wishing to instruct them
21 within this process.
22 Now, Mr Enright of Howe & Co Solicitors recently
23 had a meeting with BEIS and it has been accepted by BEIS
24 that other representatives of subpostmasters before this
25 Inquiry will be included in the further discussions
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1 about how the scheme for the GLO litigants will be put
2 together and its terms. So moving forwards, it seems as
3 though there is acceptance by BEIS that Howe & Co, and
4 no doubt other firms of solicitors, will be involved in
5 that process.

6 Now, we welcome that. It will enable discussions
7 about funds being distributed to be discussed openly and
8 transparently and that will be capable of being shared
9 with the Inquiry as the Inquiry makes it progress.

10 Nevertheless, the work that will need to be done
11 within those discussions and in making the applications
12 in the future must be properly funded to put those
13 applicants within the GLO litigation on the same basis
14 as the Post Office in terms of legal representation.

15 Can I then deal with interim payments themselves.
16 This is interim payments for those who underwent
17 prosecutions, not convicted. We have submitted that
18 there should be no distinction between those who are
19 entitled to interim payments having had their
20 convictions overturned and to those who are prosecuted
21 and acquitted at trial or where prosecutions were
22 discontinued or cautions accepted.

23 We understand that BEIS's position as stated in
24 their written submissions is that any subpostmaster who
25 was acquitted or otherwise prosecuted and cautioned or

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1 cases in these hearings.

2 Can I deal immediately with a point that's already
3 been subject to some discussion. We know that there are
4 discussions ongoing that include a reference to
5 Lord Dyson who, as we understand, has agreed to come in
6 and consider these particular category of cases. We go
7 back to our primary submission which is that you, sir,
8 should have answers to what are the principles being
9 employed in relation to such determinations. We were
10 pleased to hear the possibility set out today that the
11 comparables or the precedents or the determinations made
12 by Lord Dyson may well be available so that people can
13 see what has happened one to another with such
14 applications.

15 We do not wish to make any further submissions on
16 this particular point because we would like to consider
17 what has have be said so far between now and the next
18 hearing, but our main consideration being that
19 principles need to be open, need to be transparent, need
20 to be capable of being examined by subpostmasters and
21 our representatives remain in relation to all of those,
22 including those individuals who otherwise might go
23 through what may be described as the alternative scheme
24 employing the good services of Lord Dyson. But the
25 principles upon which decisions should be made should be

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1 not convicted can apply through the HSS scheme.
2 Presumably BEIS will say that any subpostmaster who was
3 acquitted and who was a member of the GLO can apply
4 under the new, but as yet unparticularised, scheme.

5 Our position is that those subpostmasters who were
6 acquitted fall between the mechanisms and should be
7 transferred into the category B cohort of cases and
8 should have the facility to receive up to £100,000 in
9 interim compensation in accordance with that process.
10 This would remove the unacceptable position reflected in
11 the evidence of Ms Hamilton and Ms Palmer, that those
12 who are convicted are at least eligible for conviction
13 whereas those who were acquitted were not.

14 We hope that the announcement of 30 June that
15 Ministers are to provide a 19.5 million compensation
16 package for all GLO litigants will assist in practical
17 terms. But the distinction should be made. However,
18 basic mathematics suggest that acquitted subpostmasters
19 will still receive substantially less in interim relief
20 than those who were convicted.

21 Can we deal with the compensation questions that
22 relate to subpostmasters with quashed convictions. The
23 subpostmasters with overturned convictions who we
24 represent would wish that BEIS clarify their position in
25 relation to how it will proceed in this category of

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1 open and clear to others.

2 **SIR WYN WILLIAMS:** Mr Stein, you probably heard Mr Beer
3 suggest that I might want to enquire of the affected
4 Core Participants to what extent I should butt out or in
5 in relation to this particular issue. I asked
6 Ms Gallafent what she thought and she answered me. Am
7 I butting in or out or somewhere in between on what you
8 say?

9 **MR STEIN:** Well, sir, naturally of course, we are asking you
10 to stay somewhat in the doorway.

11 The position that we are asking you to adopt is
12 this: that it is important that the principles for
13 compensation are established, are known, are transparent
14 and accessible. We also don't wish to interfere in
15 anyway with any current application or anything that we
16 put forward delay compensation being provided. So on
17 that basis, and subject to further thought between now
18 and the next occasion in this rather rapidly moving
19 situation, we suggest that the way forward will be for
20 your to stand in that doorway and say that the process
21 needs to have some level of oversight and needs to be
22 transparent and to request, if all parties agree, that
23 the Lord Tyson principles, can I put it that way, be
24 made available. That would seem to us to be,
25 respectfully, a halfway house that would be acceptable

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1 at this time.

