

The Post Office Horizon IT Inquiry

13 July 2022

Wednesday, 13 July 2022

(10.30 am)

SIR WYN WILLIAMS: Before we start to hear the submissions, as I think I said when we were together last Wednesday there has been further activity so I just want to check that all the Core Participants have what I have, apart from two things which I will mention at the end.

So in no particular order, there is a letter dated 12 July 2022 from BEIS, or the treasury solicitor acting on behalf of BEIS, together with an email in support. There is a letter of 27 June addressed to Mr Brightwell of BEIS from Howe+Co. There is a sample letter from the Insolvency Service, a letter from Howe+Co dated 7 July addressed to me, and there is also an email dated 9 July from Mr Brightwell of BEIS addressed to various firms of solicitors. I hope that those documents have all reached the Core Participants.

If not, we can take a short break while that's repaired so that everybody has those documents right from the start. I think that would be preferable to people listening in the dark, so to speak.

I should also say that I have had two emails addressed to me personally -- which have not been distributed because I don't think there is any need to do so -- but I alert the Inquiry to the fact that two of

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devastation to many good people's lives, damaged communities and undermined a national institution. It should never have happened and, indeed, should never have been possible.

The Government set up this Public Inquiry in order independently to establish the facts, to identify fault and make recommendations. As the Department has already stated publicly on several occasions, not least when announcing this Inquiry, it is essential that the necessary lessons are learnt so that nothing like this can ever happen again. The Department is, of course, fully supportive of the work of the Inquiry and looks forward to receiving its conclusions and recommendations in due course.

At the same time, the Department is all too well aware that affected subpostmasters continue to feel the consequences to this day. The lessons for the future that will no doubt emerge from this Inquiry will not make good the devastation caused to them and their loved ones nor help them pay the bills lying on their doormats.

One of the Department's central objectives is therefore to make sure that they are promptly, fully and fairly compensated for their financial losses, distress and the hardship they have experienced over many years

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the individual Core Participants, loosely under the heading subpostmasters, have written to me personally to say that, far from butting out of compensation issues, I should involve myself very much in those issues.

If there is anyone who doesn't have a relevant document, I think Ms Page was indicating she may not but she may now have it, and since you are going last will it inconvenience you greatly if we make a start, Ms Page?

Fine. Jolly good.

When Mr Chapman is ready, I think we'll be ready for him.

Submissions by MR CHAPMAN

MR CHAPMAN: I make these submissions on behalf of the Department for Business, Energy and Industrial Strategy, which I shall refer to as "the Department". This is the first time that the Department has made oral submissions in this Inquiry and it is therefore right that it records at the outset its thanks to you, sir, and to the entire Inquiry team for undertaking this essentially important work.

The Horizon scandal is truly the most serious affront to decency and justice, all the worse because the Post Office is government-owned and exists to provide public service. It has caused appalling

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and it realises that for many subpostmasters the issue of compensation is absolutely key.

It is for that reason that the Government framed the Inquiry's Terms of Reference to require it independently to assess whether the commitments made by Post Office Limited within the mediation settlement, including the Historical Shortfall Scheme, have been properly delivered.

But further than that, the Department does not shy away from the fact that fair compensation to all of the affected subpostmasters has taken longer to deliver than anyone would have wanted and in a context where some of these injustices date back over two decades; that is unacceptable.

It has also noted with concern the issues raised by some Core Participants prior to and during these hearings and recognises the need for the Inquiry to examine the operation of the compensation arrangements. The Department, therefore welcomes your decision, sir, to hold these hearings at this stage.

Can I make clear, sir, the Department's objective in these compensation issues hearings, and indeed generally throughout this Inquiry, is twofold: first, to assist the Inquiry in whatever way it can; and, second, to listen and to learn with a view to making whatever

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1 improvements are necessary. The Department wants to do
2 the right thing on compensation, within the legal and
3 practical constraints in which it operates and, whilst
4 it is actively and urgently working towards the goal of
5 ensuring subpostmasters are fully and fairly compensated
6 as quickly as possible, it does not claim to have all of
7 the information or all of the answers.

8 For that reason, it will continue to listen
9 carefully not only to any interim conclusions and
10 recommendations that the Inquiry should express
11 following these hearings but also to the representatives
12 of the other Core Participants and especially those
13 representing the affected subpostmasters.

14 But the point about legal and practical
15 constraints is an important one that's worth dwelling on
16 briefly. It is important to recognise that the
17 Department and Post Office Limited are not one
18 indivisible entity. The relationship between POL, UKGI
19 and the Department will be explored in phase 6 of the
20 Inquiry but it suffices at this stage to note that, for
21 good reason, operational matters within Post Office are
22 for the Post Office board and not for the Department to
23 decide.

24 The Department Secretary of State is POL's
25 ultimate shareholder, with his company law rights as

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1 Interim Report, it has taken on a much more proactive
2 hands-on role than is usual in the relationship, in
3 order to make sure POL fulfils the clear objectives that
4 have been set for it.

5 Perhaps we can briefly go to page 266 of the
6 hearing bundle where the extent of the role the
7 Department has taken on for itself is spelt out under
8 the heading "Government's Role" and there it says:

9 "The Government has responsibility for providing
10 the funding for settlement payments, agreeing
11 significant decisions in relation to the settlement
12 strategy, and monitoring Post Office's progress towards
13 reaching final settlements.

14 "BEIS supported by UKGI has been involved in the
15 design of the compensation programme and holds regular
16 monitoring, decision-making and working group meetings
17 both internally and with the Post Office. This includes
18 signing off on processes, principles and oversight on
19 initial cases. This is to ensure that negotiations are
20 advancing in line with the Government's desire to see
21 timely and fair compensation delivered to postmasters."

22 This is also manifest in the increased resourcing
23 within BEIS's Post Office policy team. Ordinarily, BEIS
24 has around three officials supported by a slightly
25 larger team at UKGI, allocated to working on its policy

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1 ultimate shareholder exercised on his behalf by UKGI, UK
2 Government Investments Limited, itself a company owned
3 by HM Treasury.

4 The Department of course seeks to fulfil policy
5 objectives through its ultimate ownership of POL,
6 principally to ensure that the Post Office can viably
7 continue to provide an essential public service at
8 reasonable cost to the taxpayer. But its involvement is
9 at a strategic and not operational level. The
10 Post Office is operationally independent of Government
11 for reasons that have been considered compelling by
12 successive administrations of different political
13 stripes and its relationship with government is
14 underpinned by primary legislation in the form of the
15 Postal Services Acts 2000 and 2011.

16 However, whilst the responsibility for
17 compensating victims of the Horizon scandal falls on POL
18 itself, the Department has always recognised that it has
19 an essential role to play in overseeing the process and
20 by proactively using the mechanisms available to it to
21 ensure that POL compensates affected subpostmasters
22 fully and fairly and quickly and effectively as
23 possible.

24 As explained in the Government's response to the
25 Business, Energy and Industrial Strategy Committee

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1 direction for Post Office. It now has eight officials
2 focusing on these compensation issues, supported by
3 a slightly smaller group than that within UKGI and on
4 11 January 2022 Minister Scully stated to the BEIS
5 Select Committee that the issue of compensation,
6 specifically in relation to the GLO Claimants was to
7 quote:

8 "... by far and away the most pressing issue in my
9 list of responsibilities as a minister."

10 All of that is to say that the Department has
11 taken and continues to take the issue of compensation
12 extremely seriously and is investing significant
13 resources to ensure that postmasters receive what they
14 are entitled to. But can I please make absolutely clear
15 that I am not here to defend the Department or suggest
16 that it's got everything right. Indeed, the Department
17 is clear that it could have done some things better.
18 The Department's position is one of genuine and open
19 engagement with the goal of doing whatever it reasonably
20 can now and in the future to ensure POL delivers full
21 and fair compensation as quickly as possible.

22 So having made those observations by way of
23 preamble, I turn to the substance of my submissions.
24 The Inquiry has, of course, seen the Department's
25 written submissions on these compensation issues, which

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1 are publicly available to read on the Inquiry's website.
 2 I certainly don't seek to repeat what's set out there.
 3 But the focus of my submissions today is on providing
 4 relevant updates on engaging with some of the issues
 5 raised by other Core Participants in their written and
 6 oral submissions, in the hope that that will assist the
 7 Inquiry.
 8 I'll address those points under three headings
 9 relating to the three broad categories of compensation
 10 being considered: first the Historical Shortfall Scheme,
 11 HSS; second, final compensation for subpostmasters with
 12 quashed convictions; and, third, fair compensation for
 13 the GLO Claimants.
 14 So I start with the Post Office's Historical
 15 Shortfall Scheme (or HSS). The Department seriously
 16 regrets the initial delays within the HSS. It is, it
 17 recognises, essential that affected subpostmasters who
 18 have already waited far too long for justice and redress
 19 obtain fair compensation quickly. Any delay is
 20 unacceptable.
 21 One key driver for the initial delays was that POL
 22 had planned and put in place resources on the underlying
 23 assumption that applications to the HSS would be
 24 numbered in the hundreds. If that had been the case,
 25 compensation under the scheme could have been met by POL.

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1 POL's assumptions and plan for the contingency that they
 2 were wrong. It apologises for its role in contributing
 3 to the delays which resulted.
 4 As noted in our written submissions, the
 5 independent advisory panel, as originally constituted,
 6 also did not have sufficient capacity to process the
 7 number of applications actually received. Further
 8 members had to be appointed to improve capacity.
 9 As well as much higher numbers of applications and
 10 the need to secure budget to fund the scheme, it also
 11 took time to set up the processes to ensure consistency
 12 of decision-making on applications.
 13 In establishing the HSS, an initial round of test
 14 cases was used as the basis for the creation of the case
 15 assessment principles. Those principles were approved
 16 by the Independent Advisory Panel and by BEIS's steering
 17 committee and set out the underlying legal principles
 18 which were then applied to claims within the scheme to
 19 ensure consistency of approach.
 20 After those initial delays and as a result of the
 21 additional Government funding and improved resourcing,
 22 the HSS is now operating at a reasonably good pace. As
 23 of 6 July 2022, 70 per cent of eligible Claimants in the
 24 HSS had received an offer. That is 1,659
 25 subpostmasters. The total amount of compensation

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1 itself without any additional taxpayer funding. BEIS's
 2 role at the stage of the settlement of the Group
 3 Litigation, and establishment of the HSS, was
 4 a relatively limited one through its role as shareholder
 5 supported by UKGI.
 6 In fact, over 2,500 applications were received,
 7 meaning that POL could not fund the scheme itself and,
 8 therefore, the scheme required a substantial input of
 9 taxpayer money.
 10 When the Department was informed of the problem in
 11 the autumn of 2020, it worked to obtain Treasury
 12 approval for the necessary additional maximum budget
 13 cover, £233 million, as quickly as it could, eventually
 14 securing it in February 2021, and this funding was
 15 announced in March 2021. It is important to note here
 16 that the £233 million figure is the maximum estimated
 17 required budget cover and POL's most recent best
 18 estimate of the total scheme cost is £150 million, as
 19 published in its 2021 annual accounts. Both BEIS and
 20 POL are contributing to payment of the settlement
 21 amounts.
 22 Whilst POL, UKGI and the Department believed at
 23 the start that POL would be able to deliver the scheme
 24 from its own resources, the Department now considers
 25 that it should have done more to test the risk around

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1 offered is now nearly £37 million, an average of
 2 a little over £22,000 per claim.
 3 The Department recognises that the HSS is
 4 administered by POL and it notes that, in these
 5 hearings, POL has indicated that it is on course to make
 6 offers in 95 per cent of cases by the end of this year.
 7 The Department has set POL the aim of making
 8 100 per cent of applicants an offer by the end of this
 9 year and it has been putting pressure on POL to meet
 10 that goal. The Department's view is that all possible
 11 steps should continue to be taken to make fair offers of
 12 compensation to all applicants by the end of this year.
 13 Can I turn to the question of legal support. The
 14 HSS has been arranged so that the more straightforward
 15 claims were considered first. As you've heard, sir, the
 16 intention was for the scheme to be easy to access
 17 without legal advice or representation and the
 18 appointment of legal experts to the Independent Advisory
 19 Panel was intended to obviate the need for legal
 20 representation in most cases. The Department has heard
 21 the submissions made by some of the Core Participants in
 22 these hearings that proper claims for consequential
 23 losses have regularly not been made and the suggestion
 24 that this may be as a consequence of the legal funding
 25 arrangements.

