

1 Thursday, 8 December 2022

2 (10.00 am)

3 THE USHER: Good morning everyone. This is just to
4 let you know that unfortunately we need to pause
5 for about ten minutes. The hearing will be
6 starting probably about 10.10, I would think.
7 Thank you very much, I'll come and do another
8 announcement shortly.

9 (10.02 am)

10 (Proceedings delayed)

11 (10.15 am)

12 THE USHER: Ladies and gentlemen, thank you for your
13 patience. We are trying to resolve an important
14 technical glitch, so now the hearing has been
15 deferred until 10.30. Thank you. I shall
16 announce again when we're ready to start.

17 (10.16 am)

18 (A short break)

19 (10.33 am)

20 THE USHER: Ladies and gentlemen, a quick update:
21 the Chair would like to make a brief
22 announcement so he'll be coming in shortly.
23 Thank you.

24 SIR WYN WILLIAMS: This not what I had in mind, but
25 I've come in because I want to know from those

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1 hear this and wishing to view it and have been
2 waiting to do so.
3 SIR WYN WILLIAMS: No, no, I follow all that.
4 MR STEIN: So we may need, even a few minutes right
5 now, just to discuss this particular issue.
6 SIR WYN WILLIAMS: Well, on the basis of your
7 estimates, we can reasonably delay for at least
8 another 30 minutes, which is what I'm prepared
9 to do. We resume it at that point. But, of
10 course, I'll be holding you all to your
11 estimates much more strictly, even than usual.

12 (10.35 am)

13 (A short break)

14 (11.00 am)

15 SIR WYN WILLIAMS: Give us a factual update,
16 Mr Beer.

17 MR BEER: Yes, of course. I'm afraid it's not been
18 possible to resolve the technical issue that is
19 preventing the Inquiry from presently streaming
20 the proceedings. That is an issue to do with
21 this building's connectivity. However, if you
22 do decide to proceed, sir, I have been told that
23 a transcript of today's proceedings will be made
24 as we go along and, in fact, will be displayed
25 for people in this room in the usual way. But,

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1 who intend to speak how long, realistically,
2 they want because, although there is a great
3 public interest in having a live feed, in my
4 view, there's a greater public interest in
5 dealing with this expeditiously today and also
6 giving people a reasonable amount of time.
7 So there's a limit on how long I'm prepared
8 to wait for a live feed -- that's what it boils
9 down to -- but it would obviously assist me if
10 people could explain how long they intend to
11 take.

12 So let's go by the batting order, I think
13 Mr Chapman was first up.

14 Oh, sorry, Ms Gallafent. There we are, I'm
15 completely disoriented, I'm sorry.

16 MS GALLAFENT: I will be definitely 45 minutes,
17 possibly a little bit longer.

18 SIR WYN WILLIAMS: Right.

19 MR CHAPMAN: Ten minutes.

20 SIR WYN WILLIAMS: So that's an hour-ish.

21 MR MOLONEY: 25, sir.

22 SIR WYN WILLIAMS: Mr Henry?

23 MR HENRY: 40, sir.

24 SIR WYN WILLIAMS: Mr Stein?

25 MR STEIN: 45. We have clients who are wishing to

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1 more importantly, that will be uploaded to the
2 Inquiry's website at the conclusion of
3 proceedings today.
4 An audio and visual recording of today's
5 proceedings will also be made and that will also
6 be uploaded to the Inquiry's website in the
7 normal way, so people who missed the proceedings
8 unfolding today can watch them back after they
9 have concluded.

10 So, essentially, what is missing is the live
11 YouTube feed, which means that members of the
12 public who are not in this room, and those Core
13 Participants who are not in this room, will be
14 unable to see and hear the proceedings, as they
15 unfold.

16 SIR WYN WILLIAMS: My inclination is that, in those
17 circumstances, although it's not ideal, it's
18 better than adjourning, which is the option, in
19 effect.

20 Mr Stein?

21 MR STEIN: We have clients that have been emailing
22 my instructing solicitors asking for when the
23 live stream is going to be available and hoping
24 that they will be able to take part in this
25 remotely. On the other side of the coin, there

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1 is the practicality that, if we adjourn from
 2 today's date, what further date would we get,
 3 when would that be, and the like.
 4 Our rather reluctant but necessarily
 5 practical answer is to agree, sir, that we go
 6 ahead today, partly, I must admit, in my own
 7 mind thinking that I am last in terms of the
 8 speaking order and we may well resolve problems
 9 by the time we get there, at least for my own
 10 part.
 11 **SIR WYN WILLIAMS:** Yes, well, I'm not sure if
 12 Mr Beer mentioned this, but if the live stream
 13 is rescued, then it will begin as soon as it
 14 can. So there is that possibility but,
 15 obviously, we can't rely on that possibility.
 16 **MR STEIN:** Thank you, sir.
 17 **SIR WYN WILLIAMS:** I also think it is important to
 18 explain that, if there had been live evidence,
 19 particularly of important witnesses, I might
 20 have taken a different view. But I think, given
 21 that we are simply dealing with submissions, the
 22 balance falls in terms of carrying on. So
 23 that's what we'll do.
 24 Ms Gallafent?
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1 thereunder, you would very likely determine that
 2 you should deliver to the minister an interim
 3 court, pursuant to the Inquiries Act, containing
 4 specific recommendations.
 5 I start, sir, if I may, with the Historical
 6 Shortfall Scheme. At first the issue of the
 7 pace of making offers, paragraph 7.2 of your
 8 update.
 9 So far as the pace of making offers of
 10 compensation is concerned, you noted in your
 11 previous update, this had quickened considerably
 12 during the course of the previous 12 months.
 13 That pace has been maintained in the last
 14 four months, in each of which month the Post
 15 Office has exceeded its target for the
 16 percentage of offers made in respect of eligible
 17 applications.
 18 From the group of applications made before
 19 the original extended deadline in November 2020,
 20 as of yesterday, Post Office has made offers to
 21 2,240 applicants. That represents offers in
 22 94 per cent of eligible applications. Sir, as
 23 you'll be aware, the target by the end of this
 24 month is 95 per cent. I was told shortly before
 25 coming into the hearing room this morning that

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1 **Submissions by MS GALLAFENT**
 2 **MS GALLAFENT:** Good morning. Thank you, sir. As
 3 you know, I appear on behalf of Post Office, we
 4 are grateful for the opportunity to update the
 5 Inquiry on developments in relation to issues of
 6 compensation. In our opening statement, at the
 7 beginning of Phase 2, we provided a short update
 8 on developments since the compensation hearings
 9 of July, and last week we submitted detailed
 10 written estimates setting out developments to
 11 the end of November.
 12 For the purpose of today's hearing, I intend
 13 to structure our oral submissions by the
 14 reference to the key conclusions reached by you,
 15 sir, in your progress update, dated 15 August of
 16 this year, focusing on those conclusions, which
 17 concerned matters for which Post Office has
 18 responsibility, and leaving aside, for the time
 19 being, those conclusions which you've indicated
 20 may be considered in Phase 5 in due course.
 21 I do so having particular regard to your
 22 indication in that document that, if it became
 23 clear in subsequent weeks that progress was too
 24 slow, in particular finalising a Group
 25 Litigation Scheme and/or making payments

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1 if just four more offers go out today, we will
 2 have made 95 per cent as of today. We
 3 anticipate four, if not more, offers will be
 4 going out today.
 5 The total value of the offers made to date
 6 is approximately £74 million, including interest
 7 and the deduction of withheld tax.
 8 Of those offers, 1,804 applicants, which is
 9 over 80 per cent, have accepted the offer made
 10 to them, and payments have been made in
 11 98 per cent of those cases. That amounts to
 12 a total value of payments at approximately
 13 £44.5 million, again including interest and the
 14 deduction of withheld tax.
 15 There currently remain just 134 applicants
 16 who have not yet received an offer letter. Now
 17 that's usually in the light of a case specific
 18 complexity, meaning it's been slower to progress
 19 to the point of an offer. They can broadly fall
 20 into three categories. The first is
 21 applications with complexities concerning
 22 insolvency or bankruptcy.
 23 Now, it has taken longer to establish the
 24 relevant circumstances of these applications, in
 25 the light of the potential interest or interests

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1 of the bankruptcy or insolvency practitioners,
2 such as the Official Receiver. To date, offers
3 have been made in 19 of such cases.
4 Separate to that the Independent Advisory --
5 **SIR WYN WILLIAMS:** Ms Gallafent, do you have
6 a figure for how many insolvency cases there
7 are, in the HSS, even approximately?
8 **MS GALLAFENT:** I don't, but I'm sure someone will be
9 able to tell me when I'm on my feet. But we're
10 talking about 134 in total and this is one of
11 the groups of people, which is a dwindling
12 number, if I can put it in that way.
13 There are also, within this category,
14 a group of cases where a claim has been made of
15 losses flowing from the bankruptcy or insolvency
16 and the Independent Advisory Panel is
17 considering the fair approach to be adopted in
18 that case. Post Office expects to make offers
19 in respect of those claims early next year. The
20 second category where things have taken slightly
21 longer is applicants who were prosecuted but not
22 convicted.
23 Now, with the benefit of the progress made
24 on the issue of non-pecuniary losses for
25 postmasters who were prosecuted and convicted --

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1 of medical records in support of a personal
2 injury claim.
3 As soon as information is received, the
4 panel will consider the application and
5 an appropriate offer letter will be prepared and
6 sent. Again, in this context, Post Office is
7 particularly mindful of the importance of
8 striking the appropriate balance between the
9 speed of decision making and considerations of
10 fairness.
11 For completeness, I note, in this context,
12 the points raised by Hudgell Solicitors in their
13 written submissions, in a section entitled
14 "Independence Issues" that, in fact, concerns
15 the question of heads of loss, which they say
16 were not identified until after the initial
17 offer has been made by Post Office.
18 It's unnecessary, for my purposes today, for
19 me to go into the detail of the three cases they
20 identify but I would emphasise that Post
21 Office's position is that the purpose and value
22 of the good faith meeting, under the procedures
23 of the Historical Shortfall Scheme, is to be
24 able to discuss exactly those sorts of issues
25 and any other issues that might arise, in order

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1 and I'll come on to that in the context of the
2 second process in relation to overturned
3 historical convictions in due course -- again,
4 the Independent Advisory Panel is considering
5 the fair approach to this category of applicants
6 and expects to make offers again in respect of
7 them, again, early next year.
8 The third group of somewhat slower cases --
9 **SIR WYN WILLIAMS:** So that I'm clear, these are
10 people who were prosecuted but not convicted --
11 **MS GALLAFENT:** Yes.
12 **SIR WYN WILLIAMS:** -- who did not form part of the
13 GLO.
14 **MS GALLAFENT:** Exactly, sir, and I'll come on to
15 that in due course.
16 The third category then, in relation to the
17 HSS, where matters have been slower than
18 otherwise, is where information is required from
19 the respective applicant or a third party in
20 order to fairly assess them. So that might
21 include circumstances in which responses are
22 outstanding for the applicant, for example, if
23 someone has ill health and there is a delay in
24 responding, or outstanding requests from the
25 National Health Service, for example, in terms

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1 that revised offers can be made as appropriate.
2 Sir, you may like to note that such revised
3 offers have been made to applicants, whether or
4 not they've had legal representation and, to
5 assist, sir, to date, 29 applicants have
6 received revised offers of increased value,
7 before going on to settle their claims as part
8 of either the pre, post or during the good faith
9 meeting stages, none of whom had legal
10 representation.
11 Now, there are points made in relation to
12 delays in holding good faith meetings. You may
13 wish to note that 100 of those meetings have
14 been held since the scheme began. 21 are
15 planned over the next two months. Again, I'd
16 emphasise that a good faith meeting isn't held
17 in every case where an initial offer is
18 rejected.
19 In more than half of those cases, following
20 interactions between the applicant and the Post
21 Office, which are prompted by Post Office
22 seeking to understand the reasons for rejecting,
23 the offer is accepted without proceeding to
24 a good faith meeting.
25 Where a good faith meeting is offered,

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1 either upon request or proactively, an applicant
2 is offered three dates on which to attend.
3 Delays can occur where other parties, such as
4 legal representatives or medical practitioners,
5 are part of the process, or where additional
6 information is requested as a prerequisite to
7 the good faith meeting.

8 But, again, I'd make the point, which is
9 Post Office continues to look at ways to
10 streamline the dispute resolution process,
11 including the good faith meetings, to reduce the
12 time taken, whilst continuing to ensure that it
13 enables applicants and applications to be
14 resolved fairly and in good faith.

15 Can I turn to late applicants, dealt with at
16 paragraph 7.3.

17 **SIR WYN WILLIAMS:** Before you do, just so I can keep
18 track of what you say, have I got this right:
19 there have been 100 good faith meetings?

20 **MS GALLAFENT:** Yes.

21 **SIR WYN WILLIAMS:** In 29 of them, there's been
22 an increase in the offer where people are
23 unrepresented, yes?

24 **MS GALLAFENT:** No, the increases in the offer where
25 people are unrepresented, that may have been

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1 that date, it had extended its financial support
2 to Post Office so that it could accept eligible
3 late applications as part of the scheme.

4 Post Office has now written to all but one
5 of the 230 postmasters who previously told it
6 that they wished to join the HSS, after the
7 November 2020 deadline, inviting them to join
8 the scheme, providing them with an application
9 form and the Consequential Loss Principles and
10 Guidance. On 12 October Post Office also put
11 a notice on the Historical Shortfall Scheme
12 website, inviting further such applications,
13 linking to a late applicant specific question
14 and answer document and the application form.
15 Sir, we provided copies of those documents to go
16 with our written submissions for your note.

17 As at yesterday, Post Office has received
18 93 late applications, of which 66 contain
19 a complete set of information. At this stage,
20 Post Office has assessed 68 claims for
21 eligibility under the scheme. I note that some
22 applications contain more than one claim, for
23 example, if there was more than one Post Office
24 under that particular postmaster.

25 There should be confirmation of eligibility

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1 before a good faith meeting, at a good faith
2 meeting or afterwards.

3 **SIR WYN WILLIAMS:** So have you got any information
4 about what has happened after a good faith
5 meeting in terms of increase or acceptance?

6 **MS GALLAFENT:** Yes, and I'll -- those are set out in
7 our written submissions. I can take you to them
8 at paragraph -- yes, we have set those out.
9 Yes.

10 **SIR WYN WILLIAMS:** Thank you. Right.

11 **MS GALLAFENT:** So I was just picking up on the
12 ongoing consideration of ways we can streamline
13 the process.

14 Moving then to late applications,
15 paragraph 7.3, these are obviously applications
16 that are made or will be made after the
17 27 November 2020 deadline for the scheme. For
18 the purposes of today, I'm not going to focus on
19 the reasons for delay in determining whether
20 those applications should have been accepted or
21 rejected into the scheme. I obviously recognise
22 that's a matter to which the Inquiry may wish to
23 return to in Phase 5, but I intend instead today
24 to provide an update on developments since
25 BEIS's announcement on 6 October that, as of

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1 sent to applicants in the next week or so, once
2 identification and verification checks are also
3 complete. 27 of the late applications, are
4 partially complete and we are contacting
5 applicants for missing information.

6 Sir, one of the other key conclusions in the
7 progress update was that any applicant whose
8 claim is rejected by reason of having been made
9 after 27 November 2020, should have the right to
10 have that decision reviewed by the Independent
11 Advisory Panel, and the scheme amended to make
12 that clear.

13 Now, the website for the scheme confirms
14 that applicants are asked to explain why they
15 were unable to submit an application by the
16 November 2020 date, provides, by way of example,
17 they didn't know about the scheme, were poorly,
18 overseas, caring for a relative.

19 Post Office has recently updated the
20 question and answers on the website to clarify
21 the approach to be taken in circumstances where
22 a late applicant has provisionally been declined
23 by Post Office, on the basis that they've not
24 provided a sufficient reason for missing the
25 original deadline. Such applicants will be

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1 presented with a further opportunity to provide
2 one, and Post Office will suggest a list of the
3 reasons that might apply, in their cases.

4 If an applicant still cannot provide
5 a reason or their reason isn't, for whatever
6 reason, accepted by Post Office, it will let
7 them know and the matter will be referred to
8 an independent third party for a final decision.

9 Post Office considers that this will provide
10 the requisite independence for determining the
11 issue, but without adding to the workload of the
12 Independent Advisory Panel and, therefore,
13 risking slowing down its consideration of other
14 substantive claims.

15 To date, no applications have been
16 provisionally declined by Post Office, on the
17 basis that the applicant hasn't provided
18 a sufficient reason.