2 **SIR WYN WILLIAMS:** I mean, I'm looking at this from

3 a practical point of view as well. You invited me in

4 the strongest terms to provide an interim report. In

5 the very nature of these things that would probably mean

6 a greater length of time between these hearings elapsing

7 than if I were to just provide a progress update

8 because, as you will appreciate, an interim report has

9 to be laid before Parliament and all the rest of it.

10 **MR STEIN:** Yes.

11 **SIR WYN WILLIAMS:** If it happened to be the case that

12 Lord Dyson's work was -- I think someone suggested that

13 he may complete part of his work by the end of July, who

14 knows what then might follow from that. So I think the

15 probability is that instead of us talking to each other

16 sideways about doors open and shut, I should just -- the

17 very great likelihood is that Lord Dyson might pronounce

18 before I certainly provide an interim report and my

19 interim report, if that's what it is, will then no doubt

20 take great account of what transpires. Does that sound

21 reasonable?

22 **MR STEIN:** Sir, yes. It does seem to us to be a practical

23 way forward. Being blunt, it may well be that

24 Lord Dyson will hear of this hearing, may well pay

25 attention to it, and may want to consider contact with

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1 them in making claims."

2 It also stated that the Department was concerned

3 to avoid a situation whereby postmasters were forced to

4 engage expensive litigation funders and end up with

5 their compensation reduced as a result, as happened of

6 course with the Group Litigation.

7 The need for interim payment is such that that is

8 required to allow people to get their heads above water,

9 not for such luxuries as legal costs. Legal costs

10 should be paid for by BEIS and we suggest that there

11 still is a failure of understanding by BEIS and the

12 Post Office that the subpostmasters were, and are, their

13 victims. They have created this problem. They have

14 created the need for subpostmasters to have legal

15 assistance at all.

16 Now, there appears to be some conflict with

17 submissions made by the Post Office at paragraph 56 of

18 its written submissions, that as part of the

19 negotiations Post Office will consider the postmasters'

20 reasonable legal costs. So it seems that BEIS will need

21 to reconsider its position based upon the way that the

22 Post Office has set matters out.

23 Effectively, BEIS is saying that they don't want

24 legal costs to eat into subpostmasters' final

25 compensation awards, so those costs should be taken from

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1 the Inquiry and in such contact, the Inquiry may be

2 prepare, I know not, to accept that he would be prepared

3 to set out the general nature of his considerations.

4 We don't, in any event wish, to put anything

5 forward that delays any compensation going to anyone.

6 There have been enough delays and enough obfuscation and

7 that that cannot be done. So we accept the problem and

8 we accept also, therefore, the solution.

9 Now, we understand that as regards the claw-back

10 position that this is one of the matters that has

11 changed. For us, we learnt about this this morning.

12 We're told in the correspondence that was received last

13 night, that we saw I think at 8.30 this morning, that

14 there would be no attempt now to claw that back. That

15 is progress at least in relation to those payments.

16 We note that Post Office Limited has made that

17 concession in relation to paragraph 43, we think, of its

18 written submissions. BEIS has now confirmed, it seems,

19 that it agrees with that position.

20 Now, I turn then to paragraph 33 of the written

21 submissions from BEIS which states this:

22 "One reason for the Department providing funding

23 to Post Office Limited to enable claimants to receive an

24 interim payment of up to 100,000 was to make ensure that

25 they could secure independent legal advice to assist

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1 the postmasters at source and deducted from interim

2 payments at the outset.

3 The money is needed right now to solve people's

4 immediate problems, to get them out of the financial

5 hole created by the Post Office. What are those

6 individuals to do? To receive an interim payment, put

7 some rather unspecified sum of money aside which they

8 can't touch to use for legal costs. At the heart of

9 this suggestion, it is badly wrong that those

10 individuals are being deprived of the ability to

11 properly have fully funded legal assistance.

12 BEIS will know that the aim of compensation is to

13 try to place postmasters back in the position where they

14 would have been but for the scandal. Costs are a

15 separate issue.

16 Of course, BEIS may pay the reasonable legal costs

17 associated with making claims under the scheme. It

18 appears to have agreed to do so in relation to category

19 C, the GLO litigants. It cannot, we suggest, reasonably

20 fail to do likewise in respect of HSS applicants and it

21 should not try to short change those who are convicted

22 unlawfully as a result of Post Office's abusive

23 prosecutions. It is obvious that Post Office or BEIS

24 never has to worry about the cost of its own legal

25 representatives: Government is paying for that.