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1 At the same time the Department notes that the
2 published HSS consequential loss principles and guidance
3 states in terms that consequential losses -- that is to
4 say any losses other than shortfall losses -- can be
5 claimed under the scheme and gives examples in layman's
6 terms of what the losses might be: loss of earnings,
7 loss of profits, loss of property, loss of opportunity
8 or chance, penalties and costs of financing, bankruptcy
9 or insolvency, legal and professional fees, stigma and
10 damage to reputation, and personal injury or harassment.

11 This guidance was sent to all applicants in
12 October 2020 and has been published and signposted on
13 the front page of the HSS website since September 2020.

14 The application form itself, of course --

15 **SIR WYN WILLIAMS:** Just so I don't mislead myself, does that
16 mean that it hadn't been signposted in the way that you
17 are suggesting during the initial period of the scheme?

18 **MR CHAPMAN:** Correct. It was first sent to -- the guidance
19 was first sent to applicants in October 2020 and
20 published on the website in September 2020, not before
21 then.

22 **SIR WYN WILLIAMS:** So I'm not saying this in any kind of
23 critical way, it is purely neutral, but the plain fact
24 is that those people who did apply by August 2020 were
25 not sent the guidance before they applied?

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1 initial discussions with Post Office on this issue and
2 is expecting to receive a formal proposal shortly. It
3 is determined to ensure that the process adopted is
4 a fair one.

5 I turn --

6 **SIR WYN WILLIAMS:** So that my note is correct on this, so
7 far as a decision upon increasing the level of legal
8 funding, that can be expected within -- I think I wrote
9 "some weeks" but did you say a few weeks?

10 **MR CHAPMAN:** The next few weeks.

11 **SIR WYN WILLIAMS:** What's the timescale for a determination
12 of late applications?

13 **MR CHAPMAN:** The Department's held initial discussion with
14 the Post Office on that topic and it expects to receive
15 a formal proposal shortly. I can't be more specific
16 than that. But the point is that those discussions have
17 happened and a decision is in train.

18 **SIR WYN WILLIAMS:** Now I am not being entirely neutral.
19 This does seem to be hanging around for a long time,
20 Mr Chapman.

21 **MR CHAPMAN:** Well, sir, I'm not here to persuade you
22 otherwise.

23 **SIR WYN WILLIAMS:** Fine, thanks.

24 **MR CHAPMAN:** I turn, if I may, to the second of my three
25 headings: compensation for subpostmasters with quashed

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1 **MR CHAPMAN:** Correct.

2 Turning to the application form itself, that did
3 ask applicants whether they had:

4 "... experienced any other losses that directly
5 related to the alleged shortfalls in respect of which
6 you would like to claim."

7 True it is that the term "consequential losses" is
8 not used there but the Department believes that what was
9 being asked was reasonably clear and that the use of
10 legal terminology, the expression "consequential
11 losses", on the form itself would have been more likely
12 to confuse than assist. But the Department has listened
13 to the concerns raised and going forward, as more
14 complex and larger claims are now being looked at with
15 greater potential for dispute, the Department recognises
16 that it is right to reconsider whether the levels of
17 legal funding remain appropriate.

18 The Department has been in discussion with the
19 Post Office with a view to increasing the provision of
20 legal support costs and expects a decision on this
21 within the next few weeks.

22 Finally on this topic, the HSS, I turn to the
23 question of late applications. The Department welcomes
24 the Post Office's confirmation that it is committed to
25 considering those applications. The Department has held

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1 convictions. For the avoidance of doubt, this category
2 also includes non-GLO subpostmasters who were wrongly
3 prosecuted but not actually convicted, either because
4 the prosecution was withdrawn or because they were
5 acquitted.

6 I'll keep my submissions brief on this topic.
7 I deal with the issue of disclosure first. The
8 Department was recently made aware of problems
9 concerning timely disclosure to applicants of documents
10 held by Post Office. BEIS is encouraging POL in its
11 efforts to resolve this issue. If there are any
12 continuing problems in relation to the issue, the
13 Department is keen to hear about them as soon as
14 possible so they can be resolved.

15 I next address briefly bankruptcy and insolvency
16 issues. We have received early this morning the letter
17 from the Insolvency Service to an individual whose
18 details are redacted. The Department is not presently
19 in a position to address that letter and would be very
20 grateful if this and any other specific issues relating
21 to bankruptcy or insolvency are brought to its
22 attention. It emphasises that it takes these issues
23 very seriously and I underline the point already made
24 that its objective is to ensure full and fair and prompt
25 compensation.

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1 The next issue is the potential for claw-back,
2 where interim payments are greater than for final
3 awards. The Department understands that POL has removed
4 the claw-back clause from all future offer letters and
5 has informed those who have already had offers that
6 payments will not be clawed back. The Department
7 welcomes this.

8 Interim payments: the vast majority of what have
9 been called Category B cases have had convictions
10 quashed on the ground that they were unsafe. A small
11 number of cases, three we know of to date, are different
12 in that they were quashed on public interest grounds.
13 Interim payments are made --

14 **SIR WYN WILLIAMS:** I think, again, they were quashed but POL
15 did not oppose their quashing on public interest
16 grounds.

17 **MR CHAPMAN:** That is right.

18 **SIR WYN WILLIAMS:** I don't think we should assume that the
19 judge was being asked to approve that, in any sense.

20 **MR CHAPMAN:** I accept that.

21 Interim payments in this category are made as
22 a down-payment on the final compensation that will
23 ultimately be paid. In the public interest cases, due
24 to their distinct facts, it is difficult to assess what
25 level of compensation may be due until a full claim is

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1 soon as they were agreed which refer possible, rather
2 than waiting for all heads of loss to be resolved.

3 Again, the Department would invite the
4 representatives of all affected subpostmasters to raise
5 any issues with this process.

6 Turning to the issue of non-pecuniary damages, for
7 the avoidance of doubt, the Department records its
8 agreement with other Core Participants that these claims
9 must be valued according to ordinary principles
10 applicable to the recovery of damages for malicious
11 prosecution, including by reference to aggravated and
12 exemplary damages where appropriate. The Department
13 welcomes the system of early neutral evaluation of such
14 claims and the agreed appointment of Lord Dyson as
15 neutral evaluator.

16 It stands ready to support the delivery of the
17 early neutral evaluation process and is keen to ensure
18 that the outcomes of this process enable fair and swift
19 compensation.

20 Finally and briefly, I address the suggestion made
21 by some Core Participants that individuals with quashed
22 convictions should be able to opt into the Government's
23 scheme to give *ex gratia* top-up compensation to the
24 GLO Claimants. The Department is considering the
25 overall point being made but it is important to

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1 received. For that reason, they have not been eligible
2 to receive an interim payment which is based on
3 a simplified assessment of the likely value of the full
4 claim and, of course, interim payments are *ex gratia*,
5 good faith payments.

6 These Claimants can, of course, submit a claim for
7 full compensation and that claim will be considered on
8 its merits. The Department would encourage them to
9 submit their claims so these can be properly considered.
10 Again, the Department emphasises that POL is not the
11 final arbiter of interim payments. If individuals are
12 aggrieved by a decision not to make a payment in their
13 case, legal remedies are available to them.

14 In terms of final payments, at the time of our
15 written submissions, dated 31 May of this year, POL had
16 received only two full claims. As of today, a further
17 three largely quantified claims have been received, as
18 well as further information from one additional
19 postmaster. This brings the total of largely quantified
20 claims to six.

21 The Department continues to encourage the
22 Post Office to work at pace with the Claimants' legal
23 representatives to reach a fair settlement as quickly as
24 possible and, as part of that, to make payments of
25 agreed elements of claims, such as loss of earnings, as

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1 emphasise that the GLO Claimants are in a uniquely
2 difficult position. As a result of the settlement of
3 the Group Litigation, they have no legal right to
4 further compensation, meaning there is a very specific
5 need for bespoke arrangements to be put in place to
6 ensure they are fully and fairly compensated.

7 The same is not true for the Category B group, as
8 it has been called, who continue to have recourse to all
9 legal remedies.

10 My third and final heading is fair compensation
11 for the GLO Claimants. It is the Government's settled
12 position that it is only right and proper that
13 GLO Claimants should receive further compensation, in
14 addition to that which they agreed when settling the
15 litigation against POL, to give them compensation
16 similar to that available to other subpostmasters who
17 did not participate in the GLO. This was announced by
18 the Minister for Postal Affairs on 22 March of this year
19 and reaffirmed in the Department's written submissions
20 of 31 May. The Minister was clear that it was necessary
21 to find a way to deliver this additional compensation,
22 but the Department cannot just allocate tens of millions
23 of pounds of taxpayer money [Zoom distortion] unilateral
24 force of will.

25 As I've already explained, it may only act within

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1 the parameters of the law and here there was no clear
2 statutory basis for providing the money to POL that was
3 necessary for this purpose. The Department's power to
4 subsidise the Post Office is limited by statute to
5 assisting in the provision of post offices or
6 Post Office services and there was no legal liability to
7 pay the additional compensation because the GLO
8 settlement was expressly full and final.

9 The Department tried, and tried in vain, to find
10 an existing legal basis to enable it to fund the scheme.
11 It reluctantly came to the considered conclusion that no
12 such legal basis existed and, in normal circumstances,
13 that would have meant that its only choice would have
14 been to seek to pass primary legislation to create
15 a bespoke legal basis for this additional funding and
16 the establishment of a scheme.

17 After considerable exploration, the Department,
18 with the help of the Treasury, identified a way through,
19 in line with the rather arcane Public Accounts Committee
20 Concordat of 1932, which allows expenditure of
21 an emergency or non-continuing character to be made
22 under the sole authority of the Annual Appropriation
23 Act. Approval of this highly exceptional legal basis
24 reflects the importance which ministers attach to
25 providing further compensation to the GLO group.

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1 the Department has engaged Freeths, who represented the
2 GLO Claimants in the Group Litigation, in order to
3 access the data and methodology that they, Freeths,
4 developed to distribute the 2019 settlement. This will
5 help BEIS to put in place a system for calculating final
6 awards of compensation for each of the GLO Claimants.

7 Third, finally, all members of the GLO group will
8 be able to claim reasonable legal fees that they incur
9 as part of participating in the final compensation
10 scheme.

11 Can I please be absolutely clear here about two
12 things, and they are related. First, the Department has
13 been saying since March that it will consult informally
14 with both individual subpostmasters and their lawyers.
15 That consultation must, of course, include all
16 GLO Claimants and their representatives, not just those
17 who choose to be represented by Freeths in relation to
18 the final compensation arrangements.

19 Second, no-one will be cut out of the final
20 compensation under these arrangements by choosing to be
21 represented by a firm other than Freeths or indeed
22 choosing not to be represented at all.

23 The Department hopes that this allays somebody of
24 the concerns expressed during these hearings about the
25 involvement of Freeths.

23

1 The other challenge which the Department faced
2 related to Therium, the firm which had funded the GLO
3 Claimants' litigation and which had therefore received
4 the lion's share of the compensation paid by
5 Post Office, pursuant to the settlement. Therium had
6 a possible legal entitlement to a share of any further
7 compensation paid. The Department had to and did
8 negotiate this issue with Therium and was grateful for
9 their agreement to waive any further entitlement.

10 That having been done, as the Minister informed
11 Parliament in a written statement on 30 June this year,
12 the first few major steps have now been taken to
13 implement these arrangements, in particular, first,
14 interim payments to members of the Group Litigation not
15 covered by other schemes. A total of £19.5 million has
16 been allocated to these interim payments.

17 When this is added to the share of the settlement
18 obtained in the Group Litigation in 2019, which was
19 distributed to the Claimants after costs, the GLO
20 Claimants will have received approximately £30 million.
21 Although the Department does not consider this to be
22 fair, final compensation, it hopes that it goes some way
23 to helping subpostmasters facing immediate hardship.

24 Second, with the aim of quickly putting in place
25 a scheme for final compensation for the GLO Claimants,

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1 **SIR WYN WILLIAMS:** Before you reach your conclusion, just so
2 that I am clear, I think you just said orally which the
3 data which Freeths hold will be used -- this my word not
4 yours -- to calculate final awards of compensation to
5 the GLO Claimants. In the letter that was sent
6 yesterday, unless I've misunderstood it, it was also
7 being suggested, or it was being suggested, that this
8 data would be used to distribute the interim payment sum
9 of 19.5 million. Have I got both right?