19 In the light of the revised Q&A document,
20 the Post Office expects there will be very few,
21 if any, applications deemed to be ineligible on
22 the grounds of absence of a reason for lateness
23 alone.

24 **SIR WYN WILLIAMS:** If that is the case -- and
25 obviously I accept what you tell me,

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1 current approach under the scheme to processing
2 applications that were made by late applicants,
3 and it was suggested that would be subject to
4 ensuring any such variations but not result in
5 any less fair a process.

6 Having considered the issue further, I can
7 confirm that Post Office has no intention to
8 introduce any variations in this respect. Late
9 applications which are accepted as eligible will
10 be processed in exactly the same way as those
11 received prior to the November 2020 deadline.

12 Can I turn to the subject of legal advice
13 and assistance? Again, in line with your
14 recommendation, sir, as I explained in our
15 opening statement, with effect from 10 October
16 of this year, Post Office has been offering to
17 pay the reasonable legal costs of the remaining
18 applicants in the scheme, whose claims are of
19 a higher value and more complex than those which
20 were previously settled.

21 Since that date, Post Office has invited
22 applicants, who consider they may require
23 additional support, to discuss and ultimately,
24 we hope, agree the position with them.

25 We hope that this ensures that applicants

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1 Ms Gallafent -- doesn't this seem a great
2 rigmarole to go through, going back and forth
3 about reasons as to why they haven't applied in
4 time, when the reality is going to be that
5 they'll be accepted?

6 **MS GALLAFENT:** Sir, I wouldn't anticipate it as
7 a great rigmarole; it may be a sentence added to
8 the application form.

9 **SIR WYN WILLIAMS:** The time is important in this
10 case and I am anxious to avoid unnecessary
11 bureaucracy. Anyway, there we are.

12 **MS GALLAFENT:** Of course, sir. Your recommendation
13 or, as it were, key conclusion was that there
14 should be an independent person to review, if
15 required. That we have accepted or put in
16 place.

17 **SIR WYN WILLIAMS:** But that was on the basis there
18 might be a fight over it, Ms Gallafent. If
19 there's nothing to be a fight over it then --

20 **MS GALLAFENT:** We anticipate it is unlikely, sir.

21 **SIR WYN WILLIAMS:** All right.

22 **MS GALLAFENT:** You may recall in our opening
23 statement, at the beginning of Phase 2, we
24 indicated that Post Office was considering
25 whether there should be any variations to the

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1 may obtain the assistance they require in
2 confidence that Post Office will pay those
3 reasonable legal costs.

4 But since 10 October of this year, there
5 have been 29 requests received for legal fees.
6 Post Office has endeavoured to work through
7 those fee requests as quickly as it can, to
8 avoid delay in processing applications and with
9 a view to establishing a more standardised, and
10 therefore quicker and easier, basis for cost
11 claims going forward.

12 As of yesterday, agreement has been reached
13 with Hudgell Solicitors on initial sample cases,
14 as well as a general process for assessing the
15 reasonableness of the costs. It is hoped that
16 agreement can similarly be reached quickly on
17 the applications received from other
18 representatives.

19 The next key conclusion I propose to address
20 is interim payments. I indicated in our opening
21 submissions in October that Post Office would be
22 keeping under review the issue of whether it
23 should reconsider its policy on interim payments
24 and it has now done so.

25 As recently announced on its website, to

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1 assist postmasters, including those who may be
2 experiencing financial difficulties or suffering
3 from health issues, Post Office will consider
4 making an interim payment to an applicant of up
5 to £30,000, in advance of its sending a final
6 outcome letter, once it's accepted the
7 application, informed the applicant it met the
8 eligibility criteria and identified the likely
9 shortfall amount.

10 Post Office has particularly confirmed it
11 will not ask for such payments back, whatever
12 the ultimate outcome of the claim. Moreover, if
13 an applicant has received an offer but needs
14 more time to review or dispute it, Post Office
15 will also consider making an interim payment of
16 at least 50 per cent of the offer.

17 As well as updating the website to this
18 effect, the ability to request an interim
19 payment will be specifically drawn to the
20 attention of any applicants who enter the
21 scheme's dispute resolution process and each
22 application for such a payment will, in due
23 course, be assessed on a case-by-case basis.

24 Post Office didn't consider that a revision
25 to the scheme's terms of reference, as you've

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1 initial interim payments have been made in 82
2 cases; the solicitors representing the remaining
3 case have indicated and confirmed they didn't
4 wish to apply for an interim payment.

5 Initial interim payments have been offered
6 in 79 cases and accepted in 77, with two pending
7 acceptance. Those two offers were only issued
8 in the last week or so. The remaining four
9 cases consist of the three public interest only
10 cases, which I'll come on to, and the one who
11 has confirmed that an interim application will
12 not be made.

13 Post Office has, in addition, made second
14 additional interim payments in respect of three
15 cases and offered a second interim payment in
16 a further three cases.

17 As at yesterday, the combined value of those
18 interim payments is, approximately,
19 £7.975 million, so very little under £8 million.

20 You will also, sir, wish to note that, in
21 the light of Lord Dyson's findings in the early
22 neutral evaluation process --

23 **SIR WYN WILLIAMS:** Can I just stop you to say that
24 the live stream is now working, so that you are
25 on screen, as they say, Ms Gallafent.

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1 suggested, was necessary, either as a matter of
2 jurisdiction or in order to publicise the
3 availability of such payments. Of course, in
4 making these submissions, we hope to make
5 awareness of the potential for interim payments
6 amongst applicants and potential applicants. In
7 substance, however, we have accepted your
8 recommendation in this respect.

9 Before turning to the key conclusions in
10 relation to overturned historical convictions,
11 can I just anticipate one point raised in the
12 written submissions of Howe+Co, in relation to
13 the unusual position of an individual who it
14 seems may have been effectively running a Post
15 Office branch, whilst not a postmaster or
16 an employee of the branch.

17 The position of that individual is
18 particularly complex, and Post Office will be
19 reviewing her position further and reverting to
20 Howe+Co as soon as it is able to do so.

21 Turning, then, to overturned historical
22 convictions. I start with the payment of
23 interim payments.

24 Of the 83 convictions that have been
25 overturned on appeal, to date, applications for

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1 **MS GALLAFENT:** Excellent. Thank you for the
2 warning. It could have gone horribly wrong if
3 I hadn't been tipped off, thank you.

4 So I was just dealing with the amount of
5 interim payments made to date, just short of
6 £11 million.

7 You'll also wish to note that, in the light
8 of Lord Dyson's findings, in the early neutral
9 evaluations process, Post Office decided to
10 increase the value of future interim payments it
11 may make up to £163,000.

12 20 claimants who have previously received
13 an initial interim payment, but unable to submit
14 a non-pecuniary claim, have been offered
15 a further top-up payment of up to £63,000 from
16 on or around 1 December of this year.

17 Of those, 17 have accepted the offer and
18 payment has been processed for payment before
19 the end of this year.

20 Again, the historical matters section of the
21 Post Office's website was updated on
22 11 November, to reflect the provision for
23 interim payments at this level, and legal
24 representatives have been informed. This should
25 ensure that all claimants who are eligible for

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1 an interim payment have the opportunity to
 2 receive up to £163,000 by the end of this year.
 3 Sir, in relation to your reservations
 4 concerning the three cases in applications for
 5 interim payments have been declined, which we've
 6 described as the "public interest only cases",
 7 as we explained in our opening statement, it has
 8 been agreed with Hudgell Solicitors to go to
 9 independent mediation, in order to seek to
 10 resolve these disputes and we continue to work
 11 constructively with the solicitors in relation
 12 to this process.
 13 In a related conclusion, sir, you indicated
 14 that Post Office should not be the final arbiter
 15 of applications for interim payments if the
 16 claim is rejected. In line with its approach in
 17 relation to the public interest only cases the,
 18 Post Office agrees that it should not be the
 19 final arbiter in such cases, although reiterates
 20 its view that it appears unlikely that the issue
 21 will rise again.
 22 Sir, in your progress update, you identified
 23 two alternative routes by which claimants in the
 24 group litigation, who were acquitted, should be
 25 able to claim compensation, either by way of
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1 who were acquitted but who did not form part of
 2 the GLO can be dealt with under HSS --
 3 **MS GALLAFENT:** Yes.
 4 **SIR WYN WILLIAMS:** -- and those who were acquitted,
 5 who were part of the GLO, will be dealt with in
 6 the GLO scheme --
 7 **MS GALLAFENT:** Exactly.
 8 **SIR WYN WILLIAMS:** -- so that there is a route for
 9 everyone; is that what you're telling me?
 10 **MS GALLAFENT:** Yes, exactly, sir.
 11 Contingency planning, if I may move to that
 12 topic. In order to address your conclusion that
 13 there should be contingency planning as to how
 14 disputes about final compensation payments are
 15 to be resolved, in the event that negotiated
 16 settlements are not possible, I start by setting
 17 out progress to date. Together with claimants
 18 and their legal representatives, Post Office
 19 continues to make good progress in settling the
 20 claims of postmasters with overturned Horizon
 21 related convictions.
 22 Again, as at yesterday, the position as is
 23 as follows: Post Office has reached full and
 24 final settlement covering both pecuniary and
 25 non-pecuniary losses with two claimants, both of
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1 them being apply to Post Office in the same way
 2 as those with overturned historic convictions
 3 currently do, or by applying to the Group
 4 Litigation Scheme announced by the Secretary of
 5 State.
 6 In circumstances where the Group Litigation
 7 Scheme is intended to deliver compensation for
 8 GLO members who were not convicted of criminal
 9 offences, which would obviously include those
 10 but not limited to those who were acquitted,
 11 Post Office has not taken any steps to include
 12 them in its own processes for providing
 13 compensation.
 14 In this context, I wish to make it clear
 15 though, although Hudgell Solicitors suggested in
 16 their written submissions that applications by
 17 GLO claimants could already have been accepted
 18 by Post Office, we suspect this is
 19 a typographical error. The GLO ex gratia scheme
 20 will be delivered directly by BEIS, as
 21 yesterday's announcement by BEIS confirmed, but
 22 the applications were never to be made to us.
 23 Can I move --
 24 **SIR WYN WILLIAMS:** What you were anticipating on
 25 behalf of the Post Office is that non -- those
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1 whom had participated in the ENE, the early
 2 neutral evaluation process.
 3 Starting then with non-pecuniary claims,
 4 which, as you know, was the subject matter of
 5 the ENE process, I start with the cohort of
 6 claimants who participated in that process.
 7 There were ten such claimants. Post Office has
 8 made non-pecuniary settlement offers to all ten
 9 of those ENE claimants. Of those, six of the
 10 ENE claimants have settled and been paid the
 11 non-pecuniary element of their claim.
 12 One claimant has already received the value
 13 of the non-pecuniary element to their claim via
 14 two interim payments, and the other three
 15 claimants have accepted terms of settlement that
 16 payment cannot be made by Post Office until
 17 insolvency arrangements have been finalised.
 18 Moving to claimants who were not
 19 participants in the ENE process, Post Office has
 20 received non-pecuniary claims from a further
 21 43 claimants -- again, I exclude the three
 22 public interest only claimants from that
 23 figure -- all of whom have overturned Horizon
 24 related convictions. Of those 43, Post Office
 25 has made offers in respect of 33 of those
 26

1 claims, and the total value of those offers --
2 and these, of course, figures exclude the ten
3 ENE claimants -- is approximately £4.23 million.
4 Again, that excludes the value of the offers of
5 interim payments already made in the same cases.

6 Of those 33, offers have been accepted in
7 26 of those claims.

8 Payments have already been made in 19 of
9 those claims, within the agreed payment terms of
10 28 days from receipt of signed acceptance
11 letters. I'd emphasise, in practice, Post
12 Office endeavours to pay much quicker than this
13 timescale, usually around ten days if possible.

14 Of the other seven, four are scheduled for
15 payment today and payment for the other three,
16 and those acceptances were only received on 5 or
17 6 December; payment will be made as soon as
18 practicable.

19 Post Office has now made a total value of
20 approximately £3.1 million, by way of final
21 compensation, again excluding offers of interim
22 payments made in those same cases.

23 The remaining ten claims, in which offers
24 had not yet been made, were only received at the
25 end of last month, they are under assessment by
29

1 historical matters section of its website to
2 make it clear that it will seek to finalise
3 compensation that is over and above the interim
4 payments of up to £163,000, for personal or
5 non-pecuniary damages at the earliest possible
6 opportunity, whilst awaiting claims or
7 finalising settlements in relation to pecuniary
8 aspects of a claim. This to ensure that payment
9 of compensation is not unnecessarily delayed.

10 Can I pause here to return to the issue of
11 bankruptcy, which has been raised by several of
12 the postmaster representatives. The
13 difficulties that that issue gave rise to in the
14 overturned historical convictions context, has
15 been considered at a high level within Post
16 Office, discussed with BEIS, discussed with His
17 Majesty's Treasury. It is hoped a position will
18 be reached early in the New Year.

19 Those representing postmasters in these
20 cases will know that Post Office's position is
21 that there is no justification for delaying the
22 settlement of non-pecuniary losses in order to
23 consider estates' potential claims. We will
24 obviously, sir, update the Inquiry, as soon as
25 we have any developments in this respect.

31

1 Post Office with the intention of issuing offers
2 before Christmas.

3 Post Office expects to receive three further
4 potential non-pecuniary claims by the end of
5 this year; assuming that is the case, is on
6 track to have made offers in those by the end of
7 the year or, if claims arrive later than
8 expected, early January of next year.

9 Together with UKGI and BEIS, it is working
10 hard to see that this is accomplished and,
11 again, we would like to take this opportunity to
12 reiterate Post Office's encouragement to all
13 potential claimants to come forward with their
14 claims as soon as possible.

15 As we explained in our opening statement,
16 Post Office will of more help and support to any
17 claimants with overturned convictions who do not
18 currently have the benefit of legal
19 representation, to ensure they're aware of the
20 opportunity to take their non-pecuniary claims
21 forward on an expedited basis and are aware of
22 what they need to do so.

23 In addition, I'd like to flag up one further
24 development in relation to non-pecuniary
25 damages. Post Office recently updated the
30

1 **SIR WYN WILLIAMS:** As far as you were aware, are
2 there points of legal principle, in respect of
3 persons who have been made bankrupt, who are
4 either discharged or undischarged, which are
5 standing in the way, so to speak, of progress,
6 or is the law agreed and giving effect to it is
7 proving difficult?

8 **MS GALLAFENT:** Opinions differ, and there is one, as
9 I understand it, estate which takes a different
10 view to the views taken by others. So we hope
11 to make some progress in respect of coming to
12 an agreed position. So there is a legal
13 dispute, not with Post Office -- we've made our
14 position clear -- but there is a legal dispute.

15 **SIR WYN WILLIAMS:** There is a legal dispute?

16 **MS GALLAFENT:** Yes, there is. But, as I've
17 indicated, we hope to make progress relatively
18 rapidly in that respect.

19 **SIR WYN WILLIAMS:** Well, I'm only musing aloud but
20 I might take my own legal advice about this.

21 **MS GALLAFENT:** I don't think Post Office would seek
22 to dissuade you from that, Sir Wyn.

23 Can I move to pecuniary claims. As I've
24 noted, two of those have already been settled as
25 part of those full and final settlement
32

1 agreements. Post Office has received a further
2 six claims with supporting schedules of loss,
3 since my open anything statement, in relation to
4 which Post Office is working with the solicitors
5 concerned on evidential matters to enable
6 opening offers to be made.

7 The claims for pecuniary losses that we've
8 received to date are complex. They require
9 significant legal expertise to assess. In order
10 to maintain the momentum of the process in these
11 circumstances, of providing offers to claimants
12 in respect of pecuniary losses, Post Office will
13 be looking to make partial settlement payments
14 to claimants in respect of agreed heads of loss
15 as it's done previously.

16 More broadly, Post Office is in active
17 discussions with claimant representatives about
18 the best way to approach the calculation of
19 compensation for pecuniary losses, with a view
20 to arriving at a set of principles which is
21 agreed by all concerned. These discussions have
22 included consideration of incorporating oral
23 hearings into the process.

24 It's hoped that the principles and processes
25 will be clarified in the New Year, and a basis

33

1 for consideration of future claims for pecuniary
2 loss is established.

3 In this context, we note the suggestion made
4 by Howe+Co, that the development of a scheme has
5 caused exceptional delay. Let me emphasise, as
6 demonstrated by the progress made in respect of
7 non-pecuniary claims submitted by Hudgell and Co
8 (*sic*), following the ENE, representing 71 of the
9 83 persons whose Horizon convictions have been
10 overturned, it's clear, we submit, that the
11 absence of a formal scheme has been no
12 impediment to the bringing of, and settlement
13 of, claims.