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1 Our clients are very grateful, sir, that these
2 hearings have been convened in what we all know is an
3 early stage of the inquiry process. But sadly it seems
4 that it is only by repeated correspondence from my
5 instructing solicitors and others, and by this Inquiry
6 taking upon itself the need to have these hearings, that
7 BEIS and the Post Office are having their feet held to
8 the fire in order to make them pay up.

9 There is still a very, very long way to go.
10 A large number of subpostmasters remain in highly
11 precarious situations. The HSS scheme itself is riven
12 with problems. No doubt for those people that have made
13 applications already and we suggest that it's very
14 likely that many people, if they are prepared to listen
15 to the representations we have made and others, will be
16 wanting to go back to the Post Office and say, "Well, we
17 didn't realise the consequential losses could be
18 claimed".

19 It would also be helpful to have it confirmed for
20 all of those people out there that might be in a
21 position, who having heard what is being said by
22 Ms Gallafent regarding the potential for there being an
23 open door to making a claim within the HSS scheme, for
24 that door to be made clear that it is open and that the
25 application system is still present. It needs more than

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1 money that I had in the house, tuppences, 5ps,
2 everything went into the bucket."
3 She explained that her mummy and daddy arrived.
4 She didn't know it until that point but Darren, her
5 husband, had phoned them and they went to Ballymena and
6 withdrew as much money as they could out of their own
7 bank accounts but they couldn't get enough. So they
8 rang two of the uncles and they did the same.

9 "My sister, when she was on the way to her shop to
10 lodge her own takings, she gave me her takings. So
11 I don't know the exact figure because I never got a
12 receive but somewhere in the region of £42,000 was in
13 that bucket."

14 Counsel to the Inquiry asked Sinead:

15 "Where did that bucket go?"

16 Sinead said:

17 "I couldn't drive at that stage. So I got my
18 sister to drive me down to the shop and I carried that
19 bucket in and the auditors made me stand there and watch
20 them count it. And they tutted, made me feel so lousy
21 for bringing them all these pennies but I brought them
22 whatever I could."

23 I mentioned Fiona Elliott. She gave evidence on
24 19 May. Two auditors arrived at the office. The
25 auditors told Fiona, "There's a shortfall here of £6,000

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1 counsel on behalf of the Post Office that says that that
2 is being considered. It needs to be said that the door
3 is open and applications can be made.

4 Let's compare briefly y the evidence that you have
5 heard, what's happened in the past to what is happening
6 now. Sinead Rainey's evidence heard in Belfast in the
7 Human Impact Hearings, transcript 18 May (just for your
8 note) at page 43, lines 12 onwards. You will remember
9 that she spoke of an audit which take place on 1 May
10 2019 and she had just dropped her children off at
11 school -- small children. Sinead said that when the
12 auditors had finished tallying up, they came to her and
13 they called her into the office and they said, "Sinead,
14 have you got any more money belong beginning to the
15 Post Office?" The auditors explained, "There's a
16 discrepancy here of £63,000". The auditor said,
17 "Sinead, you've got an hour to get as much money into
18 that safe. I'll be locking that safe in an hour and
19 you've got an hour to get as much money in there as you
20 possibly can. Whatever money you can put in there will
21 be deducted off the total discrepancy".

22 So Sinead says this:

23 "Well, I got into the car. I drove home and
24 I lifted a bucket in my house and I emptied my wee'uns
25 moneyboxes into them and I emptied my own purse and any

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1 showing in the system. We need to get that £6,000 now
2 or you'll have a criminal offence." Well, she said,
3 "Where did that £6,000 come?" She said, "I'm constantly
4 putting money here all the time, hundreds of pounds a
5 week and never showed up that huge amount. What will
6 I do now?" They said, "You'll have to pay it". She
7 hadn't got it in the shop. "So I ended up by saying can
8 I go to the bank?" The bank was closed. They said no.
9 "So I couldn't leave and go that far. They wouldn't
10 wait on until the bank was going to open in the
11 afternoon. She tried to offer the Post Office official
12 a cheque. They wouldn't accept that.

13 And Ms Elliott said to you, Fiona said to you, sir:

14 "Then I went and my brother owned a car business
15 in the village as well and I asked him would he have any
16 cash on him and he said, 'Aye, there's cash there'. So
17 I got the cash off him and gave it to the Post Office.
18 I never got a receipt for it."