10 **MR CHAPMAN:** Yes. Yes, thank you, sir.

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

12 **MR CHAPMAN:** Turning to my conclusion, sir, the Department
13 looks forward, sir, to any update on these issues that
14 the Inquiry should choose to give and it continues to
15 stand ready to assist the Inquiry, however it can.
16 Thank you for the opportunity of addressing you today.

17 **SIR WYN WILLIAMS:** Thank you. That's fine. Thank you very
18 much.

19 Ready, Mr Moloney, or do you want a short break?

Submissions by MR MOLONEY

21 **MR MOLONEY:** Sir, as you know, I make submissions on behalf
22 of the Hudgell Core Participants and there are three
23 issues upon which you have invited submissions. I won't
24 repeat them, sir. They have been set out many times.
25 You have heard substantive submissions from Counsel to

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1 the Inquiry, Post Office, Howe+Co and BEIS.
2 In order to avoid repetition of the general
3 submissions that you have heard, sir, we will aim to
4 provide practical context to the general issues that we
5 hope will be of assistance and, in that vein, sir, it
6 was of course us who provided the letter from the
7 Insolvency Service this morning. We will try to provide
8 practical examples to you, sir, which we hope will help.

9 Taking each in turn, then first the Historical
10 Shortfall Scheme. Hudgell Solicitors represent a great
11 many people in Category A, persons who have made
12 applications to the HSS, if you will forgive me using
13 that acronym, sir. We raised concerns in our written
14 submissions about the operation of the HSS and those
15 concerns remain, sir, despite reassurances given on
16 behalf of Post Office last week.

17 We have seven points to raise with you in respect
18 of the HSS scheme, sir. Firstly, the availability of
19 expert evidence to Claimants under the HSS; secondly,
20 limitation; third, bankruptcy; fourth, the terms of the
21 outcome letter if you will forgive that shorthand, sir;
22 fifth, interim payments under the HSS; sixth, areas for
23 further decision by POL; and, finally, the operational
24 independence of the HSS panels.

25 Firstly, sir, then the availability of expert
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1 expertise built into the process, and that's last week's
2 transcript, sir, at page 43, line 12.
3 She also observed that the panel has obtained
4 generic advice on matters such cardiac and mental health
5 in order to assist it in approaching claims, generally.
6 She then went on to say, sir, if she will forgive me,
7 that the panel's Terms of Reference also provide -- and
8 you have already been taken to this provision at
9 section 35 in relation to personal injury claims:

10 "Where insufficient evidence has been provided for
11 a claim to succeed without further medical and/or expert
12 evidence, the panel may nevertheless recommend the
13 making of an offer to the postmaster which the panel
14 considers fair."

15 She said that this provision is designed to be
16 advantageous to an applicant:

17 "It enables an applicant who is not potentially
18 able to obtain expert evidence to prove and support
19 their claim nevertheless to obtain a recommendation from
20 the panel on the basis of fairness."

21 Post Office Limited was also conscious that
22 an applicant may wish to avoid the inconvenience and
23 potential distress of obtaining a report which may be of
24 particularly acute and sensitive concern in cases
25 involving mental health issues, but the panel has the

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1 evidence for Claimants under the HSS. One of our
2 primary concerns, sir, is in respect of the issue of
3 harm caused to the Claimants in the form of mental
4 health and associated issues which flow from that.
5 We'll return to this when we address the issues under
6 Category B, sir, but Hudgell Solicitors have
7 commissioned medical reports for each of the
8 63 Core Participants that we represent whose convictions
9 have been quashed, Category B.

10 You won't be surprised to hear I'm sure, sir, that
11 a number of them have severe, enduring psychiatric
12 issues following their experiences at the hands of
13 Post Office Limited and a number have developed
14 long-term physical problems stemming from those
15 psychiatric problems.

16 It's a serious and widespread problem, sir, and we
17 have profound concerns about the approach to it within
18 the HSS scheme.

19 Ms Gallifant, Queen's Counsel, said last week that
20 there's no necessity for expert evidence for a variety
21 of reasons. Firstly she said that every case will be
22 assessed by three members of the Independent Advisory
23 Panel comprising one legal specialist, one forensic
24 accounting specialist and one retail specialist and,
25 therefore, there's already a very significant degree of

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1 power nevertheless, in the absence of such evidence, to
2 recommend an offer which it considers to be fair.

3 So, in essence, so far as this issue of expert
4 evidence on matters such as mental health is concerned,
5 Post Office contends that there is sufficient expertise
6 on the panels so that the Claimants don't require expert
7 assistance; second, that the panel has received generic
8 advice to assist it with health matters; and, third, the
9 panel can make a fairness award when there is
10 insufficient evidence prevented by the Claimant.

11 We make the following points in respect of these
12 remarks, sir. Firstly, none of the experts on the
13 panel, according to what has been said, have expertise
14 in matters of mental health and/or personal injury.

15 This -- I don't mean to be flippant -- but is not
16 a retail issue and it is not a forensic accountancy
17 issue, the issue of mental health. It is a specialist
18 area and not an area where guesswork is desirable when
19 assessing the appropriate award of damages.

20 To have any basis for an accurate assessment of
21 the impact on an individual's health, an expert view of
22 the evidence available must be necessary. Forgive me,
23 sir, if I say now something that you already know, that
24 there are guidelines for the award of personal injury
25 damages issued by the judicial college. They provide

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1 ranges of appropriate damages according to the severity
2 of the personal injury suffered by a claimant.

3 There is really, sir, a quite considerable range
4 of appropriate damages within the categories of injury
5 that people have suffered through mental health
6 problems, according to whether the impacts are severe,
7 moderate and less severe, and the level of recovery can
8 vary dramatically according to the evidence on the
9 extent, severity and duration of the impacts.

10 When the injuries are considered severe and where
11 the prognosis is poor, just to give two examples, sir,
12 the range of recovery is between £54,830 to £115,730.
13 It is essentially 55 to 116.

14 By contrast, a less severe injury, the low end of
15 the scale, might recover something between £1,540 to
16 £5,860. So there's really quite a range, sir, of awards
17 that might be made and I point out, sir, that those sums
18 relate only to the pain, suffering and loss of amenity
19 connected with the injury and not any loss consequential
20 to the subpostmaster becoming unwell, such as loss of
21 earnings.

22 So the severity of the personal injury may on its
23 own make a big difference to damages and the
24 consequential losses may make even more difference. We
25 say, sir, that matters of this nature need to be

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1 whole body and develops after stress. The panel gave
2 £15,000 in total because the panel did not consider that
3 the available evidence established that Horizon
4 shortfalls were the dominant cause of the medical
5 issues.

6 It may be, sir, that in circumstances such as
7 that, the panel should have called for a medical report
8 and not dismissed the specific claim and it's hard to
9 see, we say, how any kind of fairness results from
10 failing to seek an expert assessment in circumstances
11 such as that.

12 There is a concern, sir, perhaps, that -- and
13 perhaps the clue is in the name -- that the scheme is
14 about shortfalls and is set up for the assessment of
15 pecuniary damages for which a forensic accountant and
16 a retail expert are very well qualified but not,
17 perhaps, so finely-tuned to dealing with non-pecuniary
18 damages which result from the problems experienced by
19 subpostmasters.

20 We also, sir, refute the suggestion by
21 Ms Gallifant that an applicant may wish to avoid the
22 inconvenience and potential distress of obtaining
23 a report, which may be a particularly acute and
24 sensitive concern in cases involving mental health
25 issues. Sir, there's no evidence at all that

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1 rigorously dealt with, with reliable expert evidence
2 obtained, to inform the panel's consideration of harm,
3 causation and the recovery of consequential losses, such
4 as lost earnings, which could be very considerable.

5 Failure to explore that harm caused to
6 a subpostmaster's health by the failings of Horizon
7 could create an entirely distorted and diminished
8 picture of their true loss.

9 Secondly, the reliance on section 35, we say, may
10 lead to unfairness in some circumstances, and not
11 fairness. We say that if there's a variable psychiatric
12 or other medical issue, the panel should not make
13 a fairness decision if other evidence which would enable
14 an objective decision to be made were able to be
15 secured.

16 We provide one example, sir, from the experience
17 of Hudgell Solicitors. A case where £15,000 was
18 offered, where the person had suffered from
19 a stress-related illness, resulting from shortfalls and
20 had, in turn, contracted a diagnosed physical condition
21 connected to stress. There's limited information we can
22 provide while these claims remain without prejudice,
23 sir, but the person had to have three years off work,
24 the medical condition in question was diagnosed by
25 a consultant, it's a very painful one which affects the

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1 subpostmasters would seek to avoid a report. In fact,
2 that runs really contrary to our experience. But there
3 is plenty of reason to believe that they wouldn't be
4 able to afford it because of what Post Office has done
5 to them.

6 We say, sir, that Post Office's concern would be
7 better directed at ensuring that applicants have the
8 opportunity to secure such a report in circumstances
9 where most simply couldn't afford it.

10 Secondly, sir, limitation -- limitation within
11 HSS. Ms Gallifant said last week that Post Office has
12 agreed not to take any limitation defence in relation to
13 claims brought under the scheme, and that is at page 72,
14 line 24, of last week's transcript should it need to be
15 looked at, sir.

16 Sir, we say that that's not at all clear and if we
17 could please, sir, take you to page 287 of the bundle,
18 which is the Terms of Reference of the Independent
19 Appeals Panel and to paragraph 31 of that. So that's
20 tab 15, paragraph 31. That reads in fact, sir, that:

21 "Many eligible claims will relate to shortfall
22 losses and consequential losses suffered a significant
23 number of years ago. In order to draw a line under the
24 issues caused by previous versions of Horizon and treat
25 postmasters who have been affected fairly, the scheme,

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1 including the panel, will not apply the laws of
2 limitation in its assessment of shortfall losses or
3 consequential losses but shall deal with each claim on
4 the basis that it is not barred by the expiry of any
5 relevant limitation period."
6 So far so good, sir, but it goes on:
7 "Post Office's rights to rely on limitation
8 defences outside the scheme (including in any subsequent
9 litigation or arbitration proceedings commenced under
10 the dispute resolution process) are strictly reserved."
11 It continues:
12 "Given the large number of applicants to the
13 scheme, claims may take some time to investigate and
14 assess. Post Office is therefore willing to agree in
15 respect of each applicant that time will not run for
16 limitation purposes from the date the applicant joined
17 the scheme to the date on which the applicant receives
18 their offer letter."
19 Now, sir, if that term means that the ordinary
20 limitation period of six years, three years, whatever,
21 will only start to run once the applicant has pulled out
22 of the scheme, then all well and good. But we suspect
23 that that's not what it means, sir, and if it means that
24 an applicant who is way out of time is fine to join the
25 scheme and Post Office won't bother about limitation but

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1 Where a claim is an asset in a bankruptcy your trustee,
2 the Official Receiver, has to consider how best to take
3 the action forward.
4 "The Official Receiver has confirmed to the
5 Post Office that he wishes to continue with the claim
6 and asked for details of the compensation being offered
7 under the scheme. Some of the compensation award will
8 be paid to you where an award is made. You will receive
9 all payments in respect of the time you have spent
10 dealing with the Horizon shortfall issues and any
11 compensation for health issues, damage to your
12 reputation or distress. But the parts of the claim that
13 relate to financial losses will be paid into the
14 bankruptcy estate and this may represent the majority of
15 your claim.
16 "The Post Office will contact you at the Official
17 Receiver's request to provide any information they
18 require in support of the claim. Please provide this
19 information as the claim cannot proceed if you refuse to
20 co-operate and no compensation be paid unless you fully
21 and truthfully answer all the questions the Post Office
22 ask of you."
23 Sir, two points on that to begin with. First,
24 given that, on the face of things, the only damages that
25 are going to be allowed to stay with the Claimants in

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1 if they pull out and proceed to litigation or other
2 forms of alternative dispute resolution, then
3 Post Office may use a knock-out limitation defence, then
4 we say, sir, that that would be very wrong.
5 For those subject to limitation concerns, it could
6 produce real pressure to settle in this process. It may
7 have significant impact on the position of
8 subpostmasters during the earlier stages of dispute
9 resolution, especially, sir, as we, certainly as Hudgell
10 Solicitors, we suspect we are coming to the now more
11 complex claims being resolved within this HSS.
12 If I may turn to bankruptcy, sir, now, as the
13 third point, Post Office have recognised the differences
14 with bankruptcy cases and this is not just
15 an administrative problem. May we refer you to the
16 letter, sir, that we provided.
17 **SIR WYN WILLIAMS:** Yes, please.
18 **MR MOLONEY:** Sir, it reads at the first main paragraph:
19 "As a result of the bankruptcy order made against
20 you [and we've redacted the date from this to hide the
21 identity of the person receiving the letter, sir] I have
22 to inform you that your right to make a claim for
23 compensation under the scheme is something which forms
24 part of your bankruptcy estate because the errors
25 happened prior to the bankruptcy order being made.

