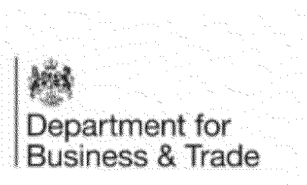


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SENSITIVE**To:** (1) Minister Thomas, (2) Secretary of State**From:** Harry Fallowfield**SCS:** Carl Creswell – Director, Post Office and Business Engagement; David Bickerton - DG**Date:** 22/07/24**FOR DECISION: HORIZON SHORTFALL SCHEME FIXED SUM AWARDS**

Summary of the issue: This note seeks your agreement on delivering a fixed sum award to provide redress to postmasters participating in the Horizon Shortfall Scheme.

Recommendation: That you agree to:

- a) Implementing your predecessors' announcement to introduce a Fixed Sum Award of £75k to HSS claimants, to bring the scheme in line with the GLO scheme.
- b) Capping awards at £50k where postmasters reject the Fixed Sum and are offered a lower amount, with no option to return to the Fixed Sum.
- c) Not providing legal advice to claimants to consider the offer of a fixed sum.
- d) Consider whether to delay the introduction of the Fixed Sum Award until we have clarity from HMT on funding for HSS Appeals, noting that this could take several weeks or months.
- e) Note the revised application process set out in paragraph 17.

Timing: We would be grateful for a swift readout. Post Office has received regular correspondence from postmasters awaiting payment of the £75k fixed sum following the March announcement and we expect it to be raised during next week's redress announcement.

Context

1. The previous government announced on 13 March 2024 that postmasters in the Horizon Shortfall Scheme (HSS) would have the option to receive a fixed sum payment of £75,000. For those who had previously settled for less money, they would receive a top-up to bring their total redress to £75,000. This policy had previously been implemented for postmasters enrolled in the government run Group Litigation Order (GLO) scheme, who are subject to similar redress principles, so this policy would ensure fairness across similar cohorts (i.e. those postmasters who did not suffer convictions).
2. The policy has not yet been implemented in the HSS, due to delays in Post Office's operational preparations and agreement of funding conditions. Post Office have advised that they can begin issuing offers at the end of July, subject to your approval.

Option 1 – Implement the HSS Fixed Sum (recommended)

3. There is an expectation from postmasters that this fixed sum will be introduced. The policy is intended to deliver swift and fairer redress for postmasters who were not convicted but suffered because of the scandal. It provides consistency between the GLO scheme run by the Government and the HSS run by the Post Office. Although the HSS cohort is much bigger, both schemes are for un-convicted postmasters and are broadly comparable in the issues faced. The public inquiry, chaired by Sir Wyn Williams, has consistently called for consistency in treatment between them. Questions were also raised about timing during the Urgent Question in the Commons on 18 July.
4. Additionally, there has been criticism that postmasters have under-settled their claims under the HSS due to lack of legal representation and issues with the consequential loss guidance. This intervention helps to mitigate this. You will receive further advice on an additional measure to address this criticism through the development of an independent appeals process. The Government will be subject to significant reputational damage and criticism

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from postmasters and parliament if it does not proceed with the up-front £75k offer, given the policy has been announced and communicated. Such a decision could also face legal challenge by postmasters by way of judicial review on grounds of legitimate expectation.

- 5. During your introduction to compensation schemes on 16 July, you suggested that we should consider delaying introduction of the £75k payments until we had clarity on a HSS Appeals process, unless it was going to create significant delay. We have since discussed with HMT officials, who have said that it may be possible to get agreement to announce our intent to implement an appeal system, subject to a business case being approved at a later date. Our assessment is that even this approach is likely to delay delivery (see paragraph 12 below) and that it would be better to press on with implementation of the £75k now. **Do you agree?**
- 6. From a public money perspective, the £75k will be more efficient to administer than the full claims process. If the £75k remains available to those who pursue the full claims process, there is a high risk that many more will choose this option leading to greater costs and delays. We therefore recommend that claimants who reject the £75k should not be able to return to it if, upon full assessment of their claim, they are awarded a lower amount. Instead, we recommend that the award is capped at £50k (or the value of the offer if it exceeds £50k), to ensure fairness and help provide Value for Money (VfM) for taxpayers. This is consistent with the approach on the GLO scheme, although there haven't been any instances of a claimant receiving lower than £75k in practice.