14 The alternatives are not, we say, as Howe+Co
15 suggest: that the absence of a formal scheme
16 means that postmasters would be required instead
17 to take the risk of commencing formal legal
18 proceedings. I would note that proceedings have
19 not been commenced in any of the claims in which
20 offers have been made to date.

21 At the risk of repetition, I would again
22 emphasise that Post Office would encourage all
23 potential claimants to present their claims as
24 soon as they are able to do so, in relation to
25 pecuniary loss.

34

1 While I have the opportunity, I would also
2 like to reiterate publicly, Post Office's
3 encouragement to convicted postmasters to
4 consider their options for appeal. We've
5 already set out in our written submissions the
6 lengths that Post Office has gone to, both
7 independently and working together with CCRC, to
8 ensure that all convicted postmasters are
9 contacted and encouraged to consider the options
10 for appeal.

11 Today, I'd just like to highlight a recent
12 and important development in relation to support
13 for such persons. In February of this year, the
14 BEIS Select Committee recommended the formation
15 of an independent body to support individuals
16 with potentially relevant convictions, who may,
17 understandably, be reluctant to engage with Post
18 Office, due to the distress their historic
19 convictions may have caused them.

20 Post Office has now agreed a package of
21 support for such individuals through Citizens
22 Advice. This service aims to provide
23 preliminary information around the appeals
24 process, the support which may be available
25 through Legal Aid, information around benefits,

35

1 and help to guide individuals to emotional
2 support tools.

3 Sir, as you will be well aware, Citizens
4 Advice is a well known and trusted brand with
5 experience of supporting members of the public
6 on challenging matters such as this.

7 This service went live on 17 November this
8 year, with a dedicated microsite on the Citizens
9 Advice web page. Post Office's website also
10 provides a link to the relevant page and it's
11 working with Citizens Advice to raise awareness
12 of this service through social media channels
13 and a banner on the Citizens Advice homepage.

14 In addition, a telephone helpline will be
15 available, through which trained agents will be
16 able to answer questions affected individuals
17 may have.

18 Citizens Advice will track any calls
19 received on the helpline outside of working
20 hours. Individuals will be able to request
21 a callback by completing a form on the website
22 in addition.

23 Against this background, whilst we entirely
24 agree with Howe+Co's submission that something
25 must be done to contact people whose convictions

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1 could be challenged, that process, including the
2 Post Office working together with the CCRC, has
3 already been underway for many months and will
4 now be firmly supported by the role to be played
5 by Citizens Advice.

6 In conclusion, having regard to the progress
7 set out in our written submissions and I hope
8 highlighted in my oral submissions today,
9 against the key conclusions in your progress
10 update, insofar as Post Office has
11 responsibility for those matters, it is our
12 respectful submission that such progress could
13 not reasonably be characterised as too slow in
14 all the circumstances, such as to justify
15 delivering an interim report to the Minister
16 containing specific recommendations.

17 Post Office does, of course, though, welcome
18 any further views or guidance you may have and,
19 of course, we stand ready to provide search
20 updates on compensation issues as the Inquiry
21 may find of assistance as the hearings progress.

22 Can I just make two further points. The
23 first is --

24 **SIR WYN WILLIAMS:** Before you do that, while it's in
25 my mind, going back to people who have been

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1 straight to the Court of Appeal is the quickest
2 way.

3 **SIR WYN WILLIAMS:** Right. Well, if I found
4 difficulty in getting that squarely in my head,
5 it may not be surprising that many other people
6 find the same difficulty.

7 **MR MOLONEY:** Including me, sir.

8 **MS GALLAFENT:** The first was I was going to pick
9 up -- very helpfully my solicitor has indicated,
10 you asked, sir, about the number of applications
11 in which insolvency or bankruptcy issues have
12 arisen. As of 6 December, there are 72
13 applications in the Historical Shortfall Scheme,
14 in which either the Post Office understands the
15 course of action rests in the insolvency
16 bankruptcy or practitioner, or it's currently
17 unclear whether or not it does. Work is ongoing
18 to establish where it sits. That includes the
19 19 applications in which offers have been made.

20 In addition, there are approximately ten of
21 the 30 dissolved company applications which may
22 be impacted by insolvency or bankruptcy issues.
23 Again, the processing of those applications is
24 ongoing.

25 Sir, I sense a keen interest on behalf of

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1 convicted but who haven't yet engaged with
2 trying to get their conviction overturned, am
3 I right in thinking that the Criminal Cases
4 Review Commission may not be the quickest and
5 suggest route, especially for those who have
6 never appealed before? In other words, if you
7 were convicted in, shall we say, 2010, for the
8 sake of argument, you didn't appeal, presumably
9 the quickest route now is simply to apply out of
10 time for the leave to appeal to the Court of
11 Appeal, without involving the Criminal Cases
12 Review Commission, provided, of course, you can
13 bring yourself within the terms of the *Hamilton*
14 judgment.

15 **MS GALLAFENT:** I'll defer to Mr Moloney but
16 I understand that to be the case.

17 **SIR WYN WILLIAMS:** Is that right, Mr Moloney, or
18 have I set a hare running?

19 **MR MOLONEY:** No, sir, you're absolutely right. It's
20 the involvement of the Criminal Cases Review
21 Commission in alerting people to the possibility
22 of appeal, whether by way of the CCRC, if
23 they've had a previous appeal, or they were
24 convicted in the Magistrates Court, which the
25 CCRC are were dealing with. Otherwise then

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1 all postmasters and, sir, you as well we will
2 certainly seek to update I think on perhaps
3 a proactive basis without waiting to be invited,
4 how things go in relation to insolvency and
5 bankruptcy issues, in both the OHC and the HSS
6 context.

7 **SIR WYN WILLIAMS:** It's just the feeling I've got
8 that this seems to be quite a difficult
9 problem --

10 **MS GALLAFENT:** Yes.

11 **SIR WYN WILLIAMS:** -- and we want to solve it.

12 **MS GALLAFENT:** We also share that.

13 **SIR WYN WILLIAMS:** I was using "we" in every sense
14 of the word "we".

15 **MS GALLAFENT:** Absolutely, I'm very grateful.

16 Sir, just one further matter, if I may, on
17 the subject of restorative justice. Post Office
18 notes the points made by Howe+Co on restorative
19 justice in their written submissions. They
20 rightly recognise this is not a compensation
21 issue and, as such, we say it doesn't properly
22 fall within the scope of today's hearing but,
23 nevertheless, we'd wish to make two points in
24 this context.

25 The first is that Post Office does not

40

1 consider that its offer, which I made, sir, you
2 may remember, in my oral opening submissions,
3 for senior members of Post Office to meet
4 directly with affected postmasters in order to
5 listen to them and make suitable apologies,
6 requires the establishment of a formal scheme or
7 process, necessitating the involvement of
8 solicitors on either side.

9 It's approach to arranging meetings will be
10 flexible and sympathetic to those affected and
11 supported by the existing dispute resolution
12 team, who already support applicants to the HSS,
13 many of whom are former postmasters themselves.

14 The second point is that Post Office's offer
15 reflected exactly what was requested on behalf
16 of the Core Participants represented by Howe+Co
17 in their opening oral submissions. What we
18 understand now to be proposed in their written
19 submissions is that, in the absence of Post
20 Office and BEIS agreeing to establish what they
21 would describe as a restorative justice fund,
22 you, sure, should make a formal recommendation
23 of the establishment of such a process and
24 funding.

25 Sir, of course, that goes well beyond the
41

1 The Department wishes to begin by
2 reiterating its commitment to ensuring
3 subpostmasters receive full and fair
4 compensation as quickly as possible, and this
5 remains a key ministerial priority. As the
6 Department said it would at the July hearings,
7 it has listened to the concerns about
8 compensation arrangements, engaged with them,
9 and taken action where necessary.

10 Whilst there will always be room for
11 improvement and much work remains to be done,
12 the Department believes that the general
13 trajectory is now broadly positive but, as
14 always, it would welcome your views. I'll
15 address each of the three compensation schemes
16 in turn, starting with the Post Office
17 administered schemes, the Historical Shortfall
18 Scheme and the Overturned Historical Conviction
19 scheme before turning to the BEIS scheme, the
20 Group Litigation Scheme.

21 Up first, the Historical Shortfall Scheme.
22 Like the Overturned Historical Convictions
23 compensation and unlike the Group Litigation
24 Scheme, the HSS is a scheme designed,
25 established and administered by POL but the

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1 previous indication of what was sought in this
2 context, and I venture to say it's equally
3 a matter that would appear to go beyond the
4 scope of the terms of reference of this Inquiry.

5 Can I just look to my left and right to
6 confirm if there's anything further that I need
7 to --

8 Thank you very much indeed, sir, for that
9 opportunity. I may have strayed a few minutes
10 past my time but I'm very grateful.

11 **SIR WYN WILLIAMS:** I think you are well within
12 a margin of appreciation, to use a phrase we're
13 no longer allowed to use.

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

15 **SIR WYN WILLIAMS:** Yes, Mr Chapman?

Submissions by MR CHAPMAN

17 **MR CHAPMAN:** I'm hoping the microphone is picking me
18 up from me here, I'm getting some feedback. Can
19 you hear me okay?

20 **SIR WYN WILLIAMS:** Can everyone hear, Mr Chapman?

21 **MR CHAPMAN:** Hopefully that's better. Thank you,
22 sir.

23 I make these submissions on behalf of the
24 Department for Business, Energy and
25 Industrial --

42

1 Department has some levers of influence, and it
2 has not shied away from using them where
3 necessary. As you know, the Department has
4 encouraged POL to speed up the HSS process, and
5 set POL the target of issuing offers to all HSS
6 claimants by the end of this year.

7 As you noted in your progress update, that
8 was an ambitious target, intentionally so, and
9 with some regret, the Department recognises that
10 POL will not meet it.

11 Even so, POL has been making relatively good
12 progress and the Department's clear expectation
13 is that offers will have been made in most of
14 the remaining cases by the end of January.

15 Once a formal proposal concerning late
16 applications was made by POL, the Department
17 worked diligently to arrange and confirm the
18 substantial additional public funding required.
19 It welcomes POL's confirmation that applications
20 following the scheme's closure will be accepted,
21 provided that a sufficient reason for the
22 failure to make the application within the
23 window is given, and it also welcomes the
24 confirmation of the role of an independent
25 review in case of disagreement.

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1 **SIR WYN WILLIAMS:** Mr Chapman, I'm a bit it confused
2 now, because I think Ms Gallafent was more or
3 less agreeing with me that they were going to be
4 accepted. You put it in a much more guarded way
5 and I'd hate there to be any divergence between
6 BEIS and POL over this.

7 **MR CHAPMAN:** I don't think that there's any
8 divergence at all.

9 **SIR WYN WILLIAMS:** So I shall carefully note what
10 Ms Gallafent said and proceed on that basis,
11 shall I?

12 **MR CHAPMAN:** I think that's fair.

13 **SIR WYN WILLIAMS:** Good.

14 **MR CHAPMAN:** The Department is very pleased to note
15 that the previous cap on reasonable legal
16 expenses has been removed, with POL reimbursing
17 all reasonable legal costs, both at the offer
18 stage and for claimants going into the dispute
19 resolution process.

20 Finally, on the HSS, the Department welcomes
21 the development that POL has made provision for
22 interim payments, irrespective of personal
23 circumstances and in addition to hardship
24 payments.

25 Turning to the Overturned Historical
45

1 made a statement in Parliament yesterday to
2 announce the shape of the scheme, following, as
3 promised, consultation with the GLO claimants
4 and their representatives.

5 In line with the views of the substantial
6 majority of those who responded, the scheme will
7 follow an ADR model, and will be administered
8 directly by BEIS, not POL.

9 The scheme will be overseen by
10 an independent advisory board, which will be
11 chaired by Professor Christopher Hodges,
12 an academic who is an expert in ADR matters, and
13 its membership will include Lord Arbuthnot and
14 the Right Honourable Kevan Jones MP, both of
15 whom have long and distinguished records as
16 campaigners for the postmasters.

17 The claims themselves will be considered and
18 assessed by an independent panel. The
19 expectation is that the full compensation awards
20 will begin before the summer, with most cases
21 being resolved by the end of next year. The
22 Department has now invited claimants and their
23 legal representatives to begin preparation of
24 claims and has announced support for claimants'
25 initial legal costs: the costs of first

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1 Convictions compensation, the Department is
2 reasonably pleased at the progress being made,
3 as just described by Ms Gallafent, though
4 clearly there remains some way to go. It
5 welcomes the positive progress being made on the
6 non-pecuniary damages claims and it welcomes the
7 increase to the ceiling for interim payments,
8 including the top-ups for those who received
9 interim payments previously.

10 Can I just add this: the Department is very
11 conscious of the practical hurdles facing
12 subpostmasters in making pecuniary damages
13 claims and, in order to help facilitate the
14 process, the Department has worked with HMRC to
15 enable easier access to historic tax return
16 data, so that claimants can particularise their
17 claims with confidence. The Department
18 encourages postmasters and their representatives
19 to bring forward their claims as soon as they
20 are able to.

21 Turning to the Group Litigation Scheme,
22 unlike the other two schemes, the Group
23 Litigation Scheme is being set up by BEIS and,
24 as one would hope, reasonably good progress is
25 being made. As you know, the Chief Secretary
46

1 engagement with lawyers.

2 **SIR WYN WILLIAMS:** That hasn't been met with
3 universal approval that, has it?

4 **MR CHAPMAN:** It hasn't. The amount is specifically
5 for initial engagement with lawyers and
6 arrangements of payments of reasonable legal
7 costs, beyond initial engagement and the costs,
8 indeed, of acquiring expert evidence, where
9 necessary, are being finalised.

10 **SIR WYN WILLIAMS:** I appreciate that there will be
11 a need to work out rates of pay, putting it
12 loosely, but the phrase that had been used
13 consistently was "reasonable legal expenses", in
14 previous announcements.

15 **MR CHAPMAN:** Can I be clear, sir, that it remains
16 the Department's position that postmasters
17 engaging in this scheme will be entitled to
18 recover reasonable legal expenses.

19 In the meantime, the Department has made
20 interim payments totalling over £16 million so
21 far, and covering 85 or over 85 per cent of
22 claimants.

23 It, of course, understands that interim
24 payments are really important, and especially so
25 for some GLO claimants. It continues its

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1 concerted work to resolve issues concerning
2 interim payments where they haven't already been
3 made. In relation to the 16 bankrupt GLO
4 claimants, who have not yet received an interim
5 payment, you've heard about the issues with one
6 insolvency practitioner in particular, which the
7 Department is seeking to resolve as soon as
8 possible.

9 We would encourage you, sir, to follow up on
10 your suggestion that you might take your own
11 legal advice on that issue, and we would be very
12 happy to set out in a little more particular
13 detail what precisely that issue is, in writing,
14 if that would be helpful.

15 **SIR WYN WILLIAMS:** Well, I think if I do decide that
16 it's appropriate for me to take legal advice,
17 I would probably ask my legal team to engage
18 with all the relevant lawyers as to the
19 appropriate questions to ask.

20 **MR CHAPMAN:** Yes, we'd certainly be happy to engage
21 in that process.

22 It may prove to be the case -- it is hoped
23 that it'll prove to be the case -- that it's
24 possible to resolve that issue, and to resolve
25 it shortly.

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1 **MR CHAPMAN:** Yeah. I hope that addresses it.

2 **SIR WYN WILLIAMS:** Yes.

3 **MR CHAPMAN:** Can I briefly turn to a couple of other
4 related matters.

5 First, the Department is very pleased to
6 note that POL is committed to setting up
7 a compensation scheme to cover lost remuneration
8 caused by suspension and, indeed, any
9 consequential losses. The Government has
10 committed to providing the funding to the Post
11 Office to cover those payments and the
12 Department will oversee the process to ensure
13 it's delivered promptly.

14 The second point: the Government has
15 committed to legislating, at the earliest
16 opportunity, to exclude all Post Office and
17 Horizon related compensation payments from the
18 calculation of capital limits for means-tested
19 benefits and pension credits.

20 That is in addition to the announcement made
21 in September that no tax will be payable on
22 compensation payments made under the OHC scheme.

23 So to conclude, the Department believes that
24 compensation issues are now generally
25 progressing fairly well, but it would of course

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1 If it's not --

2 **SIR WYN WILLIAMS:** The quicker you do it, the less
3 likely or the less need for me to engage in it.

4 **MR CHAPMAN:** Well, it is and, of course, we'll keep
5 you informed.

6 **SIR WYN WILLIAMS:** Yes.