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1 the HSS when bankrupt are non-pecuniary damages, this
2 position provides all the more reason for proper
3 attention to be paid during the HSS considerations,
4 whether that be by HSS or by the panel, as to loss of
5 reputation, personal injury, including psychiatric
6 injury; essentially, sir, to place a greater emphasis on
7 non-pecuniary damages rather than pecuniary damages.
8 Secondly, sir, there would appear to be no
9 consideration of the fact, in this letter at least, that
10 it was more often than not Post Office's actions that
11 made the person bankrupt in the first place. In
12 a vicious circle, all pecuniary losses they endured will
13 be swallowed up by a bankruptcy that was caused by the
14 pecuniary losses they endured. The letter continues
15 over the page, sir:
16 "The money paid to the Official Receiver will be
17 used to pay your bankruptcy debts, other than any claim
18 by the Post Office which was based on the Horizon
19 shortfall errors. It may be possible for your
20 bankruptcy to be annulled, (cancelled) so I have
21 enclosed information on the steps you would need to take
22 if you wanted to apply for an annulment.
23 "If you have any queries about the content of this
24 letter, please do not hesitate to contact me."
25 Sir, we say first of all that, without legal

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1 advice, it's very difficult to imagine that many
2 subpostmasters will know where to start with a letter of
3 this nature. There is guidance, sir, guidance comes
4 with the letter and it is appended to the letter, but we
5 do say that to attempt to navigate an annulment of
6 bankruptcy when unrepresented might be quite difficult,
7 to say the least, and there is no provision for
8 subpostmasters to have legal funding for this purpose.
9 Just looking at the guidance, sir, which is on the
10 third and fourth page of this document, it says at the
11 very outset "You do not have to employ a solicitor or
12 get independent advice, for example, from the
13 Citizens Advice Bureau to apply for an annulment but you
14 might find it helpful to do so. You must ensure all
15 relevant information is given to the court and the
16 proper procedure is followed."
17 This is sent to bankrupt subpostmasters with all
18 the lack of resources that that status entails. Then
19 the procedure for the annulment is explained, sir, in
20 the body of the first page.
21 Then at the bottom, sir:
22 "Paying your debts in full
23 "The Official Receiver will use the money they
24 receive from the Post Office to make a payment to your
25 creditors. This may not be enough to pay all the debts
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1 be achieved for bankrupt postmasters.
2 Finally, sir, in respect of bankruptcy, our
3 experience is that none of the claims from people who
4 have suffered bankruptcy have reached the stage of
5 an offer letter. Ms Gallifant expected that some would
6 be dealt with in the next few weeks but it is now nearly
7 two years since the scheme closed, sir -- or closed for
8 the first time, slightly longer to when it closed for
9 the second time.
10 These people, we say, sir, are people who are
11 likely to be in real financial trouble and we say, we
12 observe, at this stage, sir, that this perhaps very much
13 reflects the overall impression, right or wrong, that,
14 so far as the HSS scheme is concerned -- the Historical
15 Shortfall Scheme is concerned -- that the low hanging
16 fruit has been picked by Post Office so far in dealing
17 with these claims and the more complex claims are to
18 come.
19 It is, sir, Post Office which determines the order
20 in which claims are dealt with and come before the
21 panel.
22 Next, the outcome letter, sir. It was said last
23 week that the outcome letter lists the all the
24 contemporaneous evidence which the panel assessed to
25 make the recommendation and it expressly explains that
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1 and costs of your bankruptcy in full. If your
2 application is made because you intend to pay your debts
3 in full you will need to make the additional payments
4 yourself.
5 "You must allow time before the hearing for
6 payment to be confirmed. You need to allow at least
7 three working days before the hearing. You will also
8 need confirmation from the creditors that they don't
9 intend to claim interest on the debts between the date
10 of your bankruptcy order and the date they are paid in
11 full and if your debts are not paid before the hearing
12 but you have made arrangements to have money available
13 to pay them, for example via a guarantee from a third
14 party or a solicitor, they must attend the hearing with
15 you to explain how the debts will be paid.
16 "If the bankruptcy order is annulled before the
17 compensation claim under the Historical Shortfall Scheme
18 is settled, the claim in full will be transferred back
19 to you."
20 Sir, we say there needs to be real fairness for
21 bankrupt subpostmasters. They need help and the Inquiry
22 may -- as Mr Chapman has just said that they are not
23 able to address this letter at this stage but the
24 Inquiry may wish to raise questions with the Post Office
25 and the insolvency services as to how real fairness can
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1 the applicant can request a copy of any or all of those
2 documents and pieces of evidence. Applicants can also
3 request a copy of the Post Office investigation report,
4 the Herbert Smith Freehills legal case assessment and
5 a record of the panel assessment and recommendation and
6 that all of this data is provided in order to support
7 the applicant's consideration of the offer and, of
8 course, having considered it the applicant is free to
9 accept or reject the offer.
10 Now, sir, we say about that that the purpose of
11 the outcome letter is to enable the applicant to
12 consider the offer. If it is to assist the applicant's
13 consideration of the offer, we say it would plainly be
14 much better if the evidence, the Post Office report, the
15 HSF assessment and the panel assessment and
16 recommendation were sent at the same time as the outcome
17 letter, so that the applicant can make a fully informed
18 consideration of the offer.
19 For cash-strapped applicants with enormous
20 financial pressures, after waiting so long for
21 a payment, they may not wish to take the extra step of
22 seeking the explanation for the offer and many may
23 decide just to take the offer in order to ease the pain
24 of their current circumstances.
25 Provision of the information with the letter would
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1 mean that any lawyer they go to would also be much more
2 able to assess the merits of the offer and the merits of
3 any challenge to the offer, without engaging in more
4 correspondence with the Post Office before they can do
5 anything of substance. We say, sir, there is no reason
6 not to send all the information in order to assist the
7 applicants.

8 Next, interim payments and the HSS. In our
9 written submissions, sir, we raised the limited
10 provision for interim payments in the HSS including
11 where individuals had agreed offers made by the
12 Post Office in part and remained in dispute over other,
13 heads of loss. There are a number of reasons given by
14 Post Office as to why a change of approach, so far as
15 interim payments, was not necessary.

16 Firstly, that interim payments would be paid in
17 circumstances of hardship. We say, sir, that there's
18 little transparency over when hardship will be
19 sufficiently severe for Post Office to countenance such
20 a payment and we ask for clarity as to that. Whatever
21 the test being applied by the Post Office, it is not one
22 which has been publicised or otherwise drawn to the
23 attention of subpostmasters.

24 Secondly, sir, you pressed Post Office as to why
25 it is that no interim payments are countenanced when

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1 surely that can be something which could be paid and
2 there could not be any dispute about that in the future
3 if the panel has identified that shortfall.

4 We have concerns, sir, that the premise of our
5 written submission and the worst fears of some of our
6 clients may be right, that the reality of requiring
7 a global agreement on an offer, before any payment will
8 be made, whether rightly or wrongly, creates
9 an incentive to settle rather than continue the dispute
10 over the heads of loss.

11 Just two matters remain, sir, in respect of the
12 HSS scheme. Firstly, areas for further decision by
13 Post Office. There were two areas on which we heard
14 that Post Office's thinking about whether more can be
15 done and, in fact, we've heard from BEIS in the same way
16 this morning: firstly, what to do on the question of the
17 small number of additional claims made after the close
18 of the shortfall scheme; and, secondly, on the matters
19 of additional legal costs in the dispute resolution
20 process.

21 Firstly, sir, on those who have applied to the
22 scheme after the close, you have heard during the impact
23 hearings, sir, of continuing distress of those excluded
24 from HSS applications. The scheme has been closed for
25 almost two years now, sir, and the Post Office is still

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1 there's agreements on some losses and dispute over
2 others, and that was concern we expressed within our
3 submissions, sir.

4 The answer -- and I hope I do justice to the
5 answer -- is that the approach under the scheme is to
6 reach an overall offer, rather than breakdown the offer
7 by individual heads of loss and that offers are made in
8 the round so there might be able to be agreement in
9 principle and say, "Well, we accept this or that", but
10 it wouldn't follow that then there was able to be
11 agreement overall and the applicant would actually
12 obtain through civil litigation a sum anything like the
13 amount that is being offered based on the
14 applicant-friendly principles.

15 We say, sir, if the panel is agreed that they will
16 pay, let's say, £200,000 to an HSS applicant, we say
17 there's no reason why the applicant can't be given
18 a proportion of that £200,000, recognising the financial
19 and other hardships the applicants are likely to be
20 facing whilst they consider their options, just to help
21 them along the way, in the same way that all other
22 Claimants are helped: those in the GLO in the new scheme
23 will receive interim payments; the Core Participants in
24 Category B received interim payments.

25 We do ask, sir, why not even identified shortfall,
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1 thinking about how to accommodate claims that are out of
2 time.

3 We have one client, sir, whose husband was
4 subpostmaster in 2004. Her husband was arrested and
5 interviewed by the police after shortfalls were
6 discovered at his Post Office. He was released under
7 investigation and attempted suicide. He became
8 seriously mentally ill. He was not prosecuted because
9 of his medical state but was dismissed and required to
10 repay the shortfall. When left on his own for a day for
11 the first time, he took his own life and it was only
12 after hearing the impact evidence in this case, sir,
13 that his wife felt able to revisit what was terrible
14 trauma. She submitted a claim to the HSS, obviously out
15 of time and, in May of this year, she was informed that
16 her case would be looked into but she's not heard
17 anything since.

18 Again, sir, the feeling on the part of many
19 applicants is that the simple cases are being dealt with
20 but cases which pose difficulty are less of a priority
21 and this is something which is a concern when
22 considering the delay faced by HSS Claimants who have
23 suffered bankruptcy as well.

24 As to legal costs, we repeat our written
25 submissions: only 45 cases where costs of legal

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1 representation have been paid. On the basis of the
2 experience of Hudgell Solicitors the high number of
3 settlements agreed so far does not necessarily mean that
4 those claims have resulted in full and fair compensation
5 for those subpostmasters.

6 Post Office accepts that cases now progressing to
7 offer are more complex and more likely to lead to
8 dispute but the limited funds made available for
9 subpostmasters to seek legal advice are wholly
10 inadequate, we say, sir. Post Office has spent
11 £16 million setting up and administering the scheme, and
12 less than £50,000 has been spent on legal advice for
13 applicants. Without access to advice and representation
14 through the dispute resolution process, there's a real
15 risk, sir, that further unfairness will result.

16 Finally, sir, the operational independence of the
17 panel. Hudgell Solicitors is concerned that there ought
18 to be transparency and greater clarity around the
19 practical working of the relationship between the panel
20 and Post Office and HSF. The system in place is one
21 where Post Office carries out an internal investigation
22 and prepares a report, and then HSF Herbert Smith
23 Freehills, sir, makes a recommendation to the panel.

24 With the best will in the world, sir, there is
25 a danger in a process like that, that the panel becomes

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1 to produce either an interim report or an update, as the
2 case may be, within weeks rather than months?
3 **MR MOLONEY:** Entirely, sir. I'll come on to what we say,
4 sir, about the way forward. I'll come back to this but
5 we don't ask you to butt out, sir. We do not ask you to
6 butt out but we think, sir, that everybody would
7 benefit, and I will come back to why, by you keeping
8 a very close eye on the developments in these issues of
9 compensation for subpostmasters.

10 Sir, just finally on the panel, Hudgell Solicitors
11 have now been involved in good faith meetings and it's
12 been asserted that heads of loss which have been missed
13 are subsequently identified. Sir, Hudgell Solicitors
14 have notes sent to them by Post Office in relation to
15 good faith meetings where it's asserted -- and these are
16 Post Office notes not Hudgell notes of the meetings --
17 which says that Post Office will only take a new head of
18 loss into consideration at this stage in exceptional
19 circumstances and they queried whether there are any
20 reasons why it had not been raised previously.