Financial impact

- 7. The costs of this policy are significant due to the number of postmasters in the HSS and the fact that it is still open to applications. Currently, Post Office are forecasting a total of 7400 eligible late claims in addition to the 2417 received on the original scheme¹. There have been 1413 eligible late claims to date. The total estimated cost of the £75k policy is estimated to be **c.£530m to £800m**. This is mainly attributable to the forecasted late claims, although there is significant uncertainty around these estimates. Further detail on the financial impact is included in Annex A.
- 8. HMT have agreed to fund the £75k intervention, although any changes to delivery would need to be re-tested with HMT Ministers. DBT will need to engage HMT through the Spending Review to agree precise funding. HMT previously agreed to funding based on a forecast of £130m to £156m. We are also seeking approval from the Accounting Officer in parallel. Further detail on the financial impact is included in Annex A.

Risks/Issues

- 9. **Value for Money:** There will be overpayment due to this intervention. There is a risk that very small claims could make up a significant proportion of expected late applications and all would be entitled to £75k. As of June 2024, PO have paid c.600 claimants £5k or less (and have paid over 100 of these claimants less than £1k). However, officials believe the measure provides VfM overall as there are no lower cost alternatives that ensure equal treatment of HSS and GLO claimants. Offering a lower or no fixed payment is unlikely to reduce the overpayment risk and may increase the total costs to HMG.

Legal Privilege	Legal Privilege
Legal Privilege	Legal Privilege

The £75k fixed payment also reduces the admin costs of resolving potential appeals due to under-settlements. As set out above it also mitigates some of the criticisms that HSS applicants have under-claimed due to the lack of upfront legal advice and problems with the consequential loss guidance.

¹ This assumes a scheme closure date of 31 March 2025.

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10. **Fraud:** The offer of a £75k fixed sum is an attractive proposition and may increase instances of potentially fraudulent, erroneous or ineligible claims. We are working with Post Office and the DBT fraud risk team to ensure that robust anti-fraud measures are in place.
11. **Cost escalation:** The number of late applications could exceed forecasts leading to higher costs. We will introduce and announce a closure date to the scheme to help provider greater certainty on costs, but a degree of uncertainty is inescapable at this stage. We will also report regularly to the AO and HMT on scheme costings.
12. **Delays to delivery:** Holding back introduction of fixed sum payments for a decision on HSS Appeals may significantly delay this work. We will need approval from the Chief Secretary to the Treasury for HSS Appeals, even to announce the intent to introduce appeals subject to a business case being approved at a later date. HMT officials have indicated that this could take anywhere between a few weeks to a few months given the number of significant decisions that the CST has to make in the coming weeks. Some of the benefits of the measure will be undermined if payments are not made swiftly by the Post Office. We are working with the company to put delivery targets in place to ensure that the fixed sum payments are rolled out as quickly as possible. This is also likely to be an area of interest at the September Inquiry hearings. You should also be aware that Kevin Hollinrake raised this in the margins of last week's Urgent Question and is likely to ask about delivery of both the £75k and HSS appeals during Parliamentary discussions about the Horizon Convictions Redress Scheme.
13. **Legal:** The announcement made of the £75k fixed sum award on 13th March has given rise to an expectation that the policy will be implemented.

Legal Privilege

Legal Privilege

Option 2 – Cancel the HSS Fixed Sum

14. You could choose to reverse the Fixed Sum policy. This is not expected to reduce the risk of overpayment due to the high risk of successful legal challenge. If you choose this option, a separate intervention would be necessary. However, we strongly recommend continuing with the fixed sum at this stage.

Implementation

Closure date and communication

15. Implementing the fixed sum would involve writing to three separate postmaster cohorts:
- postmasters who agreed a full and final settlement for less than £75k,
 - postmasters who have been offered less than £75k but have not yet accepted,
 - new claimants who will be offered a choice between the £75k or the full claim assessment.
16. Post Office plans to write out to the entire population of **c. 24,000** postmasters who used Horizon software to advertise the closure date of the scheme and they wish to include reference to the Fixed Sum in this communication. Officials have discussed a potential closure date of **31 March 2025** with Post Office, but this timing may need to be reviewed. You will receive separate advice on scheme closure date in the next few weeks.