7 **MR CHAPMAN:** If it isn't looking likely to resolve
8 it very quickly, then the Department will make
9 partial interim payments, which will not cause
10 the potential problems which full payments, full
11 interim payments might cause within the next
12 week.

13 Finally, most GLO members who were acquitted
14 of Horizon offences have already received more
15 in compensation than the £100,000 interim
16 payments which have been made to those who were
17 convicted. However, the Department has
18 recognised the force of the concern that you
19 raised in relation to the handful of GLO members
20 who are not in that position. They will receive
21 additional interim payments under the GLO
22 scheme, rather than being transferred to the
23 POL-administered OHC scheme.

24 **SIR WYN WILLIAMS:** Yes, and my concern there was
25 over the substance not the form.

50

1 welcome your views on any areas for improvement.

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

3 Right, I think we'll take a ten-minute break
4 not least to allow the transcriber to have
5 a break, and then we will continue with
6 Mr Moloney.

7 **(11.58 am)**

(A short break)

8
9 **(12.13 pm)**

Submissions by MR MOLONEY

11 **SIR WYN WILLIAMS:** Yes, Mr Moloney?

12 **MR MOLONEY:** Thank you, sir, these submissions are
13 on behalf of Huddell Solicitors and Huddell
14 Solicitors represent 72 claimants under the
15 Historic Shortfall Scheme, 71 persons whose
16 convictions have been overturned and six persons
17 in the group litigation scheme.

18 Our submissions identify and address some of
19 the specific practical issues arising in
20 connection with the different types of
21 compensation claims and we address them in the
22 following order, sir: compensation under the
23 Historic Shortfall Scheme; compensation for
24 subpostmasters with overturned historic
25 convictions; and compensation for Group

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1 Litigation claimants. I'll take those in order,
2 sir.

3 Firstly, the HSS. We've sought to deal with
4 our submissions by reference to your progress
5 update, sir, and your -- this is dealt with at
6 paragraph 133 to 152 of your update and we deal
7 with just a few issues.

8 Firstly, what were referred to in the
9 progress update, sir, as "independence issues".
10 We raised a concern in July that heads of damage
11 would were being missed by those operating the
12 HSS, and raised questions as to how that might
13 happen. We're very conscious that the Inquiry
14 intends to review the operation of the HSS in
15 stage 5, but what we say is, by way of update,
16 sir, just to keep you abreast of the continuing
17 experience of Hudgell Solicitors, as matters
18 proceed.

19 Of course, the only data we have is from the
20 Hudgell Solicitors' cohort as well, so we can't
21 say this is in any way representative and, of
22 course, we've listened to what Ms Gallafent said
23 this morning on behalf of Post Office Limited.

24 But only three HSS applications where
25 Hudgell Solicitors are instructed have reached

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1 loss to have appreciated.

2 **SIR WYN WILLIAMS:** So that I understand your
3 criticism, am I right in thinking that, when the
4 lady presented her claim on her own, she hadn't
5 identified a loss of earnings, but you would say
6 there obviously must have been one, which the
7 panel should have investigated; is that the
8 point?

9 **MR MOLONEY:** Should have asked the question
10 basically, sir. The must have been, is what
11 we'd say about that. Then Case 2, an offer of
12 £3,752.26 in January 2022. That was simply
13 a shortfall of £2,000 and associated interest.

14 A good faith meeting took place in July 2022
15 and the revised offer was received on
16 17 November and that revised offer was greatly
17 increased to £63,331.89, and that included
18 compensation for losses arising from resignation
19 and distress and inconvenience that had not been
20 considered by the original panel.

21 Then in Case 3, the applicant received a net
22 offer of £21,691.23 in March 2022, a good faith
23 meeting in June 2022, and a revised offer of
24 £34,862.61, on 17 November, same day as Case 2
25 and just a week after Case 1 and, again, two

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1 the good faith meeting stage, and a decision
2 then taken by the panel on whether or not to
3 make a revised offer and, in each case, sir, the
4 experience of Hudgell Solicitors has been that
5 an improved offer has been made and, in each
6 case, there is evidence that the amount paid to
7 claimants can be significantly affected by the
8 failure to identify appropriate heads of claim.

9 We have set out the details of those three
10 cases in appendix A to our submissions, sir.
11 I don't propose to take you to them because you
12 have the details within the body of the
13 submissions, in any event. But Case 1 -- and
14 these are of course anonymised, for obvious
15 reasons -- Case 1 initially received a net offer
16 of £46,799.52 in December 2021. Hudgell
17 Solicitors served evidence in relation to their
18 case on 7 March 2022, and then some eight months
19 later, on 10 November this year, sir, she
20 received a revised net offer of £140,126.37.

21 That, sir, is close to £100,000 and that
22 difference, that significant difference, was
23 accounted for by compensation for loss of
24 earnings following resignation, which we say,
25 sir, should have been a very obvious head of

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1 heads of damage which were not present in the
2 original claim were identified and proceeded
3 with and an increased offer made.

4 Those are the only three examples we have,
5 sir, of cases dealt with by Hudgell Solicitors,
6 which have preceded to a good faith meeting
7 which, of course, is the next stage along from
8 the offer, and then resulted in a decision on
9 an offer, not simply a revised offer, but
10 a decision on an offer following that good faith
11 meeting. There have been no other decisions on
12 offers, and so each time there's been an upward
13 revision of the offer when an offer has been
14 made.

15 The identification of those heads of damage
16 has led to significantly increased offers,
17 which, of course, sir, has -- it affects the
18 wellbeing of the claimants who have suffered
19 some time ago, and that's the importance of it,
20 sir, getting their lives back on track.

21 The second aspect we'd like to refer to,
22 insofar as the HSS is concerned, is delays, sir.
23 Now, one of the concerns of the Inquiry in the
24 progress update was that no decision had been
25 made on whether to accept late applications into

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1 the HSS, and we've had an update from
2 Ms Gallafent this morning as to what's happening
3 now, so far as those late applications are
4 concerned, sir.

5 But the position now, sir, is that late
6 applications have only been provisionally
7 accepted into the HSS. So you reported, sir,
8 earlier this year, we're some months down the
9 line, they've been provisionally accepted into
10 the HSS, reasons for the lateness of the
11 applications have been requested, those reasons
12 have been supplied very quickly but, thus far,
13 there's been no confirmation that any
14 application has been fully accepted into the
15 scheme and no first offers have yet been made in
16 any of the cases.

17 So we're encouraged by what was said this
18 morning, but it has to be seen, sir, and, of
19 course, we hope this isn't a cheap point but, of
20 course, if these cases had been accepted into
21 the scheme, then we might be some distance away
22 from 95 per cent, rather than just four offers
23 way from 95 per cent of all the applications.

24 Additionally, sir, there have been
25 significant delays in the operation of the HSS

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1 onwards and ten claimants have requested a date
2 for a meeting but are still awaiting one. So
3 there is some significant pendency so far as
4 these cases are concerned.

5 Only one Hudgell case has reached the stage
6 where a mediation is to take place. That
7 mediation was requested on 21 September 2022,
8 and the reply with the proposed date was not
9 received until 24 October 2022 and the mediation
10 is now scheduled to take place in January 2023.
11 So that again, sir, gives some indication of the
12 delays which are part of this system at the
13 moment.

14 Plainly, sir, the concern expressed by you
15 at paragraph 135 of the progress update, that
16 the fulfilment of the targets that Post Office
17 and BEIS had set themselves for making HSS
18 offers should not be achieved they expense of
19 a proper and thorough appraisal of individual
20 applications before an offer of compensation is
21 made, is one that the Inquiry can return to at
22 stage 5 but we simply update the Inquiry today
23 as to the experience of Hudgell Solicitors, and
24 say, as well, sir, that we don't know the
25 reasons for the delays.

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1 beyond the stage of first offers. The
2 experience of Hudgell Solicitors is that a good
3 faith meeting is usually only possible some
4 two months after the request for such a meeting.
5 The suggestion is that some delay may be
6 occasioned by the need to secure medical
7 expertise to the GFM, to the good faith meeting.
8 Again, we're on a very limited sample, sir, but
9 the experience of Hudgell Solicitors is that, in
10 the number of GFMs that they have conducted,
11 there's been -- there have been no medical
12 experts present at those good faith meetings.

13 You can see, sir, from the three cases we
14 identified in appendix A, as it were, the
15 timetable for the, first of all, setting of the
16 GFM and then the making of the revised offer --
17 and you can see, sir, from those three cases
18 that it was between four and seven months until
19 the revised offer is made after a GFM.

20 Hudgells have conducted GFMs in 11 cases so
21 far -- these figures may now be out of date
22 because there have been a couple more over the
23 past few days -- and they're awaiting decisions
24 as to revised offers in nine cases, a further
25 16 GFMs are scheduled to take place from January

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1 As the Inquiry is aware, one major area of
2 concern was the significant delays in the making
3 of offers for compensation in claimants in the
4 HSS scheme who have been declared bankrupt.
5 Offers in those cases have now begun to be made
6 but, regrettably and as predicted, most of the
7 damages, under the terms of such settlements,
8 are being paid for the benefit of the Official
9 Receiver.

10 The Official Receiver is receiving first
11 call on any compensation relating to financial
12 losses and we have attached two examples to our
13 submissions, as Appendix B, sir, of letters from
14 the HSS to applicants explaining what will
15 happen to the award that is made by the HSS to
16 them. Case 4 we've referred to -- the first
17 case we've referred to is Case 4.

18 The HSS panel decided on an award of
19 £259,359, and the applicant has now been offered
20 £8,000 of that award and the Official Receiver
21 is to receive 251,000 of the offer. That
22 applicant, sir, had run a successful business as
23 a subpostmaster for 20 years, his business was
24 ruined and he suffered with poor mental health
25 after the shortfalls he experienced, and the

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1 £8,000 is intended to compensate him for his
2 distress, the rest is for the Official Receiver
3 because of property related matters. That's the
4 division that's being made, so far as damages
5 are concerned: personal damages, as it were, for
6 the claimant; property damages for the Official
7 Receiver.

8 Then the second case, Case 5, we've referred
9 to it as, out of an award of £24,999.32, the
10 applicant has been offered £4,500 whilst the
11 Official Receiver is to receive £20,400.32. The
12 Official Receiver has no authority, other than
13 to settle the debts of the bankruptcy in full,
14 and with the compensatory interest applying, the
15 likelihood is that any award for financial
16 losses will very often be completely swallowed
17 up when those debts are paid, and the issues
18 surrounding bankruptcy are often complex and
19 frequently require specialist legal assistance.

20 As currently appears to Huddell Solicitors,
21 the HSS takes no account of whether the root
22 cause of bankruptcy was or may have been
23 shortfalls generated by Horizon software and
24 compensation is intended to put the claimant in
25 the position they would have been in, if they'd

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1 correct me when I inevitably get this wrong but,
2 essentially, those offers would not have been
3 accepted but they are merely illustrative of the
4 division of the award, as it were, and --
5 **SIR WYN WILLIAMS:** So it's designed to persuade me,
6 if I needed persuasion, that there could be
7 a very significant amount of money at stake for
8 the individual involved on this bankruptcy
9 issue?

10 **MR MOLONEY:** That's it, sir.

11 **SIR WYN WILLIAMS:** Right, okay.

12 **MR MOLONEY:** Also, sir, just to elaborate upon that
13 point very briefly if I may, that, of course,
14 the purpose -- and underlying that submission,
15 is, of course, that the purpose of compensation
16 is to attempt to put the person back in the
17 position that they would have been but for the
18 unreliable operation of Horizon software. So
19 many of the debts which were accrued by this
20 person, in the first place, which led to
21 bankruptcy, were caused by the shortfalls before
22 that and then the way their business then
23 collapsed and then, of course, people have
24 mortgage payments.

25 It's that litany, sir, that you've heard so

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1 not been adversely affected by the unreliable of
2 Horizon.

3 So, sorry, sir --

4 **SIR WYN WILLIAMS:** I was just, as you were speaking,
5 so I'll ask you now -- and if it's embarrassing
6 in any way to answer, then please say so -- but
7 are these figures that you've mentioned, in
8 terms of the offer under the HSS, would they
9 have been acceptable as figures, if I can put it
10 in that way? Forget the split between the
11 Official Receiver --

12 **MR MOLONEY:** I've not had conduct of the cases, sir,
13 but --

14 **SIR WYN WILLIAMS:** No, but what I'm trying to
15 establish, essentially, is whether these
16 figures -- if you remove the trustee for the
17 moment -- would have been acceptable. That's
18 point number 1. If they're not, then there's
19 an ongoing issue under the HSS. If they would
20 have been acceptable, I imagine there's now
21 an ongoing dispute as to whether all this money
22 should be paid over to the Official Receiver.
23 So there are two aspects to it. That's what I'm
24 trying to get at.

25 **MR MOLONEY:** Indeed, sir, and Dr Huddell will

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1 many times during the course of the impact
2 hearings. With this outcome, what happens is
3 that all of the debts that they accrued, all of
4 the debts that led to the bankruptcy, whilst
5 essentially there's a compensation award given
6 to them, that gets swallowed up by the debtors,
7 rather than them, so they're not being put back
8 into the position that they would have been but
9 for the unreliable operation of the Horizon
10 software.

11 They're being left with, in Case 4, £8,000,
12 when, even on the assessment of the HSS, they
13 should have got £259,000.

14 Sir, we did make a point about the agreement
15 of reasonable costs but there's been progress in
16 relation to that, and we say nothing further
17 about that.

18 Then, finally, we've made a point about the
19 provision of medical assistance, assistance for
20 the commissioning of medical reports, and about how
21 that has not really been available in the
22 experience of Huddell Solicitors, and Huddell
23 Solicitors understand there is a need to deal
24 with claims expeditiously. The commissioning of
25 a medical report may delay the making of a first

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1 offer but it's also important that applicants
2 are properly compensated for any personal injury
3 they've suffered, and a broad-brush approach to
4 this issue, is a serious injustice again for
5 applicants.

6 If we could just move very quickly, sir, to
7 the application process which you dealt with at
8 paragraphs 142 to 145 of the progress update,
9 and just really highlight, just for your
10 continuing consideration, sir, the problems that
11 have been experienced by claimants in the HSS.

12 The burden of proof is a difficulty for many
13 claimants, and there have been deductions made
14 from the award with -- in the experience of
15 Hudgell Solicitors -- what they see as no
16 apparent basis and other than the principles of
17 fairness.

18 One of the reasons for the frustration as to
19 the reductions for the absence of documentation
20 is just what they were encouraged by Post Office
21 Limited to do at the time at which these
22 shortfalls were occurring. We've referred you,
23 sir, to a document that we've received during
24 the course of the disclosure, and page 77 of
25 that. We don't ask for it to be brought up but

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1 Going back to Case 4 that we referred to,
2 sir, the man who had run a successful business
3 for 20 years, ended up being made bankrupt,
4 there would have been no reason for him to have
5 been given three months' notice and we say
6 that's an arbitrary consideration in the
7 circumstances that that can form part of the
8 assessment of the requisite compensation in
9 an HSS application. We say that's not always
10 appropriate, and can lead to a significant
11 underpayment (unclear) true loss.

12 Moving on, sir, if I may, to compensation
13 for subpostmasters with overturned historic
14 convictions.

15 We say that the early neutral evaluation
16 conducted by Lord Dyson proved effective in
17 providing the parameters for settlement of
18 non-pecuniary loss claims and, as Ms Gallafent
19 has outlined this morning, they have been
20 progressing well since Lord Dyson provided his
21 report.

22 We are happy to say that -- as Ms Gallafent
23 has reported -- the dialogue between Hudgells
24 and Post Office solicitors has resulted in the
25 payment of an extra £63,000, and that will come

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1 if I just, if I may, read what it says at
2 page 77 of that document the reference you have:

3 "Making good losses. If you have not
4 obtained authority to hold the loss within the
5 suspense account, you will make good the
6 discrepancy after the final stock unit has
7 rolled to the CAP and then make good the loss
8 involved, this involves placing the cash for the
9 amount of the loss in your till."

10 So, sir, that's a process, a procedure,
11 which would not provide a ready audit trail for
12 demonstrating the making-up of shortfalls.

13 Equally, sir, so far as the application
14 process is concerned, in terms of calculating
15 loss of earnings' claims and consequential loss
16 rising, Post Office uses the Network
17 Transformation scheme leavers payment, sir, and
18 that is a redundancy package based calculation
19 of up to 27 months pre-cessation salary and
20 takes into account that Post Office could have
21 terminated the applicant's contract with just
22 three months' notice. So within the terms of
23 the contract was the option for the Post Office
24 to terminate the contract with three months'
25 notice. That's taken into account.

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1 before the holiday period, we understand, and
2 that's a very happy situation for the people who
3 have been able to set up their non-pecuniary
4 claims.