21 Now, sir, you have already made the observation
22 this morning that for those who completed their
23 application under the HSS scheme by August 2020, the
24 original closing date for the scheme, then the guidance
25 as to consequential loss was not available. Cases going

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1 familiar with the reports prepared by Herbert Smith
2 Freehills and makes decisions that are closely aligned
3 to the HSF recommendations. That may be, sir, because
4 they are uniformly right, of course, but it may also be
5 because of other reasons.

6 What Post Office suggests, that the panel is not
7 awarded less than the recommendation made by HSF on any
8 occasion, and whilst that is to be commended, we say it
9 cannot mean much on its own. There are no figures
10 available, sir, as to how often the panel recommendation
11 has been the same as the HSF recommendation and no
12 figures on how often or when the panel challenges the
13 lack of information or points out that heads of loss are
14 missed.

15 We say, sir, that the Inquiry might be assisted by
16 examining the decisions that have been made so far, to
17 look at the Post Office recommendation, the HSF
18 recommendation, and assessing the extent to which the
19 panel decisions differ from HSF recommendations in terms
20 of heads of claim and the quantum allowed for the claim,
21 and we may then see, sir, the extent to which there is,
22 as it were, an independent action by the panel, and
23 hopefully put the concerns of subpostmasters to bed.

24 **SIR WYN WILLIAMS:** There's a practical difficulty, is there
25 not, in undertaking an exercise of that sort and trying

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1 to good faith meetings at this stage may well be the
2 ones that were the early submissions. We don't know but
3 that, sir, would be a very concerning position if only
4 those heads that had been identified in the form were to
5 be considered and only heads of loss that were not --
6 heads of loss that were not in the form would only be
7 considered in exceptional circumstances.

8 In another good faith meeting, sir, a client was
9 told that it was understood that there was no provision
10 for obtaining expert reports in the HSS. That at least
11 suggests, sir, that things may be different on the
12 ground to what is thought to be happening and reflected
13 in our written submissions.

14 That's it, sir, in respect of the Historical
15 Shortfall Scheme.

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

17 **MR MOLONEY:** You will be relieved to know, sir, that
18 I believe our submissions in respect of the rest are
19 much briefer.

20 **SIR WYN WILLIAMS:** We appear to have a substantial part of
21 the day left, Mr Moloney. I am not encouraging you to
22 spin it out, as they say, but, equally, you must take
23 your time to explain your point of view sensibly to me.

24 **MR MOLONEY:** Thank you, sir.

25 Sir, Category B: final compensation for

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1 subpostmasters with quashed convictions. Hudgell
2 Solicitors represents 63 of the total 73 Category B
3 subpostmasters, that is to say those who have had their
4 convictions quashed either by the Court of Appeal
5 (Criminal Division) or in the Crown Court at Southwark.

6 There are a further five appellants represented by
7 Hudgell Solicitors whose appeal against conviction will
8 not be opposed by Post Office on 25 July.

9 **SIR WYN WILLIAMS:** Then do you think I need to attend, even
10 remotely? I was going to ask you, actually, if you knew
11 anything about it because the Court of Appeal alerts the
12 Inquiry when these things are happening, so we knew of
13 the date. But if it's going to be 10 minutes or
14 20 minutes or whatever, where the facts are briefly
15 explained and then the convictions quashed, it may be
16 that I should spend my time writing not watching.

17 **MR MOLONEY:** Sir, I will confirm the position for you but
18 I believe ten minutes is about right for 25 July. But
19 I will confirm that.

20 *(Interruption)*

21 **(11.50 am)**

22 **(A short break)**

23 **(12.04 pm)**

24 **MR MOLONEY:** Sir, I'd just introduced Category B and tried
25 to save you some time and, whilst it's obviously -- we
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1 chronology, the appeals were heard in March 2021, the
2 decision in Hamilton and Others was handed down in
3 April 2021. This is 7 January 2021, when my instructing
4 solicitor was touching base, as it were, as to the
5 potential for actions for malicious prosecution. He
6 said:

7 "For completeness, I would stress none of my
8 clients will participate in any sort of Post Office
9 scheme."

10 Hudgell Solicitors stand by that position, sir.
11 The prior history of Post Office schemes, the mediation
12 scheme, was unfortunate, we say at the least, but
13 there's never been any further dialogue, no offer of
14 an alternative scheme, an independent scheme. That was
15 it: 7 January. There has been no further discussions
16 around that.

17 As you may be aware, sir, now turning to the
18 update and just putting that particular submission from
19 POL and BEIS in context, funding is not available for
20 these cases but Hudgell Solicitors have, nonetheless,
21 been taking all necessary steps to ensure that the
22 Claimants receive the fair compensation they are
23 entitled to, and Hudgell Solicitors have made the
24 commitment that the Claimants will not have to pay them
25 one penny piece of the damages they receive.

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1 anticipate that, of course, there will now be on
2 25 July, if the Court of Appeal accedes to our grounds
3 of appeal, then there will be a further five which, will
4 be 68 represented by Hudgell Solicitors.

5 As we understand it, and we will be corrected if
6 we're wrong, of those ten not represented by Hudgell
7 Solicitors, then Howe+Co represent three Category B
8 SPMs. I'm not sure if its Hodge Jones & Allen or
9 Mr Marshall who represents three, and then each of the
10 other four solicitors named at paragraph 48 of POL's
11 supplementary submissions, Aliant Law, Clarke Kiernan,
12 John Donkin Solicitors and Brewer Harding & Rowe
13 Solicitors, represent one subpostmaster each.

14 Before we update you, sir, as to the progress of
15 those cases, may we make just one clarification in
16 respect of the submissions of Post Office and BEIS in
17 their written submissions and oral submissions. Sir, it
18 was said that one of the reasons why no scheme was ever
19 proposed in relation to Category B Claimants was that
20 Hudgell Solicitors had said in correspondence that they
21 would not take part in a scheme. We asked for the basis
22 of that assertion to be provided and it's based on one
23 line from an email to Post Office Limited from my
24 instructing solicitor on 7 January 2021.

25 Sir, just to have that, as it were, fixed in the
50

1 So in that vein, sir, Hudgell Solicitors have
2 engaged the services of expert accountants to analyse
3 the financial position of each subpostmaster, in order
4 to best understand the pecuniary losses they have
5 suffered, and all 63 subpostmasters have had the benefit
6 of those accountancy services.

7 **SIR WYN WILLIAMS:** I'm sorry, before we leave that,
8 I thought that, in respect of final payments of
9 compensation to convicted persons who have had their
10 convictions quashed, that the Minister had said they
11 would pay reasonable fees.

12 **MR MOLONEY:** Indeed, sir, but there's no funding upfront.

13 **SIR WYN WILLIAMS:** I'm with you. Sorry, I was just
14 misinterpreting --

15 Ultimately, there will be reasonable reimbursement
16 of fees and disbursements but not upfront?

17 **MR MOLONEY:** Not upfront, sir, absolutely. But that goes --
18 specialist accountancy services have been secured in
19 relation to all 63.

20 As Ms Gallifant pointed out last week and as we
21 have shown through the HSS correspondence submitted to
22 the Inquiry, bankruptcy is a complicating feature of
23 these claims as well, not just the HSS. In fact, it's
24 a significant factor in claims amongst this category.
25 20 per cent, sir, one in five, of the Category B

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1 Claimants represented by Hudgell Solicitors became
2 bankrupt, and that's just one symptom of the havoc
3 wreaked in people's lives by the unreliability of
4 Horizon.

5 So, therefore, expert assistance has been
6 commissioned to establish the best way to deal with
7 bankruptcy issues in these cases. The same goes for the
8 tax position of these Claimants. Sir, you can imagine
9 there's very little point in getting damages to put
10 a person back in the position they would have been in
11 but for the actions of Post Office, only then to find
12 a very large percentage of it swallowed back up by the
13 very department which is responsible for authorising the
14 payments in the first place. So Hudgell Solicitors have
15 commissioned expert assistance on the tax implications
16 of the compensation payments, in order to secure the
17 best position.

18 As well as taking statements from all the
19 Core Participants and their families, Hudgell Solicitors
20 have also arranged medical reports for each of the
21 Claimants, and we have established, sir, although it is
22 often said, we have now established it to be the case
23 that many subpostmasters have suffered serious,
24 long-term psychiatric damage through what they
25 experienced and that has led to significant

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1 in September. In both cases the Claimant will receive
2 another payment on account and we hope, sir, that
3 dealing with those two lead cases in that way will lead
4 to an established process so that the remaining 60-odd
5 cases can be resolved between now and the end of the
6 year.

7 **SIR WYN WILLIAMS:** It's in the context of this category of
8 Claimants that the notion of me butting in or butting
9 out, whichever way you like to put it, first raised its
10 head, although I accept entirely that it can raise its
11 head in all kinds of other different scenarios.

12 But I am conscious, and you are confirming it,
13 that there appear to be meaningful discussions taking
14 place between those instructing you and POL's lawyers
15 and, therefore, it is a matter of some concern to me to
16 get it right, the extent to which I can assist of what
17 might be a delicate moment, particularly because,
18 although you represent the bulk of the people in these
19 categories, there are, in fact, a number of other people
20 who are represented by other solicitors, which may or
21 may not make it easier or more difficult. I don't know
22 where much about these things, in the sense that I don't
23 know what is going on behind the scenes.

24 So it is a situation in which, to use a more
25 judicial type of phrase, I wish to tread carefully.

55

1 consequential losses.

2 Exemplary damages are available in this area, sir.
3 Ms Gallifant was quite right to point out that exemplary
4 damages may ordinarily be available for actions in
5 contract but they are available for actions in malicious
6 prosecution and the experiences of Claimants and their
7 families, and the effects upon them, medical or
8 otherwise, are ultimately highly relevant to that
9 category of damages, as well, of course, as aggravated
10 and general damages which are compensatory damages not
11 punitive damages.

12 There has been a great deal of work to get us
13 where we are now, sir. Much of what has gone on is
14 confidential and without prejudice because the parties
15 need to trust that their discussions are confidential,
16 in order that they are able to negotiate. But we
17 consider there has been so far been positive dialogue
18 towards a resolution. We can't go into great detail in
19 respect of the negotiations between our clients and
20 Post Office Limited but we are able to say with their
21 agreement that, firstly, the parties have concentrated
22 on two lead cases.

23 In one we've almost resolved all the heads of
24 pecuniary loss. In the other, we've resolved most of
25 the heads and the remaining heads will go to mediation

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1 **MR MOLONEY:** Sir, can we, in that vein, tell you the
2 remainder of what is going on, so that you can assess
3 how to tread carefully, so that your decision as to the
4 tread is fully informed and so, sir, as I said, we hope
5 that that -- dealing with the pecuniary losses in
6 relation to two cases will mean that the other 60-odd
7 Claimants -- that will provide a framework for dealing
8 with the pecuniary losses in relation to the other
9 60-odd that we represent.

10 Sir, litigation in the courts is seen as the
11 option of last resort but it must always remain open to
12 protect the position of our clients.

13 Now, we have instituted the early neutral
14 evaluation process, in order to try to resolve issues
15 around the appropriate levels of non-pecuniary damages.
16 Just to make clear, sir, if we may, there are further
17 submissions by Hodge Jones & Allen last night that we
18 received, which at paragraph 1(a) say that Herbert Smith
19 Freehills (HSF) have instructed Lord Dyson to lead
20 a process of early neutral evaluation to help determine
21 non-pecuniary loss for Category B Claimants which
22 includes the CPs we represent.

23 I don't know if you have -- they are not in the
24 core bundle.

25 **SIR WYN WILLIAMS:** No, but I have read them.