19 These are just two examples but you have heard
20 scores of witnesses when the Post Office wanted their
21 money, they wanted it there and then under threat of
22 criminal prosecution. However, when we see the failings
23 of the Horizon system and the Post Office's conduct is
24 uncovered repeatedly and starkly, and they are called
25 upon to properly compensate the victims, we suggest:

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1 there has been delay, obfuscation and basically these
2 issues being kicked into the long grass. They make
3 statements to Parliament, they issue press releases,
4 they do everything but pay up promptly.
5 I go back to where I started. Our clients simply
6 asks that compensation schemes are drawn up in such
7 a manner that indications are given as to the amounts
8 they are likely to receive by way of final compensation.
9 That requires precedence, it requires comparables, it
10 requires a way of accessing what it is that they might
11 be able to receive by way of the application. Schemes
12 should be transparent. They should provide indications
13 of likely quantum in a banding format. This would
14 assist in removing the unfortunate litigious elements
15 that the schemes currently contain and provide a measure
16 of certainty and facilitate targeted representations.
17 Our clients, for very good reason, do not trust
18 the Post Office nor BEIS, the department of Government
19 which owns the Post Office. On 22 March, the Minister
20 made an announcement in Parliament accepting that the
21 Government has long considered unfair the unequal
22 treatment received by members of the GLO litigation
23 group and their non-GLO litigation peers. The Minister
24 said:
25 "I'm therefore pleased to announce that the
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1 current compensation schemes and what little is known
2 about the GLO compensation proposals and that we ask you
3 do that within the format of an interim report.
4 Sir, those are our submissions this afternoon.
5 I hope I have dealt with them reasonably so that if
6 cricket is about to start that people might start to
7 turn out to the windows to their side and watch that.
8 I finish with this: it is troubling that in order
9 to get BEIS and the Post Office to come to arrangements
10 that relate or explanations that relate to the HSS
11 scheme or to answer questions that you have set out,
12 that all of the expense that is required to set up such
13 hearing has been done. It is troubling that the
14 Post Office does not seem to have been able to
15 understand that individuals that have been affected by
16 the Post Office's actions, Post Office being wholly
17 owned by BEIS, need support and need assistance. It is
18 troubling that all of those matters have been behind the
19 scenes to a large extent and that, right up until the
20 day of this hearing, including today (and I am quite
21 sure whilst I have been on my feet), that further
22 changes have been taking place.
23 So I ask, sir, that you indulge us if need be on
24 the next occasion by the ability, if required, to make
25 further short submissions in relation to what happens
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1 Chancellor will make additional funding available to
2 give those in the GLO group compensation similar to that
3 which is available to their non-GLO peers."
4 And accepting that, because they had signed a full
5 and final settlement of the court case in 2019,
6 postmasters in the group were ineligible to apply to the
7 Historical Shortfall Scheme.
8 "So despite winning the case [the Minister went on
9 to say] the group was left worse off than other affected
10 postmasters for whom they had blazed the trail."
11 In your announcements on 9 May, you refer to the
12 fact that in their written submissions both Post Office
13 Limited and BEIS suggest that claimants in the group
14 litigation falling within categories 1 and 2 will be
15 eligible to claim compensation for malicious prosecution
16 by virtue of the Minister's announcement of 22 March.
17 You go on to say this:
18 "It is also [your] provisional view, however, that
19 Post Office Limited and BEIS are correct to suggest that
20 claimants in the Group Litigation who fall within
21 categories 1 and 2 can claim compensation for malicious
22 prosecution in reliance upon the Minister's
23 announcement."
24 So it is for these reasons that I have set out
25 today that we invite you to set out your view on the
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1 between now and then and after having had a little bit
2 more and more time to think of some of the submissions
3 that have been made today. I will make a promise that
4 it will be a short series of submissions targeted at
5 only those issues itself, and no more than that, and
6 obviously after hearing from others that set out their
7 submissions on that day.
8 **SIR WYN WILLIAMS:** Thank you, Mr Stein. I think that
9 I would be remiss in not making some reference to what
10 might happen on the next occasion and so I'll do it.
11 In the notice which I published on 30 June,
12 I anticipated that these hearings would produce a flurry
13 of activity. I didn't use those words but that was what
14 was in my mind and I'm not disappointed. I am quite
15 sure that between now and 13 July there may be further
16 activity, in which case I will give people an
17 appropriate opportunity to deal with what occurs. What
18 is appropriate will depend on what occurs. So I'm not
19 going to promise anyone that they can make any further
20 submissions (although I don't rule it out) and, as
21 I say, an appropriate opportunity will be available to
22 everyone to respond to this shifting process.
23 Thank you all very much for the economy with which
24 you've addressed me and for accepting my invitation to
25 deal with things which were controversial rather than to
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The Post Office Horizon IT Inquiry

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1 major on what you thought were your good points.
2 I look forward to seeing many, if not all, of you
3 again next week.
4 (3.22 pm)
5 (The hearing adjourned until Wednesday, 13 July at 10.30 am)
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