5 The position in respect of respect for
6 claims for pecuniary losses is less happy but
7 it's not disastrous, sir. In our submissions,
8 we identify delays that are occurring but there
9 is progress and we're confident that that
10 progress will continue.

11 As you've heard, sir, two claims have been
12 settled and paid in full, but they remain the
13 only claims for pecuniary losses to have been
14 settled.

15 As far as four other cases are concerned,
16 final settlement proposals have been awaited for
17 months and, in appendix E -- and there is no
18 need to take you to appendix E, we've again
19 included the details within our written
20 submissions -- they were submitted, previously
21 submitted in June this year and one in August.
22 There were requests by Post Office for further
23 information, they were all dealt with
24 expeditiously and there have been significant
25 delays, we say, by Post Office at each stage,

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1 and still no substantive response to any of the
2 claims.

3 We hope that there will be a response to the
4 claims very soon and the reason for the delay in
5 Post Office making proposals for settlement is
6 not known to Hudgell Solicitors.

7 We had hoped and expected that the initial
8 six claims would provide an adequate and
9 appropriate framework for the process of the
10 remaining claims, in essence, a sort of parallel
11 to the early neutral evaluation process. But
12 the delay of months has meant that that
13 expectation hasn't materialised but there is
14 will on both sides for that to happen with these
15 cases and we hope that we will be able to
16 resolve that very soon.

17 In addition to difficulties encountered by
18 some bankrupt claimants under the HSS scheme
19 that we've referred to, problems have also
20 recently arisen in the Overturned Historical
21 Conviction cases in which bankruptcy is
22 a feature.

23 It's fine with those cases which fall under
24 the auspices of the Official Receiver; we've
25 managed to resolve that, with the Official

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1 details if I were to say now, but we would be
2 happy to assist in any way we can, sir.

3 But it is the same principle in this way,
4 sir, that this compensation is designed to put
5 people in the place they would have been if they
6 hadn't suffered and, in particular, in these
7 cases, they hadn't been prosecuted and
8 convicted.

9 So that's what this compensation should try
10 and achieve and, plainly, if a large portion of
11 the damages is being taken from them, in the
12 same way that it is with the HSS, then that is
13 obviously significant injustice, we'd say, and
14 that, essentially, Post Office -- if the
15 bankruptcies were caused by the actions in the
16 first place, it's incumbent on them to do all it
17 can to ensure that these people are put in the
18 position they would have been in but for the
19 unreliability of the Horizon software.

20 **SIR WYN WILLIAMS:** I'm not sure to what extent
21 I can, in truth, delve into these matters, but
22 since I'm having a bit of a go this morning, it
23 seems to me there's almost two different issues.
24 One is your assertion based on what BEIS and
25 Post Office have said, that there should be full

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1 Receiver indicating that they've no further
2 interest. But, as you've heard from Mr Chapman,
3 there are three other cases where they are being
4 dealt with by a different insolvency
5 practitioner.

6 Two of those people are Noel Thomas and
7 David Blakey, and the insolvency practitioner
8 initially relinquished any interest but then,
9 following advice from King's Counsel, they've
10 now claimed an interest in part of the damages,
11 and this has held up payment of damages for
12 non-pecuniary losses.

13 So this is separate to the situation that
14 Mr Chapman has just indicated, because that
15 refers to the Historic Shortfall Scheme. This
16 the Overturned Historical Convictions cases.
17 It's not a scheme, they are cases --

18 **SIR WYN WILLIAMS:** Well, it's a different scheme,
19 but would the principles governing it be the
20 same or not?

21 **MR MOLONEY:** No, they're not, sir. But we've
22 seen -- we're addressing it, and we've had no
23 assistance from Post Office until very recently,
24 but they are slightly different, sir, and it may
25 be that I might be revealing confidential

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1 and fair compensation. Which is another way of
2 saying you should be put back into the position
3 if this had never happened to you.

4 On the other hand, there's the legal
5 position of a person who has been made bankrupt
6 to his trustee in bankruptcy, or her trustee in
7 bankruptcy. It's that latter point, I think,
8 that BEIS and POL were inviting me to dip my oar
9 in, so to speak, not the former point, if I can
10 put it in that way. What do you think about
11 those issues, Mr Moloney?

12 **MR MOLONEY:** Sir, one solution, which might not be
13 attractive to BEIS and POL, is that the actual
14 level of compensation paid is increased so that
15 the debtors that are required to be satisfied by
16 the Official Receiver or the insolvency
17 practitioners can be paid, and the postmasters
18 can be put in the position that they would have
19 been in, but for the unreliability. That seems
20 to us to be the most straightforward way: that
21 both are taken care of.

22 **SIR WYN WILLIAMS:** The trouble is I'm not sitting
23 over the road; I'm sitting in a completely
24 different capacity.

25 **MR MOLONEY:** Indeed, sir. But that seems to us the

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1 way through. It's more expensive, but it may be
2 that there are a limited number of cases of this
3 nature which might mean that it didn't become
4 too onerous for POL and BEIS.

5 **SIR WYN WILLIAMS:** All right. Well, I think I'm
6 getting a feel for where the various roads might
7 lead.

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

9 Then finally and very briefly, sir,
10 compensation for the Group Litigation claimants.

11 Hudgell Solicitors don't represent many of
12 the claimants in this scheme, and so we've very
13 limited observations to make.

14 **SIR WYN WILLIAMS:** Yes.

15 **MR MOLONEY:** But they've taken part in two
16 round-table meetings with Post Office and other
17 interested solicitors, and they are pleased to
18 see the announcement yesterday. But as with
19 other subpostmasters, although they're not
20 subpostmasters' lawyers, but they're not as
21 invested in this as others, then they have
22 concerns about the funding of this particular
23 scheme.

24 The biggest threat to the success of the
25 scheme at the outset is the size of the panel

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1 and the resources available to process
2 applications, but Hudgell Solicitors are pleased
3 to see that a panel of independent people has
4 been appointed to oversee its work.

5 So to conclude, sir, although the ENE
6 process has facilitated significant progress in
7 the Overturned Historical Convictions
8 non-pecuniary loss claims, there has been some
9 delay with the pecuniary loss compensation, and
10 the position of bankrupt claimants is also of
11 specific continuing concern, which has not been
12 properly addressed by Post Office or BEIS,
13 although they have begun to address it in the
14 week leading up to this compensation hearing,
15 sir.

16 So we respectfully ask that the Inquiry
17 continue to review the cases and review the
18 issues relating to compensation as proceedings
19 continue through 2023. Whilst there have been
20 difficulties, Hudgell Solicitors see no reason
21 why most, if not all, current claims for
22 compensation by their clients realistically
23 cannot be resolved in the course of 2023, and
24 the Inquiry's continued attention to the issues
25 around compensation can only help to ensure that

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1 the desired closure is achieved. Thank you,
2 sir.

3 **SIR WYN WILLIAMS:** Thank you, Mr Moloney.

4 Mr Henry, I'll give you a choice. You can
5 have a quarter of an hour now, and we break at
6 1.00, or we can break for lunch now and you can
7 have your continuous period of 40 minutes.

8 **MR HENRY:** May I ask you, sir, if we break for lunch
9 now.

10 **SIR WYN WILLIAMS:** By all means. So we'll start
11 again at 1.45.

12 (12.44 pm)

(The Short Adjournment)

14 (1.45 pm)

15 **SIR WYN WILLIAMS:** We're down to two this afternoon,
16 as you can see. Our colleague is unavoidably
17 having to go somewhere else.

18 Yes, Mr Henry?

Submissions by MR HENRY

20 **MR HENRY:** Thank you, sir.

21 There are two issues. The first is the
22 continuing and inexcusable delay in delivering
23 compensation to the wronged, to the innocent,
24 and that will also include whether the awards
25 proffered are even remotely approaching

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1 acceptability.

2 The second, which is inextricably entwined
3 with the first, is whether POL will accept that
4 it deliberately denied, obstructed and delayed
5 appellate rights, needlessly, unjustly and
6 wrongly prolonging the suffering of those that
7 it had devastated, either by civil judgments and
8 bankruptcy, or criminal convictions.

9 Wholly unjustified, iniquitous prolonging of
10 suffering which, without exaggeration, you might
11 even compare to torture, because these are
12 people who were destroyed by the legal system,
13 as Professor Moorhead in his evidence before you
14 expressed, as long ago as February, his concern
15 that this tragedy, these appalling injustices,
16 had been facilitated and perpetrated by legal
17 services, and to deny people their Article 6
18 rights, both as to contesting the charges
19 against them -- and that is beyond question --
20 but then to suppress and bury the very
21 exculpatory material, the very information that
22 would allow them to go before a court and say,
23 "I was wrongly convicted, this judgment against
24 me ought to be set aside", is a degree of
25 wrongdoing of such magnitude that it is without

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1 precedent.

2 And BEIS is also, as we have submitted,
3 responsible.

4 We come to the buzzword, the slogan: full
5 and fair compensation. Well, of course, sir, as
6 you well know, no amount of money can right the
7 wrong, undo the harm and heal the wounds caused
8 by these terrible events. "Terrible" is indeed
9 a strong word but it almost becomes
10 an understatement, sir, if one adds to the
11 appalling injustice of wrongful conviction or
12 wrongful civil judgment, a deliberate and
13 malignant desire or policy to suppress the
14 truth, so that even the senior courts are
15 deceived, so that these appellate rights, which
16 are sacred in our system of justice were
17 effectively destroyed for years.

18 Now, an integrity test can easily be
19 determined by POL's approach to these two
20 questions: first, did the Post Office
21 deliberately interfere with or obstruct
22 convicted defendants rights of appeal? Second,
23 if so, was its purpose in doing so improper?

24 Sir, I invite you now to ask Ms Gallafent
25 those questions because, although she has

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1 in status between the unfortunate agent and the
2 oppressive master, allowed this to happen,
3 before 37 Crown Courts around the country,
4 37 Crown Courts, involving over 700 people, over
5 a 20-year period, and that is why, sir, it ought
6 to be resolved right now, right now, without any
7 more delay, dilatoriness or prevarication.

8 So, sir, I ask you to invite my learned
9 friend to answer those questions: deliberate
10 interference for a wrongful purpose.

11 **SIR WYN WILLIAMS:** Well, I'm not going to make any
12 kind of direction, Mr Henry, as I'm sure you
13 appreciate. Whether or not Ms Gallafent wants
14 to say anything is a matter entirely for her at
15 this stage.

16 **MS GALLAFENT:** Thank you, sir. No.

17 **MR HENRY:** Well, that may be a matter of profound
18 regret, not of course for my learned friend who
19 acts on instructions, but it may be a matter of
20 profound regret, and we shall see -- by their
21 fruits you shall know them, sir. We shall see
22 whether this is performative breast beating or
23 an actual realisation of the enormity that has
24 been done.

25 Before addressing, in particular, the

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1 submitted this morning that she does not wish to
2 address them until Phase 5 of this Inquiry,
3 these awards are going on now and there should
4 not be any further delay, such as the delay, for
5 example, in argument that was expressed in
6 *Hamilton* that "Oh no, you don't need to deal
7 with ground 2 abuse, let ground 2 abuse be
8 resolved in the malicious prosecution hearings,
9 the malicious prosecution claims", and the court
10 robustly, albeit belatedly, but robustly
11 rejected that approach.

12 So if I may, sir, with your permission,
13 I shall sit down and give way to Ms Gallafent to
14 answer those two questions which arise from the
15 argument that has been posed because it is
16 important that they are resolved as soon as
17 possible, and that there should be no more
18 pettyfogging or equivocation on the matter,
19 because this goes to the actual *gravamen* of what
20 is under consideration here: the wholesale
21 contamination of civil and criminal justice by
22 a private prosecutor who had a trusted
23 reputation, was a public corporation, and
24 historically an arm of the executive.

25 Such inequality of power, such a disparity

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1 pernicious effect of delay, I want to come, if
2 I may, to a central premise of the argument as
3 to why we submit that deliberate denial of
4 appellate rights for a malicious and malignant
5 purpose is a live issue here.

6 As the CCRC noted, the Post Office's
7 attitude towards disclosure tends to prove that
8 the intransigence identified by the honourable
9 Mr Justice Fraser in the Post Office's conduct
10 of the Horizon Litigation beset the manner in
11 which they conducted criminal prosecutions.

12 It was as a consequence of an ineffectual GT
13 (Grant Thornton) report commissioned by the
14 CCRC, which relied on the transaction logs, that
15 the CCRC then decided that that report was of
16 little utility and they would have to await the
17 decision of Mr Justice Fraser in Horizon
18 number 6.

19 The transaction logs themselves, sir, would
20 not reveal the bugs, errors and defects which
21 would have been apparent from the ARQ data, and
22 of course, they were not aware of the PEAKs.
23 So, therefore, at paragraph 47 of their
24 statement of reasons, they decided that they
25 would have to await the Horizon litigation,