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1 **MR MOLONEY:** Sir, it's repeated at paragraph 21 that the
 2 scheme should, of course, make use of any published
 3 guidance arising from HSF instructing Lord Dyson. Sir,
 4 that is absolutely not the case. The process is
 5 an early neutral evaluation and, in that process, the
 6 parties consider between them various options as to the
 7 appointment of the evaluator and then they agree upon
 8 the evaluator to give an indication as to what they
 9 consider would be the appropriate damages after trial.
 10 HSF have not instructed Lord Dyson; the parties
 11 have instructed Lord Dyson.
 12 **SIR WYN WILLIAMS:** So that I'm under no misapprehension, how
 13 do you define the parties there, Mr Moloney?
 14 **MR MOLONEY:** It's essentially Post Office Limited and the
 15 clients that we represent.
 16 **SIR WYN WILLIAMS:** So it's the Hudgell Core Participants --
 17 **MR MOLONEY:** Yes.
 18 **SIR WYN WILLIAMS:** -- and POL?
 19 **MR MOLONEY:** Indeed, sir, yes. Sir, in that vein, we
 20 return, if we may, to paragraph 1(a) where
 21 Hodge Jones & Allen assert that Herbert Smith -- HSF
 22 have instructed Lord Dyson to lead a process of early
 23 neutral evaluation to help determine non-pecuniary loss
 24 for Category B Claimants, which includes the CPs we
 25 represent. It's not for all Category B Claimants. It's

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1 involvement or at least the agreement of Hudgells. We
 2 don't know where that comes from, sir. This is not
 3 meant to be a process for all Category B subpostmasters
 4 but we have reached the stage, sir, in our dealings, the
 5 preparation of these cases, where we have all our
 6 necessary evidence in place, we're ready for this stage,
 7 we have made good progress on pecuniary damages, and
 8 there are no heads of loss which are excluded in this
 9 process, we make clear.
 10 But we are concerned about this, sir, because our
 11 clients have suffered enough worry over the past many
 12 years and they don't need further worry about
 13 Herbert Smith Freehills having instructed the neutral
 14 evaluator and it not being an agreed and decided
 15 position when there is absolutely no foundation to that
 16 suggestion.
 17 It's Wednesday, sir. The hearing is on Monday.
 18 I ought to say, in that vein, sir, as well, that
 19 Mr Stein asked you last week if the evaluation of
 20 Lord Dyson might be made available. Well, sir, the
 21 parties formally agreed weeks ago that the evaluation
 22 would be made available to you if you requested it, with
 23 that in mind, sir.
 24 That's how things are progressing, sir, and also
 25 there have been some positive developments in the run-up

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1 a stage that has been reached between the
 2 Core Participants in Category B represented by Hudgell
 3 Solicitors and the Post Office, with the claims that we
 4 have.

5 We hope, sir, that the general principles of
 6 evaluation by Lord Dyson will be able to be applied to
 7 the remainder of our 68 clients and facilitate
 8 assessment of non-pecuniary damages across the board for
 9 our clients. We hope that that will be possible.

10 It may assist the remaining ten persons, variously
 11 represented by other solicitors, but it's a matter for
 12 them, sir, as to whether or not they are assisted by it.
 13 Neither party is bound by the evaluation of Lord Dyson,
 14 certainly none of the other Category B Claimants are
 15 bound by the evaluation of Lord Dyson. This is not for
 16 all Category B Claimants, sir.

17 At paragraph 8 of the Hodge Jones & Allen
 18 submissions, it reads:

19 "HSF's instructions to Lord Dyson appear to have
 20 been drafted with the involvement or at least the
 21 agreement of Hudgells but Paul Marshall, who acts for
 22 the CPs we represent, is not even aware that Lord Dyson
 23 had been instructed until after the event."

24 Now, we're not really sure, sir, what instructions
 25 are being spoken about there and what is meant by the

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1 to your hearings over these two days in July, sir. As
 2 Mr Chapman acknowledged, there have been difficulties in
 3 disclosure, so far as these cases are concerned. We
 4 have been pursuing discovery -- we are happy to say that
 5 we received letters last night which have moved things
 6 forward significantly.

7 But you will also have seen in our submissions,
 8 sir, that we explain that many of our clients were
 9 worried about Post Office clawing back the interim
 10 payments they have received. They have been reluctant
 11 to rely on those funds as being secure and, for many,
 12 that has meant continuing financial hardship in the
 13 absence of any reassurance from the Post Office on their
 14 claims.

15 At paragraph 41 of our further submissions to the
 16 Inquiry, which is at page 84 of the bundle, we say that
 17 it would of course be open to the Post Office to make
 18 any such concession or give such reassurance to the
 19 Claimants because Hudgell Solicitors raised the question
 20 of claw-back nine months ago and had chased it since.

21 On 5 July, sir, we're happy to say, as
 22 Ms Gallifant reported last week and confirmed by
 23 Mr Chapman this morning for BEIS, that we've received
 24 an assurance that there would be no claw-back of interim
 25 payments.

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1 Now, that provides some comfort to the
2 subpostmasters, sir, but it isn't the end of the matter.
3 Many of these subpostmasters have been in significant
4 debt for very long periods of their lives and it's what
5 we say would rightly be described, sir, without
6 hyperbole, as crippling debt. £100,000 sounds like
7 a lot of money, it is a lot of money, but the debts of
8 subpostmasters were usually well in excess of £100,000,
9 and the interim payments have often been used to settle
10 some of those debts and are now gone.

11 In fact, some of the interim payment was said to
12 recompense interim legal costs incurred by the
13 solicitors but such is the position of these
14 subpostmasters that Hudgell Solicitors represent, then
15 they did not take anything from the interim payments to
16 cover any of the funds they've expended.

17 The position genuinely, sir, of many of the
18 Claimants is really bad and you can perhaps imagine that
19 it would be case after 15 years of being a criminal,
20 a bankrupt and unemployed or employed in very low-paid
21 jobs. With £100,000 they haven't won the lottery, sir,
22 it's just one step towards putting them back into the
23 position they would have been but for the actions of
24 Post Office.

25 It's a feature of these cases, sir, that many of
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1 to enjoy their retirement as much as possible after
2 enduring what they did.
3 Sir, in practical terms what that means is they
4 need now to be able to have good experiences with their
5 children and grandchildren and other family and friends
6 to try and replace the terrible memories that they have
7 had since they suffered injustice at the hands of
8 Post Office, caused by the unreliability of Horizon. So
9 we say, sir, there needs to be expedition with these
10 claims so that the Claimants can start to regain the
11 lives that were wrongly taken from them for such a long
12 period of time.

13 Not shortcuts, this is a really important process
14 and the Claimants have to get what they are entitled to
15 in law with a willingness, on the part of all involved,
16 for these claims to be resolved as soon as realistically
17 possible. The time for adversarial aggressive
18 litigation, we say, is long gone and what happens from
19 now on should be geared to finding solutions with the
20 interests of the subpostmasters at the heart of
21 everything that is done and not the interests of
22 Post Office or BEIS or UKGI, or firms of solicitors or
23 counsel.

24 So far from asking you to butt out, sir, we have
25 never wanted you to butt out, we would ask you to
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1 the people who were convicted and many in the wider GLO
2 group were in middle age when they took over their
3 branch at the Post Office. Given how long the injustice
4 they suffered was sustained for, the vast majority of
5 them are now either approaching retirement age or past
6 retirement age but they just can't retire. They can't
7 afford to retire. The last third of their earning life
8 was blighted by this scandal and so any earnings
9 potential over that time was destroyed and they are not
10 in a good enough financial position to retire.

11 This is Jo Hamilton, who's here today, and I hope
12 she will forgive me if I say that she continues to work
13 as a cleaner and a dog walker and her husband is
14 75 years old and is still working.

15 So leaving aside the awful reality, and it is
16 a reality, that some of these Claimants' parents died
17 while they were still convicted and the terrible
18 potential that some of them may die before
19 compensation -- and I won't dwell on the details of
20 that, sir, but one of the Claimants represented by
21 Hudgell Solicitors has inoperable brain cancer and
22 counsel for Howe+Co Core Participants mentioned the
23 circumstances of another two of Hudgells clients last
24 week, so I don't propose to drag it up for their
25 families again but, essentially, these Claimants deserve
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1 continue to watch both the situation with these claims
2 and the HSS scheme because we believe that, for a
3 variety of reasons, those who hold the purse strings
4 don't want you to think badly of them, sir.

5 Anything you say on these things, sir, will be
6 very, very important to them. So we ask, sir, that you
7 return to the position on compensation during the autumn
8 when we resume the hearings, and return at convenient
9 times as the Inquiry proceeds, in order to see how the
10 Claimants in these cases are being compensated. It's
11 not a position we say, sir, where you can make firm
12 conclusions that will apply right the way across the
13 board at this stage.

14 May we please say something, sir, about the three
15 Claimants in this category who have not received
16 an interim payment after making a request. As you know,
17 sir, these three Claimants had their convictions
18 referred by the Criminal Cases Review Commission to the
19 Crown Court at Southwark, on the basis that there was
20 a real possibility that their convictions would be
21 quashed. That's the statutory basis for the referral by
22 the Criminal Cases Review Commission, whether to the
23 Court of Appeal or to the Crown Court, and they all went
24 to Southwark Crown Court.

25 There were matters to be resolved in the cases of
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1 the complainants, which were important to the
2 determination of the appeal. The Post Office decided to
3 offer no evidence in their cases, in the interests of
4 justice and, as a result, sir, not guilty verdicts were
5 entered. They were all found not guilty and the matters
6 to be resolved as identified by the CCRC were not
7 resolved. Now, the Claimants had no say in that
8 process, nor indeed did the court, but the Post Office
9 now refuses to pay compensation to them. In effect,
10 they say "Sue us in the Civil courts".
11 They say to these people who were wrongly
12 convicted by the Post Office, because they are not
13 guilty of the allegations they were wrongly convicted
14 of, they say to these people who were part of the
15 GLO Litigation where Post Office fought tooth and nail
16 to the defend the indefensible, they say to these three
17 people who are ineligible for the HSS and ineligible for
18 the BEIS GLO scheme in contemplation, they say that they
19 will not pay them.
20 The time for litigation, sir, was at
21 Southwark Crown Court where the court was seized of the
22 issues which were central to the determination of
23 whether Horizon data was essential for their prosecution
24 and Post Office would have had to prove their guilt to
25 the criminal standard. The Post Office had the
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1 don't fall into the GLO because they weren't part of the
2 GLO but they may have a cause in malicious prosecution.
3 **SIR WYN WILLIAMS:** Absolutely, but my point was I'm, as
4 a matter of fact, not aware of any such person. I'm
5 aware of people who were within the GLO who fall into
6 this category but I am not actually aware of any people
7 who were not within the GLO but who yet were prosecuted
8 but acquitted.
9 **MR MOLONEY:** Sir, there are five people that Hudgells
10 represent.
11 **SIR WYN WILLIAMS:** I'm sure that in due course I will be
12 made aware of them, if they exist, but I'm just putting
13 that out because that's the state of my knowledge and if
14 it's because I've missed a detail in the papers
15 I apologise. But that is the state of my knowledge.
16 **MR MOLONEY:** Sir, you haven't missed any detail but there
17 are a number, and Hudgell Solicitors represent five of
18 them --
19 **SIR WYN WILLIAMS:** Right.
20 **MR MOLONEY:** -- who were not part of the GLO but were
21 prosecuted and were not convicted. They have actions in
22 malicious prosecution but they are not part of
23 Category B.
24 **SIR WYN WILLIAMS:** I've caught up now, Mr Moloney. So they
25 have no rights under the GLO scheme that's about to
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1 opportunity at that point to contest their appeals and
2 unilaterally chose not to. In those circumstances, we
3 say, sir, it would be wrong to ask them to go right back
4 to the start.
5 Finally, under this section, sir, of the Claimants
6 who have had their convictions quashed, may we deal with
7 the position of persons who were prosecuted but not
8 convicted. Anybody who was prosecuted but not convicted
9 may have an action in malicious prosecution, just the
10 same as anybody who was convicted. As they were not
11 convicted, they don't automatically come within the
12 group of Category B people. Now, in those cases, sir,
13 in the Category B cases Post Office is not relying on
14 limitation. We say the natural position for these
15 people who are prosecuted but not convicted is in
16 Category B because the same issues arise.
17 **SIR WYN WILLIAMS:** As things stand, and I want to clear my
18 thoughts upon this, there's the further complication of,
19 I think, the people involved, so far as I'm aware, being
20 GLO Claimants, yes?
21 **MR MOLONEY:** No, sir. So there are people who were part of
22 the GLO who were prosecuted but not convicted. They
23 will stay in the GLO scheme. They are in there but
24 there are others, sir, who were not part of the GLO
25 scheme but were prosecuted and not convicted. Now, they
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1 flower?
2 **MR MOLONEY:** That's it.
3 **SIR WYN WILLIAMS:** So, at the moment, they are a genuine
4 lacuna?
5 **MR MOLONEY:** They are, sir, and we simply ask, sir, that --
6 **SIR WYN WILLIAMS:** Except for -- sorry, to be articulating
7 this as we're going along -- but have not BEIS said
8 that, in respect non-GLO people of this category,
9 although the Minister used the shorthand "convicted
10 people" in his announcement of December 2021, in fact he
11 always intended that people that you were now talking
12 about should fall within this category. Have I got that
13 right, Mr Chapman?
14 **MR CHAPMAN:** Quite, sir, yes.
15 **MR MOLONEY:** Thank you, sir. We ask that the same
16 concession be extended in terms of limitation to those
17 people as it is to the people in terms of Category B.
18 That's what we ask.
19 **SIR WYN WILLIAMS:** So that in my head before today, and
20 I want to throw this out in case I've not got this
21 right, one way or another every category of person now
22 falls within a scheme.
23 **MR MOLONEY:** Sir, yes.
24 **SIR WYN WILLIAMS:** Right, fine.
25 **MR MOLONEY:** Sir --
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1 **SIR WYN WILLIAMS:** So that there's no doubt about it, the
 2 HSS clearly is the HSS. The interim/final compensation
 3 scheme, if I can put it in that way, now catches and
 4 always was intended to catch people who were acquitted,
 5 who are not part of the GLO and those who were acquitted
 6 but were part of the GLO are now in the scheme that will
 7 be developed over the next coming months.

