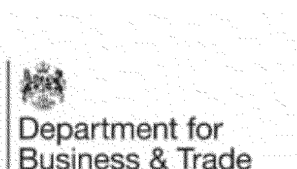


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**To:** 1) Minister Thomas; 2) Secretary of State

**From:** Liam Butler/Harry Fallowfield

**SCS:** Carl Creswell  
David Bickerton

**Date:** 24/07/2024

**FOR DECISION: HORIZON SHORTFALL SCHEME APPEAL MECHANISM**

**Summary of the issue:** This note recommends introducing an independent, government-administered appeals process for the Horizon Shortfall Scheme (HSS).

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**Recommendation:**

That you agree to officials:

- Developing a government resourced and administered independent appeals process for the HSS with the aim to introduce this as quickly as possible.
- Working with HM Treasury to obtain funding for this process.
- Aiming to make an announcement on launching a scheme ahead of the Post Office IT Inquiry hearings in September 2024.

**Timing:** A decision is required urgently to ensure that an announcement can be made ahead of the next Inquiry hearings in September, illustrating HMG's proactiveness and a willingness to action the recommendations of the Horizon Compensation Advisory Board and the Business and Trade Select Committee.

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**Context**

1. The Horizon Shortfall Scheme (HSS) is a Post Office-administered compensation scheme set up in 2020 to provide redress to victims of the Horizon scandal who suffered shortfalls but were not part of the 2019 court case against Post Office and had no previous convictions.

2. The scheme has been subject to criticism from postmasters, the Horizon Advisory Board and legal representatives participating in the ongoing public inquiry, chaired by Sir Wyn Williams. This has focused on:

- Perceived lack of independence due to Post Office delivery;
- Lack of awareness for what losses could be claimed due to lack of availability of guidance in relation to consequential losses; and
- Lack of professional/legal support to make a claim.

3. It is difficult to determine the extent to which these perceived issues may have influenced claim outcomes due to lack of information on the counterfactual. However, officials think it likely that lack of professional support and availability of guidance may have affected the

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framing of some claims. Furthermore, there is a poor external perception of the scheme, which makes it difficult to bring closure to the scheme without further intervention.

4. Additional background information on the HSS and the criticisms it has faced can be found in Annex A.

**Option 1: Introduce an independent appeals process (recommended)**

5. We recommend that you agree to the introduction of an independent government administered appeals process for the following reasons:

- The Horizon Compensation Advisory Board have recommended that these issues are addressed by providing a route for appeals that would operate independently from the Post Office's HSS process. Furthermore, during the last parliament the Business and Trade Select Committee made the recommendation to "*allow those who have already settled under the Horizon Shortfall Scheme to revisit their claims to ensure that they have received fair redress*"<sup>1</sup>. Undoubtedly this has raised external expectation that a process for appealing settled claims will be introduced, and not doing so would compound existing criticism.
- As already noted, the Inquiry is due to focus on compensation issues at the next hearings in September, and it is possible that its chair (Sir Wyn Williams) will also recommend further interventions. He has launched a survey to get feedback on the HSS, which suggests HSS delivery will be a particular focus at these hearings. Announcing an appeals process will pre-empt any criticism or recommendations and demonstrate that DBT has listened and is prepared to act on existing criticism of the HSS.
- As highlighted in paragraph 3, DBT officials acknowledge that some areas of criticism may be valid. These issues have all fed into a broader perception that the HSS has delivered unfair outcomes. It is likely Post Office and DBT will continue to face pressure on this until there is an independent appeals process in place relating to HSS claims that operates outside of the HSS process.

**In summary we recommend taking forward a DBT run HSS appeals mechanism as it will address issues in the current scheme set-up that may have unfairly disadvantaged claimants and caused them to under-settle their claims ensuring all HSS claimants receive a fair level of redress.**

**Financial Impact**

6. Estimates for the additional cost of an appeals mechanism are highly uncertain as the potential number of claimants that will come forward are difficult to forecast, as are the potential uplifts to their awards. Officials estimate that the appeals mechanism could cost anywhere from c.£17m to £220m, and we would need to work closely with HMT to agree maximum funding limits and regular review points and can provide you and the accounting officer regular updates on spend. **Annex B** sets out further information about these cost estimates.