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1 which they then described as revealing
2 a fundamental shift in understanding.
3 Now, that is why, sir, we went into
4 exhaustive detail in our document on
5 compensation, on the extraordinary, almost
6 unbelievable conduct of that litigation, both
7 the common issues and also the Horizon
8 litigation. Because, sir, it appears to be,
9 again, inextricably linked to the issue of
10 openness, transparency and candour. Those
11 criminal appeals in *Hamilton and others* were
12 literally hanging by a thread on the resolution
13 of Horizon number 6.
14 But I now want to turn to the pernicious
15 effect of delay in relation to a convicted
16 individual, leaving aside for this moment, of
17 course, that two of those with Ms Page and
18 Mr Schwarz, we are proud to represent, Ms Arch
19 and Mr Castleton, were never convicted -- never
20 convicted. But let's deal with a conviction.
21 First of all, which would be common to
22 Ms Arch as well, the unjust shunning and
23 suspicion after they had been dismissed and the
24 rumours circulate, the gossip, about "They've
25 robbed our pensions, they've robbed our granny's
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1 disclosable.
2 You are effectively a convicted person, even
3 though you are completely innocent. The
4 pensions contributions that have never been
5 made; the National Insurance contributions that
6 have not been made, and then the loss of perhaps
7 capital, undoubtedly, both sunk into businesses
8 and also in property, replaced by poor housing,
9 caused by one's reputational damage, consequent
10 as well upon one's loss of liberty.
11 Now, I've dealt with those in the abstract,
12 the generic. I now want to transpose them on to
13 a living human being who is here today, Janet
14 Skinner, who was, from the time she started at
15 the Post Office really the darling or the pet of
16 the Post Office, back in the early 1990s, and
17 did phenomenally well, and was respected and
18 liked and admired by all of her colleagues, and
19 then had it all taken away.
20 Of course, you know that she was charged
21 with theft and false accounting. She was
22 advised that, on the strength of the "evidence",
23 in inverted commas, she should plead guilty to
24 false accounting and did so, in the hope that
25 she would not be sent to prison but, of course,
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1 pension"; the wrongful dismissal, the use,
2 again, of the law to dismiss them.
3 The criminal conviction that followed
4 wholesale breaches and utter dereliction of the
5 Criminal Procedure and Investigations Act, the
6 duty of disclosure, the Code for Crown
7 Prosecutors, the Attorney General's guidelines
8 on disclosure, where the private prosecutor who
9 should act still as administer of justice,
10 particularly when they are a public corporation
11 acted as an unscrupulous, ruthless and
12 remorseless party.
13 Incarceration. Then the unjust judgments
14 that follow. I now actually involve those who
15 were not convicted, unjust civil judgments,
16 bankruptcy, unjust property seizure. Damages,
17 confiscation, compensation to POL. All based on
18 entirely fictitious, utterly baseless
19 computer-generated losses.
20 The ruined health, both mental and physical.
21 The intractable stress-related illness,
22 autoimmune disorders, PTSD. The impaired and
23 shattered earning capacity. The fact that you
24 don't get a job because, of course, under the
25 CRB and then the DBS, these matters are
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1 she was.
2 As she walked beside me today she nearly
3 stumbled, and she limps and I asked her why.
4 She has nerve damage from cervical vertebrae
5 four downwards, she has neuropathy from
6 an autoimmune disease that struck her down in
7 2008, after she'd been released from prison. Is
8 it just a coincidence? Is it too remote? Is
9 there going to be some clever legal argument
10 about causation? Some *novus actus* because some
11 virus descended from the North Sea and landed in
12 a cup of coffee in her house in Hull? Who
13 knows.
14 She was told she was never going to walk
15 again. She limps and will always limp because
16 of it.
17 Her house was repossessed but, fortunately,
18 she secured a sale. But when she was released
19 from prison, she couldn't find anywhere to live.
20 So she had to live in condemned housing --
21 condemned housing -- with her then 14-year old
22 son, Matthew, who is now 31; her 17-year old
23 daughter Toni, who is now 35; living in
24 condemned housing. Those two children
25 traumatised by the fact that their mother, as
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1 I said to you, refused to see them while she was
2 in prison because she did not want to see them
3 and she more importantly did not want them to
4 see her in prison garb.
5 So she could get nowhere to rent and she
6 hasn't worked because she can't work, since
7 2008.
8 Now, the emotional trauma visited on her
9 children, will that be compensated, the fact
10 that they were living in condemned housing with
11 their mother? The fact that they were
12 traumatised by the fact that their mother was
13 taken away from them when one was 14, the other
14 17? They're now 31 and 35. They were asked to
15 compose statements on the effect of this upon
16 them and, as they did so, they wept.
17 The trauma attenuates across time and space
18 and it doesn't go away. It doesn't go away, as
19 Janet Skinner said to you, sir, in the impact
20 hearings, "No amount of money is going to make
21 this better". These people have been changed.
22 They have been changed in a way that not even
23 you or I can see, and one knows from medical
24 science that that is right, that stress of this
25 profound nature, trauma of this profound nature,
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1 textbook but should actually reflect upon that
2 vital question: where would these people be now
3 had they never suffered this appalling
4 injustice, that the trajectory of their lives
5 had not been flattened or crushed by false
6 accusation and then the denial over many years
7 of a right of appeal?
8 That is why I really adopt Mr Moloney's
9 point that, yes, the Official Receiver can
10 devour an award, but there wouldn't be creditors
11 if these people had not been branded, shamed,
12 convicted or otherwise destroyed in this
13 inexcusable manner, by Britain's most trusted
14 brand.
15 That is what full and fair compensation
16 requires, sir. Not that the Official Receiver,
17 the trustee in bankruptcy, takes that which is
18 owed to the creditors, but to ask oneself why
19 Mr Castleton, who sank so much money into that
20 business, who had had a distinguished career
21 serving his country, then in the City, and then
22 decided that he wanted a change of pace in his
23 life and would become a subpostmaster, ended up
24 being bankrupted, ended up being shunned and, as
25 you heard from me when I made an opening
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1 actually affects people at a cellular level.
2 It is now beyond question that mitochondria,
3 which are the actual driving force of human
4 existence, providing energy and communication,
5 are badly affected by stress, and that is why,
6 sir, it is not a coincidence that, in the whole
7 history of this saga, you have people who have
8 already died, who have committed suicide, and
9 who all have, as a group of people, an unusual
10 incidence of physical and psychiatric health
11 issues.
12 That is because of the appalling suffering
13 to which they were needlessly subjected but,
14 more importantly in the context of this matter,
15 it was inordinately and wrongly prolonged.
16 Now with great humility, sir, you will
17 realise that not even with the powers vested in
18 you, you don't have the power to do anything to
19 right that wrong. Your duty is to the truth,
20 but these profound wrongs have affected these
21 people in ways that we may never understand, and
22 which also may not be legally recoverable, which
23 is why one really does make this submission,
24 that full and fair compensation should not be
25 a box-ticking exercise going through a tort
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1 statement, the atrocious degradation and cruelty
2 shown to his child, his daughter, by those who
3 thought that they were better than her because
4 her father was a thief.
5 As I've said, the damage is extraordinary;
6 like a stain, it spreads. It was not contained
7 for over 20 years and it may never be eradicated
8 because of that, and that is why the full
9 measure of damages is required and justified in
10 affirmative answers in due course, from the Post
11 Office, and the paymaster, BEIS, to those two
12 questions that have been posed: those two
13 questions, simple questions, sir, simple
14 questions which would reveal so much if they
15 were answered, as opposed to that silence.
16 Or your question earlier today, sir, where
17 you were talking about artificial obstacles.
18 You didn't use the word "pettyfogging" but the
19 "unnecessary bureaucracy". I mean, that might
20 have been necessary if there was going to be
21 a fight, you said, but did you get any
22 categorical assurance from those representing
23 the Post Office?
24 "Oh no, no, it's not going to be a fight."
25 You got this: "It's unlikely".
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1 We're not here to deal in likelihoods, sir.
2 We're here deal with addressing the reputational
3 damage, the mental health and physical health
4 that has been scarred, the future earnings that
5 would have been missed, the opportunities that
6 could have been grasped that never were, and all
7 unnecessarily prolonged by a decision at the
8 highest level that they would rather preserve
9 commercial and reputational matters, as opposed
10 to doing justice to the victims.

11 As you saw, sir, the Post Office was
12 receiving advice on compensation from the same
13 Mr Simon Clarke who wrote the Clarke Advice in
14 2013. Why? Why did it take a further seven
15 years -- eight, in fact, before the resolution
16 by the Court of Appeal's judgment -- for the
17 matter to be put beyond question?

18 Why in the interim, before that, was there
19 that tooth and claw last-ditch stand before
20 Mr Justice Fraser in those two trials where some
21 extraordinary events occurred, which need not
22 trouble us now because, of course, they're in
23 the forefront of your mind.

24 So I want to conclude, sir, by thanking you
25 for arranging this hearing, requiring BEIS and

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1 But I return to her, Ms Skinner and also
2 Mrs Misra. With Mrs Misra as well, I would wish
3 to say a few words now about the extraordinary
4 suffering that she endured, together with her
5 husband and children.

6 Let us not forget, sir, that from 2005, they
7 were trying to make their business work. In
8 2010, after sinking family money into the
9 business, to satisfy wholly fictitious
10 shortfalls, she was sent to prison, pregnant.
11 From 2010 to 2021, she had to wait like
12 Ms Felstead and Ms Skinner, and it is now nearly
13 2023 and, of course, a claim has not yet been
14 submitted in her case but it is that long delay
15 before her name was cleared that is a matter we
16 respectfully submit that ought to be taken into
17 account: the impact on her children, the impact
18 on her husband, who descended into alcoholism.
19 Families get ripped apart.

20 Those who would normally be sometimes the
21 people to whom one would seek solace and
22 support, become ashamed because of the myth of
23 the Post Office's infallibility as a national
24 institution that their own flesh and blood had
25 acted with malign and clandestine dishonesty,

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1 POL and also the UKGI to appear before you, and
2 for BEIS and POL to answer your questions and
3 explain what they claim to have done in
4 resolving this issue of compensation.

5 But I still come back, sir, to those two
6 questions which have not been answered, and they
7 will be the test of whether this is more words,
8 words, words. Words, words, words, which you
9 have read last night and words, words, words,
10 which you have heard today. But still, some of
11 the submissions heard this morning have the
12 capacity to amaze.

13 I mean, what parallel universe does POL
14 inhabit when stating that the lack of a formal
15 scheme has been no impediment to the settlement
16 of pecuniary losses? How so, particularly when
17 Ms Felstead waited half her life to be cleared
18 and had to wait until the 19 October to have the
19 unjust confiscation order made against her back
20 in 2002 repaid with interest?

21 So from the 23 April 2021 to 19 October
22 2022, that was not settled. It is interesting
23 to note, sir, that she had been convicted on
24 26 April 2002 and had to wait until 23 April
25 2001 to be vindicated.

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1 and that is a matter that has destroyed families
2 in a way that can never be healed or
3 compensated.

4 But we come back to this annoying question,
5 or those two questions that have not been
6 answered and, again, before closing -- and
7 I promise you, sir, that this is my last
8 submission -- Tracy Felstead, Janet Skinner and
9 Seema Misra, against all the odds, and against
10 considerable opposition from all quarters,
11 pursued ground 2. You will know, sir, from
12 submissions I've already made but also from the
13 history of that case, that ground 2 was bitterly
14 opposed.

15 So it is, sir, that we respectfully submit
16 that, notwithstanding the protestations to the
17 contrary, what you have heard today is again
18 part of the disconnect between rhetoric and
19 reality. Returning very briefly to the
20 Historical Shortfall Scheme, the fact that POL
21 has published statistics that 75 per cent of
22 those claims have already been settled, causes
23 one justifiable concern, given the manner in
24 which it has previously approached this matter,
25 and one wonders if there may need to be now

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1 a reopening of those awards, given the
2 penetrating analysis on behalf of Huggells by
3 Mr Moloney about how the unrepresented can be,
4 again, taken advantage of.

5 So it is shameful, embarrassing and beyond
6 comprehension that those exemplars put before
7 you by Mr Moloney actually happened before
8 lawyers came in to resolve the matter. One asks
9 "Why is it so difficult? Why does it take so
10 long to act with integrity?"

11 Why does it take so long to do the right
12 thing, particularly since these people were
13 subjugated, they were victims of effectively
14 state power, an agency or public corporation
15 that oppressed them, criminalised them, when
16 they'd served that institution with loyalty,
17 with kindness to their customers and with
18 integrity, and yet they were degraded in that
19 way and deprived of the means to clear their
20 names.

21 It all started, even before the very
22 beginning. First, they were sloppy, they were
23 slow, they were incompetent. It was all their
24 fault. Then, of course, for that 1 per cent or
25 less who were subject to those latent bugs,

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1 of this malignant culture of secrecy and
2 non-disclosure.

3 Those two questions, unanswered, will
4 continue to hang over the head of those who
5 represent the Post Office but, more importantly,
6 those who are the directing mind of the Post
7 Office. It is a profound shame to this country,
8 that, even after all that has been done wrong,
9 that silence, even today, persists.

10 Those are our submissions, sir.

11 **SIR WYN WILLIAMS:** Can I just be clear that I've got
12 right in terms of the persons whom you
13 represent?

14 Ms Felstead, Ms Misra, Ms Skinner and
15 Mr Parekh fall to be compensated under the
16 Overtaken Conviction scheme, as I understand
17 it.

18 **MR HENRY:** Yes, that is correct, sir.

19 **SIR WYN WILLIAMS:** Mr Castleton and Ms Arch will
20 fall into the GLO scheme that Mr Chapman
21 referred to this morning --

22 **MR HENRY:** Correct, sir.

23 **SIR WYN WILLIAMS:** -- and Mr Shiju falls into the
24 Historical Shortfall Scheme --

25 **MR HENRY:** Correct, sir.

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1 errors and defects, and the remote tampering
2 with the system, they were lying, dishonest
3 thieves, and yet year on year, as this
4 irrefutable evidence built up, it was covered
5 up, it was buried and, with it, the Post Office
6 realised that they were burying them.

7 In conclusion, sir, if that is not taken
8 into account, and if that is not amply and
9 properly recognised and factored in to the
10 awards that are to be made, then this whole
11 compensation scheme or schemes will not be fit
12 for purpose.

13 This not benevolence, this not Lady
14 Bountiful giving alms. This is to restore
15 people to the position that they would have been
16 and might have been, what they would have
17 achieved -- a bright 19-year old, Tracy
18 Felstead, who lost her entire adult life through
19 the Post Office's malevolence.

20 So you can't just give them a sort of
21 mechanical or merely functional sum, based on
22 a box-ticking exercise. There has to be
23 a qualitative assessment of these people's
24 potential, the assets that they lost and the
25 opportunities that they were denied, all because

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1 **SIR WYN WILLIAMS:** -- and is currently in the
2 process of going through that scheme.

3 **MR HENRY:** Yes.

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

5 **MR HENRY:** Thank you, sir.

6 **SIR WYN WILLIAMS:** Thank you, Mr Henry.

7 Mr Stein. Mr Henry was correct almost to
8 the last minute in terms of his prediction, and
9 I'm just a bit concerned about the shorthand
10 writer.

11 Would you like a short break before Mr Stein
12 starts because I wouldn't want to interrupt him,
13 and he's likely to be about the same length of
14 time.

15 **THE TRANSCRIBER:** A short break would be great,
16 thank you.

17 **SIR WYN WILLIAMS:** Fine, we'll have a short break
18 and then resume with Mr Stein.

19 (2.25 pm)

(A short break)

21 (2.35 pm)

22 **SIR WYN WILLIAMS:** Mr Stein.

Submissions by MR STEIN

24 **MR STEIN:** Sir, good afternoon. I will remain
25 seated as I have done for other submissions

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1 throughout this Inquiry.
2 As you know, I represent, briefed by Howe+Co
3 solicitors, 156 Core Participants, as well as
4 supporting applications being made by other
5 subpostmasters, mistresses and managers within
6 the scheme.

7 Sir, one of the advantages, perhaps, of
8 going last today, not that I can just therefore
9 take the entire afternoon that's left, but --

10 **SIR WYN WILLIAMS:** You certainly cannot!

11 **MR STEIN:** -- one of the advantages is this: it's
12 allowed us time to consider the various emails
13 and contacts that we've had from clients that we
14 represent, because they have been listening, now
15 that the live feed has been restored, and they
16 have been taking account of what has been said
17 by all of the parties who have made submissions
18 before you.

19 The summary answer from our client group as
20 to what they have heard, rather sadly, is they
21 hear that next week or in the New Year that
22 things are going to happen, that schemes will
23 change, that there will be something being done
24 about funding, there will be something being
25 done about individual compensation claims.

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1 members, the litigation group members. What we
2 see as lacking in relation to the compensation
3 schemes variously being discussed today is
4 a lack of controlling mind, lack of cohesion,
5 lack of intelligence, being placed into these
6 schemes across the board.

7 We shouldn't be in a situation whereby,
8 essentially, there are different choices and
9 different types of systems being put forward in
10 relation to people that have essentially the
11 same issues as subpostmasters, mistresses and
12 managers.

13 Of course we represent people who are right
14 now hurting. These are people who are finding
15 it very difficult and it's irresistible to say
16 that we are looking towards a Christmas break or
17 holiday break, whereby people are thinking about
18 how they can finance that and how they can
19 manage through that period.

20 Now, the truth here is that the Post Office
21 has fought and fought and fought to prevent the
22 truth coming out, and against the fair provision
23 of compensation, to those that have been harmed
24 by this most public of IT scandals. My
25 instructing solicitors, Howe+Co, have worked

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1 So, as an example, Sinead Rainey, who has
2 been mentioned today by Ms Gallafent, her
3 particular position is one that is very
4 difficult. She wasn't in fact, if you like, the
5 subpostmaster but she acted as in the position
6 of the subpostmaster, and that was recognised at
7 the time because the Post Office pursued a debt
8 against her.

9 Now, we hear today that her position will be
10 addressed in the next few weeks.

11 So the difficulty that our client group has,
12 in the responses that we've had so far today, is
13 that they only hear "Delay, sometime later,
14 something will happen". They don't hear that
15 work is ongoing. They don't hear about what has
16 happened in the background.

17 So, sadly, sir, we suggest that the product
18 of what we have had today, through the
19 compensation hearing that you arranged as part
20 of this Inquiry, has been, of course, useful but
21 not enough.

22 Yesterday, we saw a product arising out of
23 a lack of controlling mind across these
24 compensation schemes. We had served upon us in
25 the afternoon the proposed scheme for GLO

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1 tirelessly with campaigners to shame the Post
2 Office into recognise something that they must
3 compensate subpostmasters.

4 Regarding compensation, the standout issue
5 that has bedevilled the provision of timely
6 compensation for those that have suffered so
7 much at the hands of the Post Office and BEIS
8 has been the failure to make provision for
9 reasonable financial costs of claimants, so that
10 they can have legal advice and representation.

11 Sir, we're not just talking about a couple
12 of people who need help. These are hundreds of
13 subpostmasters with complex, compound claims
14 that can only be assessed and presented with the
15 support of expert solicitors with experience in
16 difficult compensation cases.

17 It seems to us and those we represent that
18 the Post Office and BEIS seek to wind back the
19 clock and pretend, like Bobby Ewing returning
20 from the dead in Dallas, from one episode to the
21 next, that it was all a bad dream.

22 Sir, I'm sure you remember Dallas very well.

23 The Horizon System was defective.

24 **SIR WYN WILLIAMS:** Don't tempt me, Mr Stein!

25 **MR STEIN:** Sir, the Horizon System was defective.

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1 It's a reality.
2 We suggest, as we're learning through the
3 evidence in Phase 1 and Phase 2 of this Inquiry,
4 that the true extent of the losses to
5 subpostmasters, managers and their assistants
6 are unlikely to be known for some time. We
7 believe very strongly that we may, so far, have
8 only seen the tip of the iceberg. It will be
9 a matter for another time for us to assess and
10 consider how much damage had been caused, as we
11 look at the range of factors which contributed
12 to the shortfalls and losses seen by
13 subpostmasters. But it does seem very likely,
14 from what we have heard in the evidence so far,
15 that many subpostmasters will not have
16 understood that the losses they suffered and
17 came to their door were not their fault but the
18 fault of the Horizon System.
19 Let me then turn to the position of BEIS and
20 the Post Office and we should say, for the
21 record, that part of the problem with BEIS and
22 the Post Office is that they have no experience
23 of engaging with and compensating victims.
24 Ms McMahon, who is an incredibly experienced
25 solicitor who works at Howe+Co, she and I have

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1 process. BEIS, we suggest, does simply not
2 understand that traumatised people do not
3 appreciate prototype schemes being placed on
4 websites without any advance notice and without
5 provision of the draft scheme to those who
6 represent them.