8 **MR MOLONEY:** That's it, sir. Thank you.

9 **SIR WYN WILLIAMS:** Fine.

10 **MR MOLONEY:** We're grateful for that, sir.
 11 Sir, final fair compensation for GLO Claimants.
 12 Sir, at the weekend Hudgell Solicitors, along with
 13 a number of other firms, were invited to take part in
 14 discussions with Secretary of State for BEIS over how
 15 best to approach scheme to fairly compensate members of
 16 the GLO and they will do whatever they can to assist.
 17 A number of the Hudgell Core Participants were members
 18 of the GLO and leading members of the GLO, who have been
 19 active in the JFSA campaign for many years and what the
 20 GLO members achieved with that litigation was
 21 extraordinary by any standards.
 22 The members of the GLO supported each other and
 23 will continue to support each other and the
 24 Core Participants represented by Hudgell Solicitors will
 25 help in supporting in whatever ways they can.

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1 loss of relationships and reputation, for some the loss
 2 of liberty and we ask, sir, that compensation is full
 3 and fair and quick in these cases.

4 **SIR WYN WILLIAMS:** There's just one point of detail I'd like
 5 to raise with you --

6 **MR MOLONEY:** Sir.

7 **SIR WYN WILLIAMS:** -- relating to one of the three persons
 8 who had not been paid an interim compensation payment,
 9 notwithstanding the quashing of their conviction.

10 **MR MOLONEY:** Sir.

11 **SIR WYN WILLIAMS:** You said, I think, in your written
 12 submissions, that that one person was also the subject
 13 of a confiscation order --

14 **MR MOLONEY:** Yes.

15 **SIR WYN WILLIAMS:** -- and that hasn't been repaid?

16 **MR MOLONEY:** No.

17 **SIR WYN WILLIAMS:** I'm using you now as a kind of letter
 18 box, so to speak, but my understanding is that -- if I'm
 19 wrong, I'm wrong, but I don't think I am -- but
 20 a Crown Court can only make a confiscation order against
 21 a convicted person.

22 **MR MOLONEY:** Yes, sir.

23 **SIR WYN WILLIAMS:** So once the conviction is quashed, the
 24 confiscation order, in effect, has no effect.

25 **MR MOLONEY:** Yes, sir.

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1 We say that, clearly, sir, there should be parity
 2 of outcome for all of these people who have worked
 3 together in this way, recognising the common and
 4 case-specific harms that they have suffered.

5 Finally, sir, just to conclude, we focused our
 6 submission on addressing points raised by others in
 7 providing a practical context to our written submissions
 8 but the importance of this issue can't be
 9 over-estimated. We're very grateful to the Inquiry and
 10 to you, sir, for recognising that there can be no more
 11 delay and, in opening these hearings, Mr Beer began with
 12 a chronology of the issue of compensation, which
 13 highlighted the start of the GLO Litigation in 2017, but
 14 before that came the failed mediation scheme, terminated
 15 in 2015. Before that, for many Core Participants, came
 16 years of campaigning for redress.

17 What our Core Participants can't forget and which
 18 they ask you, sir, to recall in considering the points
 19 made to you, is that for many of them these losses
 20 stretch back over two decades and for every SPM, every
 21 subpostmaster in each of the categories, their losses
 22 start with money taken from them by the Post Office for
 23 shortfalls to which, really, they had no legitimate
 24 claim and which led to the loss of businesses and
 25 incomes, the collapse of health and well-being and the

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1 **SIR WYN WILLIAMS:** So how can it be that the money's not
 2 repaid, I ask both rhetorically and otherwise, and
 3 I leave that for people to ponder.

4 **MR MOLONEY:** Certainly, sir, and it's something we have been
 5 pondering. Thank you.

6 **SIR WYN WILLIAMS:** Now then, Ms Page, it is 12.40 by this
 7 fine clock that I have put in front of me. I'm in your
 8 hands. If you are going to make submissions which would
 9 conclude by, say, 1.30, then my preference would be to
 10 hear them and then we can all adjourn for the day, so to
 11 speak.

12 Mr Beer, I see you are about to intercept me
 13 before I make any such ruling.

14 **MR BEER:** Sorry to intervene unexpectedly. Whilst you have
 15 been sitting, there has been a request from the Howe+Co
 16 Core Participants to make some short supplemental
 17 submissions, in particular in the light of the BEIS
 18 letter that was distributed this morning. So Mr Stein
 19 has applied by email, which you won't have read, to make
 20 those submissions. That might have a modest impact on
 21 timing. That's the only reason for the intervention.

22 **SIR WYN WILLIAMS:** First of all, Ms Page, how long do you
 23 think you are likely to be? I am not going to hold you
 24 to minutes.

25 **MS PAGE:** I certainly imagine being finished by 1.30 if I

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1 were the next one to --

2 **SIR WYN WILLIAMS:** Short, I take it, means no more than
3 15 minutes, does it, Mr Stein?

4 **MR STEIN:** Sir, if I can assist, it will be no more than
5 five.

6 **SIR WYN WILLIAMS:** So are we still okay then to proceed and
7 then finish once I have allowed Mr Stein his
8 five minutes? Is everyone happy with that?

9 Good, well then, over to you, Ms Page.

10 **Submissions by MS PAGE**

11 **MS PAGE:** I speak for the three Post Office victims
12 represented by Hodge Jones & Allen, and we are, on their
13 behalf, dealing with the fallout from the most
14 widespread devastating miscarriage of justice in legal
15 history, where hundreds of honest hardworking people
16 were hounded by a state-owned entity and all because of
17 unreliable documentary hearsay from a faulty IT system.

18 That led to the golden thread of our criminal
19 justice system, that is the duty of the Prosecution to
20 prove guilt, being broken. People were told, in effect,
21 that they must prove their innocence and when they tried
22 to do so, as we know from Seema Misra's case, the
23 Post Office hid the evidence that might have enabled
24 them to do so.

25 The devastation that that inflicted on people's

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1 caused Mrs Misra to raise an eyebrow last Wednesday when
2 she saw the rows of desks set aside for the Post Office.

3 In answer to the question posed to the
4 Post Office -- should they be the final arbiter of
5 compensation offered to Category B Claimants -- the
6 Post Office says that if they don't like the settlements
7 they are offered, they can always seek ADR, arbitration
8 or litigation. That is rich indeed.

9 They say this to three women whose lives were
10 destroyed by the Post Office, three women who showed the
11 resource and courage necessary to join the 555 when the
12 Post Office fought them tooth and nail, and three women
13 who also stood out on their own at the Court of Appeal
14 because the Post Office would not accept ground 2 abuse
15 and, again, fought them tooth and nail.

16 Now, the Post Office says "Well, if you don't like
17 what we offer you, we should be allowed to fight you
18 tooth and nail again". Once again, the answer is the
19 lawyers will get paid while the Post Office resists
20 doing the right thing.

21 There is, we say, a simple way out of this: the
22 Post Office can stop resisting doing the right thing.
23 We have heard repeatedly that the Post Office has
24 changed. We are told that the "historic" failings are
25 a matter of great regret but there is little evidence of

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1 lives is immeasurable. The dignity of those who gave
2 evidence at the human impact hearings was as impressive
3 as their stories were heart-breaking. That is what it
4 means to be a Category B Claimant.

5 The three Core Participants I represent are all
6 amongst those who had their wrongful convictions
7 overturned but were also part of the 555, the
8 GLO Claimants. We are here to try to find a way to make
9 some amends but there is no sum of money that will give
10 them back their lives.

11 It is for this reason that we argue, in the
12 strongest possible terms, that compensation must not be
13 ruled by narrow legalistic argument about heads of loss
14 but by the need to ensure that compensation is fair and
15 swift and, if some legal hurdles need to be surmounted
16 or ignored to achieve those aims, then so be it, and it
17 may do something to redress the balance, because the
18 Core Participants I represent have spent years fighting
19 and yet fair compensation still seems a long way off,
20 partly because they have no reason to trust the law or
21 lawyers.

22 The lawyers have continued to be paid, even while
23 they have been unable to get the compensation that they
24 desperately need and rightly deserve. The Post Office
25 continues to employ many lawyers. That, in itself,

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1 it.

2 Take the issue of disgorgement just raised, sir.
3 Of those sums which were wrongly taken from my clients
4 by way of post conviction confiscation or compensation,
5 as you said, sir, only possible to be taken because of
6 their convictions. They were sums that were fictional
7 Horizon losses and they took the money from those
8 convicted in any way they could.

9 In the case of Mrs Misra, her flat in London was
10 seized and sold. In the case of Ms Felstead, her family
11 hoped that if they gave the Post Office the money she
12 would be spared jail; she was not but she paid her
13 family back anyway by remortgaging her home. In
14 Ms Skinner's case after she had already lost her home
15 and the Post Office had hounded her for sums of money
16 she didn't know they were trying to take from her they
17 still succeeded in taking the little she had left, and
18 there is simply no justification in the Post Office
19 keeping these sums.

20 It has been well over a year since the convictions
21 were overturned and the Post Office has made no moves of
22 its own initiative to give these sums back.

23 The one small sum which has very recently been
24 returned to Ms Skinner was due to the intervention of
25 the Court Service. Where is the proactive desire to

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1 right wrongs, to rectify the damage, to make sure that
2 full and fair compensation is paid?
3 We've heard of course about the Historic Shortfall
4 Scheme, another opportunity for the Post Office to
5 demonstrate how they have changed, and I will not repeat
6 the submissions of others which elucidate clearly how
7 the Post Office has failed to take that opportunity. So
8 I say very little evidence of the much vaunted change at
9 the Post Office, little evidence that the failings are
10 indeed historic.
11 So it's against that backdrop that we absolutely
12 urge you, sir, not to butt out of the compensation
13 arrangements as they affect Category B Claimants.
14 The Core Participants I represent have no reason
15 to trust that the negotiations currently taking place
16 will produce full, fair compensation and they do not
17 want to have to fight the Post Office again if those
18 negotiations fail. They want the reassurance of being
19 able to turn at their option to an open, transparent
20 scheme run independently of the Post Office.
21 It now transpires that such a scheme is being
22 established in any event, albeit for Category C
23 Claimants. But we say there can be no valid distinction
24 between the two categories. It is right that Category B
25 Claimants have the distinct right to pursue claims in

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1 very stressful, Group Litigation which broke the
2 scandal. And yet the current course is set to see them
3 parcelled off from the rest of the 555 and left to sink
4 or swim in their negotiations with Post Office. Worse
5 still, the settlement deed took away all their rights,
6 except their malicious prosecution claims; so the
7 Post Office would be potentially legally entitled to
8 limit their settlements without any further
9 consideration of their contractual positions.
10 For each and every one of the three
11 Core Participants I represent, the settlement from the
12 Group Litigation was woefully inadequate. The reports
13 of the 555 are to have that settlement reopened and
14 their contractual rights will not be circumscribed when
15 considering compensation. It must be right that
16 Category B Claimants deserve to be empowered in the same
17 way. They deserve to be able to seek full and fair
18 compensation from the Post Office and if they don't
19 believe they have got it directly, we ask that they
20 should have another realistic course of action open to
21 them which will still deliver, one would hope, a just
22 and swift result.
23 I'd like to respond directly to the Post Office's
24 submissions in respect of Mr Marshall's submissions
25 because they called into question whether Mr Marshall's