Revised application process

17. Post Office plan to streamline the application process for future applicants who wish to accept the £75k fixed sum. This includes a more limited assessment of Horizon shortfalls, which will maintain the check on whether the applicant experienced a shortfall during the Horizon period but will not seek to quantify the shortfall, which is a more time-consuming process. Additionally, Post Office are looking to simplify the application form. Officials think it

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is important that claimants are still required to provide detail of the shortfalls they experienced and the resulting impact to provide a deterrent against spurious claims.

Legal costs

18. The current policy on HSS legal costs is that Post Office will reimburse reasonable fees for postmasters to seek advice on their offer of compensation. For those who wish to accept the £75k Fixed Sum, either as a top-up where they have already settled their claim below this amount or those who have not yet settled, **we do not think that the costs of legal advice should be reimbursed**. This is because: the VfM is diminished by incurring significant expenditure on claimant’s legal fees; legal involvement will slow delivery down; and postmasters who settled below £75k have already had the opportunity to seek legal advice and are now being offered a higher amount.
19. There is a risk that not offering legal advice will be criticised as unfair on postmasters given previous commentary about low levels of legal representation for claimants in the HSS. However, as this intervention will benefit postmasters and is intended to be delivered swiftly, it is a defensible approach that ensures the benefits of the policy are fully realised and we recommend that approach. A separate decision to introduce an appeals mechanism would also help here.

Next steps

20. Subject to your steers, we will work with the Post Office to introduce the Fixed Sum award as quickly as possible. You may wish to do some proactive comms to mark the start of the Fixed Sum payments. We can provide you with some comms advice separately.

Annexes

Annex A – Financial Impact

Clearance list

Team	Clearance necessary?	Named lead who has cleared
SCS	Mandatory	Carl Creswell
Perm Sec	< Yes / No >	< Name >
Second Perm Sec	< Yes / No >	< Name >
Communications (inc named Press Officer)	< Yes / No >	< Name >
Finance / Fiscal Events	Yes	Richard Howard
HR	< Yes / No >	< Name >
Legal	Yes	Eleri Wones
Parliamentary Unit	< Yes / No >	< Name >
Devolution	< Yes / No >	< Name >
Analysis	Yes	Monique Ebell
HMTC	< Yes / No >	< Name >
Other	< Yes / No >	< Name >

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Annex A – Financial Impact

Post Office are forecasting a total of 7,400 eligible late claims in addition to the 2,417 received on the original scheme. The total estimated cost of the £75k policy is estimated to be in a range of **c.£530m to c.£800m**.

Cost of top-ups

- For the c.2,000 postmasters who have already settled for less than £75k, the cost to top them up to this amount is **circa £107m** in additional compensation.
- Additionally, there are c.320 claimants currently in receipt of offers below £75k, who will require topping up. This will cost £13m.
- There are c.800 eligible claims awaiting assessment, with an estimated top up value of £36m.
- In total, **£156m** is required to top up all existing claims.

Cost for those yet to apply (late applications)

- Costs are highly uncertain for those who have not yet settled or applied to the scheme. Post Office have estimated an additional £639m based on a 30% response rate to sending a letter out to c.24,000 postmasters.
- This is made up of c.4,900 new claims receiving £75k (with a total estimated cost of c.£380m) and c.900 with claims estimated to be >£75k (total estimated cost c.£260m).
- Assuming a 20% response rate and 90% of claims >£75k, we estimate a much lower additional cost of **£371m**.

Admin costs

- Due to the relative ease to administer the Fixed Sum awards, the operational costs are estimated to be relatively low at **£500k**
- Post Office have quoted significant costs (c.£31m) for the c.900 claims forecast to be above £75k. DBT officials do not think these cost forecasts are reliable and have commissioned Post Office to review these forecasts and set out options to deliver more cost-effectively.

These figures are highly uncertain as the size of this potential cohort of postmasters is not fixed and eligibility rates for the HSS scheme are high.