7 In light of these recent events, we say that
8 you, sir, should recommend with an interim
9 report that all schemes are overseen by
10 an independent person, with power to resolve
11 disputed issues between the parties, a trusted
12 individual, such as Lord Dyson, who has overseen
13 the recent neutral evaluation.

14 The brutal reality is that, notwithstanding
15 progress that has been discussed today and
16 progress made mainly in relation to interim
17 payments, subpostmasters continue to suffer as
18 they did in July. There has been a lack of
19 progress where progress is most urgently needed.

20 Now, sir, you are aware from our written
21 submissions and from the file that we have
22 presented to the Inquiry, that we have set out
23 within those submissions and schedules many
24 accounts of our clients, and I will not go
25 through all of them. Nevertheless, whilst you

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1 discussed what is requiring. The client doesn't
2 just fall in the door and you say, "Right, here
3 we go".

4 You establish essentially a meeting with the
5 individual client to set out what is going to
6 happen. There then needs to be, within the
7 rules that solicitors comply by, through the
8 SRA, the Solicitors Regulation Authority, client
9 care letters, letters that clearly set out
10 a case plan and letters that also deal with the
11 question of how cost is going to be dealt with
12 through the process.

13 By the time that has happened and gone
14 through, we're talking about an hour or two gone
15 already of solicitor's time.

16 What is happening, therefore, is that, in
17 terms of setting out the schemes that, as
18 an example -- we'll deal with it in more detail
19 in a moment -- under the GLO, there needs to be
20 an understanding of what actually happens when
21 you're dealing with people that have such
22 complex needs through compensation.

23 Unsurprisingly, we say, there may have been
24 very few, if any, compensation schemes where the
25 perpetrators call the shots and control the

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1 have this material, this is a public hearing and
2 there needs to be a recognition on the public
3 recording of the ongoing harm caused by the Post
4 Office, and so I will summarise.

5 Sir, in relation to the file we presented,
6 you'll find this at page 2. I have it behind
7 tab 1 but, using the pagination bottom
8 right-hand corner, which is consistent
9 throughout the file, this is page 2. I will not
10 read of all entries but parts of some.

11 I refer to Peter Worsfold. He said in July
12 that he had not been able to repay his 94-year
13 old mother. This month, December, he says he
14 has received interim compensation and it has
15 helped pay some debts. He is concerned that,
16 receiving compensation in dribs and drabs means
17 that he and other subpostmasters cannot invest
18 and receive income to look forward to in old
19 age. He has effectively lost 20 years of
20 business. Importantly, he instructs that the
21 compensation he received did not touch the sides
22 of what he has lost.

23 Virendra Bajaj:

24 "My current financial position is worsening
25 day by day and the whole cost of living is

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1 petering me off a cliff edge. I worry
2 constantly how I will be able to afford the
3 bills. I can only pay off nominal amounts of
4 the debt, and I have been told it will take
5 100 years to pay it all back. Mentally
6 draining, stressful and exhausting."

7 Robert Thomson:

8 "I've been fighting five years to get my
9 name cleared. In that time, I've only had one
10 payment which was very beginning when this case
11 was getting looked into. Does no one realise
12 the financial strain you're putting on me and my
13 family?"

14 Brent Whybro:

15 "I feel that the inertia in the whole
16 process is extremely frustrating and alongside
17 the ongoing Inquiry this just as to the strain."

18 Joanne Foulger:

19 "Christmas is going to be a struggle.
20 Christmas dinner will be microwaved.
21 Disappointment after disappointment is making
22 a hole so big that I feel I'll never be whole
23 again."

24 Shala Ahmed and Faisal Aziz:

25 "We're worried if this winter we will be
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1 able to heat our home and serve meals to our
2 large family at the same time. The interim
3 payment we were given will only last couple of
4 months considering the rising energy bills and
5 inflation overall."

6 He discusses his older children who have
7 started to hide their needs. His 13-year-old
8 daughter had a tear in her school shoe:

9 "She didn't tell us about it, and decided to
10 glue it needed to save money."

11 Anonymous witness, I'll refer to by the last
12 three digits 293:

13 "My experiences regarding the compensation
14 process and claims submission have been
15 difficult due to the length of time that has
16 elapsed. It has caused mental stress. My
17 financial pressures have affected by earning
18 capacity, unable to work full time and overtime
19 as I used to. Applying for loans of high
20 interest in order to get through this time and
21 borrowing from friends and family members."

22 James Withers:

23 "There appears to be no thought or
24 compassion for the victims from them, or how
25 most of the victims are actually struggling.
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1 They seem to make it their mission to delay the
2 outcome as much as they possibly can."

3 Joan Bailey, the wife of the Core
4 Participant Lawrence Bailey:

5 "Our financial circumstances are we still
6 have a mortgage on our property, mortgage should
7 have finished in 2021, and loans for the
8 business. We're still paying out payments to
9 the bank out of our pensions and we are looking
10 forward to the day when final compensation is
11 paid. Only then we will feel it is over."

12 Victor Price:

13 "I have for many years had mental health
14 issues I was not aware of, until I had lost
15 everything. We agreed to sell everything and
16 just move into our caravan. This we did for
17 two years. We've been renting ever since. We
18 don't want charity, we just want some form of
19 compensation to make up for the years we have
20 paid in rent."

21 Thomas Brown:

22 "The compensation process has been extremely
23 unreliable. I was simply told that my case was
24 complicated and they would be in touch. It once
25 again left me in a state of financial
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1 difficulty. The Government has agreed that the
2 bankruptcy should be paid back in full. The
3 only people in disagreement were the trustees.
4 However, because I'm in such a desperate
5 financial state I had no choice but to accept
6 the 51 per cent I was offered. This had
7 a detrimental impact on my mental health as it
8 dragged up all the past trauma caused by the
9 Post Office over the years."

10 Now, sir, later on we're going to be
11 referring to those as the 51 per cent cases, the
12 bankruptcy cases, that have been dealt with like
13 that.

14 Thomas English:

15 "We were seriously abused by the management
16 whose wages were contributed to by our
17 investments. The fact that I, as a retired
18 police officer and former Royal Marine, could
19 have my reputation trashed by the management of
20 a supposed organisation that the pillar of the
21 establishment, the thing really eats you up and
22 it does so now and I haven't had the suffering
23 of others at the extreme end of this manner."

24 Donna Gosney:

25 "I was one of the many ex-subpostmasters
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1 forced into bankruptcy, solely due to the
2 scandalous, damning and bullying bestowed on me
3 by the Post Office."

4 Sir, those are some of the individuals, and
5 there are others that are mentioned within that
6 schedule.

7 We mention that because we need to make sure
8 that, not just the Inquiry panel, not just the
9 Inquiry Team, but everybody understands that
10 this is ongoing suffering that is happening
11 right now and we're talking about the need to
12 deal with people right now.

13 I take you now to the written submissions we
14 have put forward on behalf of our client group,
15 and turn, please, to pages 8 and 9 and
16 coincidentally paragraphs 8 and 9., and I want
17 to touch on Heather Williams's case.

18 Paragraph 8 of our written submissions.

19 The effect that BEIS and POL's delay is
20 having on our clients is starkly demonstrate, we
21 suggest, by the case of Heather Williams. She
22 spoke to Mr Enright, my instructing solicitor,
23 on 1 December 2022. She told Mr Enright that
24 shortly after the announcement of the GLO scheme
25 she was informed by Freeths on a Friday that she

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1 of competent solicitors such as Howe+Co and
2 where required, advice from counsel, and input
3 from medical or other experts, in order to
4 present their cases in the best possible light,
5 and they should not have to do it on the cheap
6 or be forced, as they are now, to go cap in hand
7 to the perpetrator for some type of time-to-time
8 funding.

9 Further, we say that all subpostmasters,
10 whether within the Historic Shortfall Scheme the
11 Overturned Historical Convictions scheme, or the
12 Group Litigation scheme as proposed, should be
13 entitled to aggravated damages. Sir, you will
14 be very familiar with the case law, the 1972
15 case of *Broome v Cassell*, where aggravated
16 damages were considered in relation to the
17 following context: the high-handed malicious,
18 insulting or oppressive behaviour that would
19 justify going to the top of the bracket, in
20 terms of damages, and awarding as damages the
21 largest sum that could be fairly regarded as
22 compensation.

23 Well, the judgment of Mr Justice Pumfrey, as
24 he then was in *Nottinghamshire Healthcare v*
25 *News Group Newspapers* in 2002, where frankly he

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1 would receive a significant sum by way of
2 interim payment. However, on the following
3 Monday she was told that she would receive
4 nothing because she is in an IVA. Ms Williams's
5 debt, in respect of the IVA, is less than 2,000.

6 Ms Williams has very little money. Her
7 accounts with her electricity and gas providers
8 are £2,000 in arrears. She is worried that her
9 power will be cut off. Consequently, she
10 doesn't heat her home. She often eats pot
11 noodles. Three weeks ago, Ms Williams had a bad
12 fall at home because she was tired and weak from
13 not having eaten. During this time she says she
14 was in so much pain, cold and hungry and all
15 alone. She was unable to get up from the floor
16 for over two days and she finally managed to
17 crawl to where her phone was but it was out of
18 charge. Luckily she could get to her charger
19 and she was able to call for an ambulance. She
20 remains in hospital.

21 She is desperate to receive an interim
22 payment, which she believes would sort out all
23 of her problems, and she still received no
24 compensation.

25 Subpostmasters need and deserve the support
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1 could have been referring to a situation as we
2 have heard in the human impact hearings.

3 He put it this way:

4 "An award of damages, while awarded with
5 a view to compensating the claimant for his loss
6 has regard to the injury to the plaintiff's
7 proper feelings of pride and dignity,
8 humiliation, distress, insult or pain, caused by
9 the circumstances of the defendant's conduct."

10 We suggest, sir, that the situation of the
11 subpostmasters and mistresses who fall to be
12 compensated fall within that very highest
13 bracket.

14 We often hear representatives of the Post
15 Office and BEIS say the words that they are
16 sorry on behalf of their client organisation.
17 They do it in well delivered apologies when they
18 have to. But we suggest that the way those
19 organisations have treated compensation and
20 support for subpostmasters make those apologies
21 seem empty and bereft of compassion.

22 In summary, and despite what has been said
23 by the Post Office and BEIS in their written
24 submissions and orally today, the current
25 situation is this: there is no agreed scheme for

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1 the provision of compensation for those
2 maliciously prosecuted. We have heard today
3 that those who were prosecuted but acquitted
4 will be dealt with within the schemes the GLO
5 scheme and the people who have been prosecuted
6 scheme.

7 Even after yesterday's manoeuvring in
8 relation to the proposed GLO scheme, there is no
9 agreed GLO scheme. This is what has been set
10 out by Government.

11 The original HSS scheme is questionable and
12 we will remember the submissions that you
13 heard -- going now back in time when we were
14 also, I think, able to watch the beginnings of
15 a cricket game through our windows across the
16 place where we were sitting at the time -- that
17 the HSS scheme is questionable at best, in the
18 way it sought to minimise compensation rather
19 than ensuring that ancillary losses for pain and
20 suffering are identified and provided for.

21 Now, this has all been hugely frustrating
22 for those who are trying to help the victims
23 here. Howe+Co have worked tirelessly,
24 I suggest, on these areas and have endlessly
25 corresponded with POL and with BEIS. But my

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1 firm of solicitors, Howe+Co, have not received
2 a penny from POL or BEIS for the work associated
3 with attending meetings, canvassing their client
4 views and making detailed submissions at BEIS's
5 request.

6 The issue of funding for solicitors never
7 sits well with making submissions when you're
8 talking about compensation, but with this number
9 of clients, firms such as Howe+Co must be funded
10 to have at least parity of ability to make
11 representations on part of the cases that they
12 represent.

13 On the other hand, of course, when Post
14 Office and BEIS reply, they do so via their
15 lawyers or via their team members, paid for out
16 of their payroll, or instructed solicitors
17 assisted, where needed, by counsel. On
18 17 November this year, the Minister announced
19 that BEIS had spent £53.4 million on legal and
20 administrative costs for the HSS to date, with
21 £7 million spent and £31 million projected to be
22 spent on legal advice on the overturned
23 convictions.

24 There is, we suggest, strong evidence from
25 that, if nothing else, that what is going on

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1 here is a clear inequality in arms.

2 Yesterday, and confirming that the only way
3 that the Government, in whatever guise, BEIS or
4 its wholly-owned subsidiary, the Post Office,
5 reacts to this continuing scandal, we had the
6 announcement from BEIS and the Right Honourable
7 Grant Shapps MP standing up in Parliament
8 stating that the GLO scheme had a particular
9 shape.

10 Never has there been a better illustration
11 that the Inquiry cattle prod touching the
12 backside of the state is the only way that
13 progress is going to be made.

14 Now, we know that the intention behind this
15 announcement is that the members of the GLO will
16 have a scheme which will enable them, I quote,
17 "to receive similar compensation to their
18 peers".

19 This will require a calculation of their
20 losses and damages in just the same way as is
21 required for those who are being dealt with
22 under any other of the frameworks or proposed
23 frameworks. Just as an example, Ms McMahon, who
24 I mentioned earlier, an experienced solicitor at
25 Howe+Co, with experience of individual claims,

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1 she started to look at what might be required
2 for any individual case, and tried to start
3 putting it together so that she would have
4 an example of what may be needed, while putting
5 aside the starting point, which is client
6 engagement letters, conversations at the start.

7 So far, in relation to one example, it led
8 to something like 400 pages of disclosure from
9 the Post Office, those include call logs from
10 EPOS, the EPOS part of the system, when working
11 as a subpostmaster.

12 It includes consideration of the shortfalls,
13 the reason why you need the call logs is because
14 you need to argue what the shortfalls are and
15 they need to put the two together. HMRC records
16 is something like 20 pages. GP records,
17 100 pages. That's without, essentially,
18 starting the case. That's just gathering the
19 materials.

20 The Minister's press release yesterday
21 states that what we are paid is £900 per
22 claimant to prepare a claim, covers, we think,
23 something approximately like something in the
24 region of two-and-a-half hours. This will not
25 cover client conferences reviewing disclosure,

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1 taking a proof of evidence, investigating and
2 supporting the claims, preparing instructions to
3 experts, preparing schedules of loss, et cetera,
4 and this will not be sufficient for the
5 instruction of counsel to provide an advice on
6 quantum.

7 It would assist, sir, and it would assist
8 this Inquiry, if you had clarity on payments of
9 costs thus far to Herbert Smith Freehills. Sir,
10 you may find also useful information from
11 Freeths who have referred in their letters to
12 Government costs.

13 Then just after 2.00 pm yesterday, Howe+Co
14 were sent the email from Mr Brightwell, signing
15 itself off as GLO Compensation Department for
16 Business, Energy and Industrial Strategy, which
17 now sets out that the £900 is an initial
18 allowance, apparently determined by a cost
19 draftsman with further cost allowance for the
20 remaining phases up to, including submissions of
21 claims to be published in the next few weeks.

22 So we move on from £900 as a starting point,
23 to now this is an initial amount, an initial
24 allowance, and then further applications are
25 going to be need to be made in order to make

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1 the best interests of the subpostmasters that
2 a set of defined fee parameters be agreed within
3 the framework of the compensation process so
4 that there can be clarity in this regard. We
5 would therefore invite you to provide us with
6 a breakdown of your proposed costs so that we
7 may open a dialogue and work towards
8 an agreement in respect of this issue."

9 The one thing that we all agree on is the
10 principle that people within the GLO proposed
11 scheme, GLO claimants, be put in the same
12 position as the other claimants with identical
13 claims arising out of the same scandal. Yet the
14 Post Office and their owners, the Department
15 they report to, BEIS, are suggesting that
16 representation and reasonable payment for fees
17 should be allowed for in two different ways: one
18 tranche by tranche on application for each part
19 as you move forward; and the other it seems by
20 an acceptance of reasonable fees, yet to be
21 agreed within a framework.

22 Now, this is either the Post Office or BEIS
23 deliberately treating the GLO litigants less
24 favourably than other SPMs who fall to be
25 compensated, or it shows that the left hand

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1 progress with the proposed GLO scheme.