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1 malicious prosecution but, in other respects, their
2 contractual rights were negotiated away in the
3 settlement deed in just the same way as Category C
4 Claimants. The same potential heads of loss will apply
5 to both sets of Claimants, the same issues of process
6 apply to both sets of Claimants, the money to pay the
7 compensation ultimately comes from the same place. It
8 is all taxpayers' money.
9 We are told that BEIS has found an ingenious way,
10 we are told this morning, to fund the compensation for
11 the Category C Claimants. There is no substantive
12 reason why that scheme could not be open to Category B
13 Claimants at their option. Of course, Category B
14 Claimants should not be able to claim twice. No doubt,
15 if the negotiations fail, they would be turning to the
16 scheme as an alternative and if the negotiations
17 succeed, no doubt that will resolve all their issues.
18 But where is the sense or justice in requiring them to
19 invoke a separate process of ADR, arbitration or
20 litigation if those negotiations do fail?
21 The main point is this: Category B Claimants of
22 all the subpostmasters have borne the brunt of this
23 scandal the most severely, not only were their lives
24 blighted by the wrongful convictions but they also had
25 the courage to join that very pioneering, and no doubt

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1 submissions were within the terms of this Inquiry. We
2 find that a disappointing but not a surprising response.
3 The terms of the Inquiry make it plain that the a key
4 aim is to find out not only what went wrong but whether
5 the Post Office's learning lessons and making the
6 necessary changes. Are Marshall's submissions should be
7 seen by the Post Office as an opportunity to think about
8 whether they are learning the lessons and making the
9 changes. Instead the reaction is to stop up their ears
10 and seek to deflect those submissions as outside the
11 terms of the Inquiry.
12 I'm afraid this is typical of how the Post Office
13 has behaved "historically" and it is a shame that they
14 do not appear yet to be changing. As we've said in
15 writing, term D of the Terms of Reference, taken
16 together with C and F, make it plain that this Inquiry
17 is fully empowered to consider the issue of whether full
18 and fair compensation has been paid and that is what
19 Mr Marshall's submissions were directed towards.
20 Again, as we've already said in writing, it was
21 a mis-characterisation of those submissions to suggest
22 that there was an invitation to make a finding of fraud
23 at this stage. Of course that would be premature. But
24 the point is it would be also premature and quite wrong
25 to allow finalised payments to be made on the assumption

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1 that nothing more untoward than breach of contract has
2 occurred. Given what we know already in the
3 unreasonable delays that have been occasioned by
4 Post Office's actions, it would be right and proper to
5 ensure that issues of remoteness and foreseeability are
6 dealt with generously as if the claims were in fraud.

7 If I may also respond to submissions from BEIS
8 this morning, it is good to hear that they are listening
9 and that they do not seek to defend themselves but
10 rather to assist the Inquiry. It would be good if the
11 Post Office were to take the same stance.

12 It seems from what has been said very recently in
13 communications and here today that the Department
14 acknowledges and seeks to make it clear that BEIS will
15 not have a special relationship with Freeths setting up
16 the scheme and that other lawyers will be feeding into
17 that fully. That is as it should be. It is not as if
18 all of the 555 were happy with the outcome of the
19 settlement negotiated by Freeths and, whatever the
20 rights and wrongs of that, and I don't trespass into
21 that area, it was extremely unfortunate that
22 GLO Claimants were led to believe that if they wanted to
23 have any say in the BEIS scheme, they needed to
24 reinstruct the very firm who negotiated that settlement.
25 That was particularly unfortunate in the context of this

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1 situation -- of course it is a delicate situation -- and
2 it is hard to make sure that everybody gets what they
3 want but what we would suggest is that the submissions
4 that we make on behalf of our Core Participants need not
5 stand in the way of the actions that are being taken on
6 behalf of those Core Participants who are represented by
7 Hudgells. It is an opt-in that we advocate for and
8 there would be no reason why anyone should opt in if
9 they don't wish to.

10 **SIR WYN WILLIAMS:** If I've understood you correctly, your
11 position is that there should be an option for both your
12 clients, but for that matter any other Category B
13 clients, to become part of the scheme that will be
14 developed with the GLO Claimants.

15 **MS PAGE:** Exactly.

16 **SIR WYN WILLIAMS:** That doesn't preclude people reaching
17 their own settlement if that suits them.

18 **MS PAGE:** Exactly.

19 **SIR WYN WILLIAMS:** I've got it, yes.

20 **MS PAGE:** That would simply make the BEIS scheme open to all
21 the 555 which is, in fact, a figure that BEIS has often
22 used when talking about proper compensation for the SPMs
23 but, of course, once the Category B Claimants are taken
24 out of the picture, it is no longer the 555.

25 As part of the recommendation that we suggest, we

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1 case when the subpostmasters have so many reasons to
2 mistrust the law and lawyers.

3 As we said in writing, it was also regrettable
4 that Freeths wrote to Category B Claimants as if they
5 had not been excluded from the first phase of this
6 scheme. We endorse Mr Stein's submissions from last
7 Wednesday. BEIS should not be conducting their
8 interactions with the GLO Claimants and this Inquiry
9 through press release, and if more thought had been
10 given to communicating properly for the GLO Claimants,
11 the unfortunate communications from Freeths might have
12 been prevented.

13 BEIS says it is listening and it says today, and
14 we welcome, that it is giving consideration to our
15 submission that Category B Claimants should be given an
16 opt-in to their scheme and so we ask you, sir, to help
17 them to reach a positive decision on that.

18 If I may respond then to Hudgells and I'm very
19 grateful to Mr Moloney for clarifying the situation with
20 respect to the instructions which did not come solely
21 from HSF to Lord Dyson, but from Hudgells as well as
22 HSF. That's very helpful and apologies for any -- well,
23 indeed for the misapprehension and the mis-communication
24 on my part -- our part.

25 What we would say is that it is a delicate

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1 say that through that scheme the best approach to
2 aggravated and exemplary damages would be to resolve
3 a preliminary payment on that head but to leave that
4 head open until the conclusion of the Inquiry. We
5 suggest that that would be the best way to ensure that
6 on the one hand there is a swift resolution but on the
7 other hand there is a full and fair resolution.

8 We accept, of course, that everyone wants a swift
9 solution and indeed no doubt departmental budgets make
10 it difficult to leave that head of damage open for what
11 may be a relatively long period of time. But we suggest
12 that if all payments on the head of aggravated and
13 exemplary damages have been finalised, the findings of
14 the Inquiry might not have the impact that they could.
15 Therefore, we ask that the desire to close off and tidy
16 up should not prevent relatively late additions to that
17 head of damage. In the same vein, we would ask that the
18 scheme be left open for as long as it takes for the 555
19 to make any claims they may wish to but at least until
20 the end of this Inquiry. It is a finite group and once
21 principles and process are in place, it should not be
22 hard to make provision for late claims.

23 Those are the submissions that I would like to
24 make. I would like to conclude, however, by offering
25 apologies for Mr Henry, who I know has written directly

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1 and apologises that he is unable to be here today.
2 **SIR WYN WILLIAMS:** That's fine. I'm very glad he's busy.
3 Right, thank you. That concludes those submissions.
4 So I think, as he always anticipated he would,
5 Mr Stein will have the last word.

6 **Submissions by MR STEIN**

7 **MR STEIN:** May I thank you for the opportunity to make these
8 short further submissions.

9 It perhaps was useful that there was a break this
10 morning which allowed my instructing solicitor,
11 Mr Enright, and Mr Brightwell from BEIS to have
12 a discussion in Paternoster Square. Whether I can call
13 that "Paternoster Square Protocol" as yet, I'm not sure.

14 It serves, though, to provide the basis for an
15 update. So you are aware of the correspondence, sir,
16 that we had yesterday from BEIS and you will see the
17 various matters that are set out there insofar as they
18 touch upon the interim compensation scheme, how that
19 might be rolled out and how that would affect the
20 GLO Claimants.

21 Sir, the way ahead appears to be this. Now, this
22 is aspirational because this relates to a discussion
23 today and it therefore requires firming up, but it does
24 provide some light at the end of the tunnel to secure
25 those interim payments for the GLO Claimants.

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1 we put a marker down, if I can put it that way, for
2 disclosure to those representatives of individuals
3 before this Inquiry of that methodology when it's
4 available to BEIS. We do that because, sir, you're
5 aware having been addressed last week on the basis that
6 there have been already some concerns raised as to how
7 that was dealt with originally in evidence.

8 Lastly, if I am approaching the end of my five
9 minutes, I will use my last few seconds to just say
10 this. Sir, you have been addressed on the basis today
11 and last week that you should keep yourself involved in
12 discussions and keep an eye on what is going on.
13 Various ways have been looked at as to how that should
14 be done, either butting in or not as regards discussions
15 and progress being made. Our primary submission was
16 made that you should, if you would accept it, issue an
17 interim report.

18 Having considered all the matters said on the last
19 occasion and today, and if, sir, you are willing to
20 retain the oversight job to make sure that compensation
21 is delivered in a timely fashion, may we tentatively
22 suggest that you plan for a third day. The reason for
23 that would be to have a date in the future that in
24 a fairly traditional legal way that could be vacated if
25 it was unnecessary by agreement from all parties, but it

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1 Freeths will provide a schedule of GLO Claimants
2 to BEIS setting out the using the Freeths distribution
3 methodology the amount payable to that group as being
4 the first step. Next, BEIS will then pay Freeths the
5 sum of money that is required within, they hope and they
6 believe, a week. Thirdly, within a similar timetable
7 Freeths will then pay the interim compensation monies to
8 the individual GLO Claimants, as I repeat, hopefully
9 within a week.

10 So the sort of timetable that we are talking about
11 that may assist you in understanding what we are looking
12 at when people refer to "a few weeks" or "as soon as
13 possible" or similar remarks, it provides a way of
14 accessing the possibility that is in discussion today of
15 getting money to people that urgently require it within
16 very few weeks. It is possible within something like
17 three weeks.

18 May I just also refer to the question of the
19 Freeths methodology. As you are aware, BEIS has
20 confirmed in their correspondence that that methodology,
21 which was adopted for the distribution of monies as
22 a result of the settlement of the GLO litigation, that
23 is being supplied to BEIS. Our concern is, as you have
24 discussed today, that there is a need to make sure that
25 all matters are dealt with transparently, openly, and so

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1 would provide perhaps a work-towards date that may
2 assist.

3 That also might assist you, sir, in resolving the
4 issue of whether an interim report is, in fact, required
5 because if you came to the conclusion that good progress
6 is being made in a timely fashion given all of the
7 delays, you might come to the conclusion that a third
8 day would either be necessary to resolve any final
9 matters or it could be vacated if required or it might
10 resolve the issue as to how to deal with overall the
11 position that you are left with in looking at the
12 compensation issues in the round.

13 Sir, those are our submissions. We also do
14 represent an individual who fits within that other
15 category of people, and so there are of course for
16 Hudgell Solicitors, Howe+Co and I'm sure for
17 Hodge Jones & Allen individuals we represent that fit
18 within all aspects of the different A, B and C
19 categories that you, sir, have identified.

20 Can I assist any further?

21 **SIR WYN WILLIAMS:** No. Thank you very much, Mr Stein.

22 Well, my thanks to all the advocates who have
23 spoken this morning. Clearly we've made very good
24 progress today because we've now reached the end of the
25 intended submissions.

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1 As I said in my short written note which preceded
2 the first hearing, I intend to reduce to writing -- I am
3 choosing my words very carefully -- my thought processes
4 as a consequence of the submissions that I have heard.
5 I will not announce now whether it will be a progress
6 update or an interim report but what I will say is, so
7 that people have some expectation of a timescale, that
8 if it is an interim report I have in mind that
9 Parliament will resume after the summer vacation on
10 5 September, so that would appear to be a time when any
11 such report, or shortly thereafter, could be laid before
12 Parliament; obviously in terms of a progress update,
13 that legal step is not a requirement but I expect that
14 I would be working to much the same sort of timetable.
15 So that's what we have in mind, ladies and gentlemen.
16 I hate to make predictions about the pace of my own work
17 but I will do my best to adhere to what I have just
18 said.
19 So thank you all very much. Please feel free to
20 leave because I'm just going to stand up and walk out
21 and then everybody can do the same.
22 (1.07 pm)
23 (The hearing concluded)
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