**Risks**

7. There are inevitable logistical and financial risks related to the time an appeals process will take to deliver. There is also a risk that expectations are heightened by the announcement of an appeals process whereas in practice many cases may not receive an uplift; potentially leading to criticism or challenge to the process. Whilst an appeals

<sup>1</sup> Post Office and Horizon redress: Instruction to deliver report, 07 March 2024

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mechanism will help to address criticisms of the scheme not providing fair compensation, if large numbers of appeals are received, resolving these will take time which cuts across our aim to deliver swift compensation. However, that risk is mitigated to some extent by the fact that those appealing would have already received a compensation award. Implementation of the £75k upfront award (see below) would also help to settle a large number of claims and reduce the number of appeals coming forward. A summary of the risks associated with this option are also outlined in **Annex B**.

**Option 2: Rely on existing planned interventions**

8. The previous government announced on 13 March 2024 that postmasters in the Horizon Shortfall Scheme (HSS) will have the option to receive a fixed sum payment of £75,000. For those who had previously settled for an amount lower than £75k, they would receive a top-up to bring their total redress to £75,000. If you agree to move forward with this policy (as outlined in our separate advice sent on 23 July), it is likely that this would allay some concerns about the fairness of the scheme. It also does not preclude the Government from making a further announcement on appeals at a later date, potentially with better information on likely take-up and the extent to which it is still necessary.

9. However, the £75k upfront offer will not directly address all of the criticisms of the scheme. Nor would it help those who have either received, or are forecast to receive, offers higher than £75k, who may still feel that they have been disadvantaged by shortcomings in the scheme set-up (currently c.650 claimants).

10. Given that this approach would differ to that suggested by both the Horizon Compensation Advisory Board and the Business & Trade Select Committee there will likely be widespread criticism of DBT from within those groups, other external stakeholders and most likely the Inquiry when it reports. Kevin Hollinrake raised the need for an appeals mechanism with Minister Madders following the recent Urgent Question and we understand he has raised it with the CST directly too. It is likely that criticism will continue if the Government chooses not to pursue this route, and this will have to be accepted and managed accordingly.

**Next steps**

11. Subject to your decision, we suggest that officials develop plans for how the process will work in practice and begin to explore procurement options for independent legal expertise needed to handle appeals.

12. We also suggest that officials begin to engage with HMT on the proposed process, ultimately leading to submission of a funding request.

13. HMT have advised that you will need to send a letter to CST to request funding. We will look to share a draft letter with you as soon as possible.

14. If you are content and HMT funding approval is subsequently obtained, officials aim is for an announcement to be made by September 2024, ahead of planned Inquiry hearings. We will work closely with Press Office and Special Advisers to communicate this decision according to your preferences.

**Annexes**

**Annex A:** Background information on the HSS and criticisms it has faced

**Annex B:** Financial Estimates and Risks associated with Option 1 – additional information

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## Clearance list

Team	Clearance necessary?	Named lead who has cleared
SCS	Mandatory	David Bickerton Carl Creswell
Perm Sec	No	N/A
Second Perm Sec	No	N/A
Communications (inc named Press Officer)	No - sighted	Harriet Clarke
Finance / Fiscal Events	Yes	Richard Howard
HR	No	N/A
Legal	Yes	Eleri Wones
Parliamentary Unit	No	N/A
Devolution	No	N/A
Analysis	Yes	Monique Ebell
HMTC	No	N/A
Other	No	N/A



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**Annex A: Background information on the HSS and criticisms it has faced**History of the HSS and DBT's involvement