2 So it's going to be worthwhile, just for
3 a moment, to compare the announcements from BEIS
4 yet with the correspondence from the Post Office
5 this week. Sir, you should have before you
6 a letter dated 5 December, I'm very grateful.

7 Now, the letter is from the Post Office
8 dated 5 December, top right-hand corner, in
9 correspondence, thanking Howe+Co solicitors for
10 their letter and correspondence for 27 November.
11 This is titled "Compensation Claims", and then
12 references to thanks for participation in
13 meetings and the like.

14 Third paragraph, from Mr Recaldin, the
15 Director of Historical Matters, Post Office
16 Limited:

17 "We do not believe that your various
18 comments regarding the payment of reasonable
19 fees in respect to of these matters claims is
20 correct. It has always been the position that
21 Post Office will meet the reasonable costs in
22 relation to the compensation claims. Our only
23 concern is the question as to what is
24 reasonable.

25 "You are correct in that it may indeed be in

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1 still does not know what the right hand is
2 doing. Either way, this gives the impression of
3 chaos. That chaos has not lifted since we were
4 back here in July, and so that is one of the
5 good reasons why we need an interim report.

6 There is, sir, nothing new or magical about
7 legal costs. Hourly rates are set by the court,
8 and in any civil litigation, if costs and
9 disbursements are not agreed, they will be
10 subject to taxation by a cost master or judge.
11 It is perfectly standard for there to be a final
12 independent arbiter on costs, issues, rather
13 than the defendant keeping the matter to itself,
14 drolling out sums where it says, and exercising
15 total control.

16 Let me be clear. Howe+Co, and the other
17 firms acting on behalf of subpostmasters, are
18 well-known firms who are very experienced in
19 acting on behalf of claimants in civil
20 proceedings. They know what needs to be done.
21 They know what sort of costs will be incurred,
22 and they are used to the costs taxation process.

23 We are not seeking to reinvent the wheel.
24 We merely seek some level of parity of
25 representation with the Post Office and BEIS.

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1 Simply put: fairness for subpostmasters.
 2 May I then refer, please, to the complex
 3 cases, those that are being made bankrupt, and
 4 IVA clients.
 5 It is absurd that some of the most
 6 vulnerable victims of the Post Office are
 7 languishing at the back of the queue. There
 8 should be no queue. Where cases are complex, or
 9 involve bankruptcies or IVAs, BEIS should divert
 10 resources to dealing with those problems rather
 11 than sidelining them. The unfeeling
 12 procrastination that has characterised the last
 13 few months must end.
 14 Another reason why the bankruptcy cases
 15 should not be sidelined is that it was the
 16 actions of the Post Office that bankrupted our
 17 clients. Mr Shapps, in Parliament yesterday, in
 18 the points he was putting forward as he was
 19 addressing the introduction of the GLO scheme,
 20 accepted that there were those that had been
 21 bankrupted by the Post Office.
 22 Those actions, in bankruptcy or turning to
 23 an IVA, those individuals are part of a truly
 24 shocking public scandal, and the clear duty of
 25 the Post Office and its owner, BEIS, is to clear
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1 Ms Sue Palmer's case is a double whammy, and
 2 you'll recall her position that BEIS originally
 3 refused to implement your recommendation on
 4 providing compensation for subpostmasters who
 5 had been prosecuted and acquitted. Now in
 6 respect of the GLO scheme, her position is set
 7 out amongst others at paragraphs 24-33.
 8 BEIS suggests that the way forward is for
 9 her compensation to be paid 51 per cent to her,
 10 and 49 per cent to Moores, the administrators of
 11 her bankruptcy.
 12 So I take you to the bundle if I can,
 13 please, again just briefly.
 14 If you'll go to page 14 of the bundle,
 15 bottom pagination, bottom right-hand corner.
 16 You'll see this is a letter dated 30 November to
 17 Laura Pickering at Moores, the trustees in
 18 bankruptcy:
 19 "Hi Laura, is there still no update? Please
 20 put me out of my misery. I need to know one way
 21 or another. Tomorrow is 1 December, 25 days
 22 until another miserable Christmas."
 23 Page 12, Thursday December 1, 2022 at 11.02.
 24 Message from Freeths Solicitors to Ms Palmer:
 25 "Dear GLO postmaster", et cetera.
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1 the debts, restore the credit ratings of
 2 subpostmasters so that they can begin to live
 3 again.
 4 Just as a personal aside, a couple of days
 5 ago I was sorting out some of my own insurance
 6 issues that are left to be dealt with and
 7 finally got around to, and one of the things
 8 that struck me was the question I was asked: had
 9 I ever been made bankrupt? The answer is no.
 10 One of the problems with bankruptcy is it acts
 11 a little like a conviction. It remains a stain
 12 on your character as you try and move forward
 13 and try and gain credit.
 14 Now, sir, you're aware of individuals in the
 15 position of Mr Sethi. You can see that in
 16 relation to the details that we've set out in
 17 the Howe+Co submissions at page 12,
 18 paragraphs 18 to 23. You'll remember his
 19 powerful testimony that you had before you on
 20 the first day of the human impact evidence on
 21 14 February 2002.
 22 POL still has failed to progress Mr Sethi's
 23 claim or pay any compensation to him. Must he,
 24 as he said in his evidence to you, die before
 25 any compensation is received?
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1 So this is a response from BEIS in relation
 2 to her position, and the third paragraph tells
 3 us what is being suggested.
 4 From BEIS:
 5 "We recognise the need to get you some money
 6 quickly, so we plan to agree to monies being
 7 paid to you in line with the terms of the
 8 original assignment. You would have received a
 9 portion of the interim payment which relates to
 10 your personal losses. We will confirm with
 11 Moore whether any of the initial £11,000 fee is
 12 outstanding in each of your cases. Of the
 13 remaining amount, you would receive 51 per cent
 14 and Moore will receive 49 per cent. This
 15 decision only relates to your interim payment.
 16 How payments are treated under stage 2 of the
 17 scheme are yet to be determined."
 18 Page 11. Ms Pickering, again from Moore, to
 19 Ms Palmer:
 20 "Dear Suzanne,
 21 "No update at the moment, unfortunately.
 22 However, we are having a call with BEIS on
 23 Monday to discuss this matter further."
 24 Seeing the emails in relation to the subject
 25 today, nothing further has happened. That
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1 remains the basic position.
2 Can we, on her behalf and on behalf of those
3 others that are stuck in this logjam in relation
4 to these bankruptcies, can we ask why? Why is
5 the suggestion that the compensation to
6 Ms Palmer will be split between her and her
7 trustees in bankruptcy? Well, of course we know
8 the answer, as lawyers, but as someone
9 registered as a bankrupt, her administrators
10 manage her finances and are appointed to use
11 monies that come to her for the benefit of her
12 creditors, but the Post Office and BEIS put her
13 there.

14 What must happen is one of two choices. For
15 Ms Palmer and others in her situation, they must
16 be funded to pay for legal representation to
17 annul their bankruptcies. Because of the highly
18 unusual circumstances of her bankruptcy, the
19 bankruptcy order should not have been made.

20 Or, all her debts and bankruptcy fees must
21 be paid or secured -- in other words
22 guaranteed -- by a third party: BEIS and POL.
23 And her bankruptcy must be annulled in order to
24 for her to be able to move forward without that
25 hanging over her head as a registered or

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1 I know he is willing to meet and try and discuss
2 the individual circumstances, and try and find
3 a way forward. And we know that essentially
4 there is a will to pay, but the will to pay must
5 be a will, I'm afraid, to pay those individuals
6 more than they might get otherwise in order to
7 find their way through these bankruptcies. What
8 must not happen is that their compensation
9 should be split for something that has been at
10 the cause of Post Office or BEIS.

11 So we suggest, sadly, that the Post Office
12 and BEIS have created chaos, and that is adding
13 to the suffering. There is a need for an urgent
14 interim report from you, sir. The situation of
15 so many of our clients is intolerable. BEIS has
16 had a chance to resolve matters in July, but it
17 did not take that chance.

18 Now, sir, we've not had sufficient time to
19 evaluate the details of the prototype scheme
20 that has been put forward. We do note that in
21 relation to this scheme, that there are various
22 issues.

23 Sir, very briefly, I don't know whether you
24 have this to hand, but I can read it if not.

25 **SIR WYN WILLIAMS:** I think I may have it to hand.

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1 previously -- or discharged bankrupt.

2 Of those in an IVA, their debts must be paid
3 by BEIS-POL and the IVA discharged. The notion
4 of Ms Palmer's compensation being split is
5 unreasonable, unless it can be assured that for
6 present purposes, her part of the split to the
7 administrators will never count against her, or
8 be deducted at a later stage from her overall
9 compensation once BEIS and Post Office have
10 settled the bankruptcy.

11 Sir, we are aware of the difficulties that
12 the position of those that are in this situation
13 pose to the Post Office and to BEIS. But the
14 position is in fact, to a large extent,
15 illusory. These individuals have been known
16 about for some time, and we are here discussing
17 this on the hearing that you have convened to
18 consider what is going on just before Christmas
19 2012, so long after these events have taken
20 place. If they have caused it, they need to
21 solve it. They need to resolve it, and they
22 need for these individuals to be move forward
23 and be paid.

24 Now, we've had discussions in the margins of
25 these hearings today with Mr Brightwell, and

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1 Hang on.

2 **MR STEIN:** Sir, I'm dealing with the document that
3 was served yesterday, described as being the
4 additional compensation for GLO members scheme
5 process.

6 **SIR WYN WILLIAMS:** Yes.

7 **MR STEIN:** Paragraph 13:

8 "The taxonomy will need to pay special
9 attention to cases where technical difficulties
10 can be expected, such as bankrupt or deceased
11 claimants, company claimants, claimants whose
12 partners are also claiming under this or other
13 schemes, or claimants lacking capacity and no
14 legally appointed representative."

15 Well, sir, that's the mention of those
16 individuals in those particular positions, in
17 other words "We'll work it out sometime".

18 Now within this, if you then go, please, to
19 the references at page 21.

20 **SIR WYN WILLIAMS:** Page or paragraph?

21 **MR STEIN:** Page, please, sir. Bottom right-hand
22 corner of the pagination, page 21.

23 **SIR WYN WILLIAMS:** Yes.

24 **MR STEIN:** "Consequential loss claims:

25 "The panel should apply the scheme

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1 consequential loss principles and guidance which
2 are included at appendix 1."

3 Well, sir, there is no appendix 1. The
4 review and approval at paragraph 36:

5 "The version of the terms of reference was
6 approved by the historical remediation committee
7 on 20 June 2014."

8 Sir, we know this a cut-and-paste document
9 from earlier schemes that have been put forward.
10 We know that because, if you go to page 22, you
11 can see the heading is "Historic Shortfall
12 Scheme Consequential Loss Principles and
13 Guidance".

14 **SIR WYN WILLIAMS:** Sorry, my page 22 is headed
15 "Consequential Loss Claims" --

16 **MR STEIN:** Yes, sir.

17 **SIR WYN WILLIAMS:** -- and my page 23 is headed
18 "Historical Shortfall Scheme". I just want to
19 be sure I'm in the right place, that's all.

20 **MR STEIN:** Yes, it's being suggested it may just be
21 the way it has been printed off.

22 **SIR WYN WILLIAMS:** Yes, quite possibly. Could you
23 just go back to the -- you made a point about --

24 **MR STEIN:** Yes, sir. Well, wait, we have it.

25 **SIR WYN WILLIAMS:** If you give me the paragraph
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1 our minds to it.

2 These are complicated matters that require
3 considerable attention to detail. They require
4 individuals to have representation that can
5 cover these details from the earliest possible
6 stages of meetings, reasonable costs must be
7 paid.

8 All our clients are actually asking is that,
9 bearing in mind they've waited decades to
10 receive fair treatment, they want the ability to
11 instruct solicitors to process their claims in
12 the normal way, without having to go cap in hand
13 to the perpetrators of this scandal. Now, sir,
14 we've set out in detail, and I won't repeat
15 orally, the recommendations we sought in our
16 written submissions. They concern the
17 resolution of the complex cases or bankruptcy
18 issues and the like.

19 Let me now turn just very briefly to
20 restorative justice.

21 **SIR WYN WILLIAMS:** This is your page 33 of your
22 written submissions?

23 **MR STEIN:** Sir, yes.

24 **SIR WYN WILLIAMS:** Fine.

25 **MR STEIN:** Now, in the same letter that I've
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1 number.

2 **MR STEIN:** 34, sir.

3 **SIR WYN WILLIAMS:** Hang on. "The panel should
4 apply", yes, fine.

5 **MR STEIN:** "... the consequential loss principles
6 and guidance that are included in appendix 1."

7 **SIR WYN WILLIAMS:** And there is no appendix 1, yes,
8 I have that.

9 **MR STEIN:** If you have paragraph 36:

10 "The version of the terms of reference was
11 approved by the historical remediation committee
12 on 20 June 2014."

13 Then, if you turn over the page, you then
14 see the "Historical Shortfall Scheme
15 Consequential Loss Principles and Guidance",
16 which I strongly suspect in fact is what is
17 meant by appendix 1. But if you then glance
18 through the number of pages that refer to
19 consequential loss and the principles applied,
20 which then takes us through from page 22 to
21 page -- yes, it goes to page 31. Glancing
22 through that, sir, you will see, which, sir,
23 your own work in the past, these are the
24 principles set out for pain and suffering, loss
25 of amenity that we will find if we were to turn
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1 referred you to a few minutes ago from the Post
2 Office, the current position, as regards
3 restorative justice, is that the Post Office
4 suggest that they can be left to deal with
5 meeting arrangements with subpostmasters, our
6 clients, and that solicitors are not required.

7 Unfortunately, we have to say that the Post
8 Office simply has not been listening to our
9 clients in the Phase 1 hearings.
10 Ex-subpostmasters, mistresses and managers don't
11 trust the Post Office and for very good reason,
12 with the way that they've been treated for so
13 many decades.

14 The years of denial of responsibility
15 throughout those last 20 years are a good reason
16 for the lack of trust and as, we suggest, is the
17 hurt from the continuing response to
18 compensation issues.

19 All our clients want is for them to have
20 their lawyers, who they do trust, discuss terms
21 for restorative justice with the Post Office and
22 for their lawyers to be paid reasonable costs
23 for doing so. They should not have to be made
24 to do otherwise.

25 Now, we have also suggested, at page 34 of
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1 our written submissions, how restorative justice
2 might look, including such an idea as
3 an entrepreneur's fund and bursaries for the
4 families of subpostmasters. Our clients' lives
5 have been torn apart. They started businesses
6 that they expected to see them through into
7 their retirement, looking after their families,
8 children that would have been brought up within
9 subpostmaster branches and offices, where they'd
10 been learning the value of small businesses,
11 often torn apart by the actions of the Post
12 Office.

13 Restorative justice is also about making
14 sure that, in this particular matter, that the
15 Post Office has actually learned lessons, and so
16 far, rather sadly, it seems that the Post Office
17 has not even started at school.

18 So enough is enough, sir. We suggest that
19 there is a need for an interim report under
20 Section 24.3 of the Inquiry Act and, sir, we ask
21 you to carry through the suggestion you made
22 that you made that you may do.

23 Sir, two last points. We ask that the
24 process of compensation hearings in this Inquiry
25 continues. We know it seems that it's the only

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1 way to make sure that anything is done and
2 I join with Mr Moloney in his submissions, which
3 is to ask the Inquiry to ensure that it is able
4 to continue oversight, in these individual
5 hearings, of the compensation process as we move
6 forward.

7 Second point: you've dealt with this largely
8 by discussing matters with Mr Moloney regarding
9 convictions and the progress of matters being
10 dealt with at the Court of Appeal and I agree
11 entirely with what he said. I'll just add one
12 small point.

13 The way the Court of Appeal is dealing with
14 matters, sir, for your information, is that when
15 subpostmasters or individuals come to them who
16 are caught within this particular scandal, the
17 Court of Appeal registrars' office is contacting
18 solicitors that have acted on behalf of those
19 individuals in the past and are ensuring that
20 they have representation, and we then go through
21 the process -- either Mr Moloney or myself or
22 our teams -- of considering the information,
23 advising as to whether there is, in fact,
24 a potential for the appeal to go further, and
25 then putting forward grounds.

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1 So there is a process and it doesn't involve
2 the CCRC.
3 Sir, forgive me for one moment. *(Pause)*
4 Sir, nothing else. Thank you, sir.
5 **SIR WYN WILLIAMS:** Thank you. Right. Well, I think
6 that concludes the oral submissions to
7 supplement the written submissions that I've
8 received. I will go away and think about them,
9 and decide what to do about them. So there we
10 are.

11 **(3.20 pm)**

12 **(The hearing adjourned)**

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