- In 2016, Alan Bates brought litigation against Post Office. A Group Litigation Order (GLO) was made in 2017 and 555 current and former postmasters joined the claimant group.
- In December 2019, Post Office reached a settlement with this claimant group. As part of that settlement the Post Office agreed to set up the Horizon Shortfall Scheme.
- It was agreed as part of that settlement that the scheme would compensate postmasters who were not part of the GLO and did not have a criminal conviction.
- The HSS was first launched in May 2020, and originally closed in November 2020.
- Post Office received significantly more applications than expected, with 2417 ultimately assessed as eligible. Following the scheme closure, Post Office approached HMG to fund the scheme.
- HMG agreed to fund the scheme with an estimated maximum budget of £233m. This was in addition to the first c.£87m being covered by Post Office, with remaining settlement amounts then covered by DBT. It was also agreed that Post Office would cover all operational costs associated with the scheme. However, DBT is now also funding the operational costs.
- Following significant pressure to re-open the scheme, the Government announced in October 2022 that it would provide funding for late applications to be accepted into the HSS. The scheme remains open as no closure date has been announced at this stage.

Criticisms of the HSS*The HSS is a Post Office-run scheme*

- HSS claimants (many of whom had an extremely negative experience working for Post Office) are required to engage with the company throughout the process.
- Although an independent panel is in place to recommend compensation awards, and Post Office have very rarely disagreed with their recommendations in practice (and have only ever intervened to increase awards), Post Office are seen externally as the final arbiter of compensation claims.
- Furthermore, it is seen as undesirable that Herbert Smith Freehills, who have acted on behalf of Post Office since the 2019 Group Litigation, conduct the initial assessment of HSS claims.

*HSS claimants are not sufficiently aware of what they can claim for*

- Claimants can claim losses related to shortfalls caused by the Horizon system, but also any consequential losses suffered as a result. These can be varied and make up a significant proportion of the value of most HSS claims.
- The consequential loss principles used in the scheme were not published by Post Office until after the scheme had originally closed. For this reason, some claimants (particularly those who settled during the early stages of the scheme) feel that they were unable to set out their claim in full and felt obliged to accept an offer that did not reflect their experience. For example, data from 2023 shows that the average award value for consequential losses increased from £14,000 to £25,000 after October 2020, when guidance was released.

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*HSS Claimants have not had access to appropriate support to set out their claim*

- The HSS was designed by Post Office to be simple and user-friendly to avoid the need to incur costs of legal representation when setting out a claim. Legal and other professional support is offered to claimants who require assistance in understanding their HSS offer and for those who wish to dispute their offer.
- However, it has been argued that it was not always clear when and to what extent legal and professional support is offered under the scheme. Efforts have been made to mitigate this criticism but there remains a very low uptake of legal support on the scheme, which has led to stakeholders expressing concern about settlements. After the consequential loss guidance was published, the average claim value was £27,000 and average award was £25,000 (as opposed to £9000 average claim and £14,000 average award before).
- By contrast, overturned convictions redress and the DBT-run schemes such as the GLO and HCRS schemes cover the costs of legal and other professional support from the outset of making a claim.

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**Annex B: Financial Estimates and Risks associated with Option 1 – additional information**

- As highlighted in paragraph 5, officials estimate that an appeals mechanism could cost **c.£17m to £220m**.
- This range is shown in the table below and is based on scenarios from a 'low-cost' scenario of 10% of the forecast HSS cohort with claims over £75k wishing to bring forward an appeal and receiving an uplift of 10% of the average award value, to a 'high cost' scenario of 50% of the potential appeals cohort coming forward and receiving an uplift of 100%. We have also shown what we believe to be an extreme scenario of all c.1900 (100%) of the forecast potential cohort raising an appeal and receiving a 100% uplift on their award. Each scenario additionally includes c.160 claims currently in the HSS dispute resolution process (DRP) who are not expected to take up the £75k fixed sum award and would transfer to this appeals scheme.
- We think a sensible central estimate is **c.£74m**, which accounts for c.650 postmasters receiving a 50% uplift. This central estimate of c.650 is derived by assuming 45% of the HSS scheme's original claimants will appeal, and 25% of late applicants will appeal (the original cohort is assumed to have a higher average rate of appeal in the low and central scenarios because the consequential loss guidance was not released during the scheme's initial run, and this is likely to lead to more original claimants seeking revised compensation offers). This £74m includes an estimated c.£58m in redress costs, c.£7m in claimant legal costs and c.£9m in operational costs. This is reasonable as it is likely that not all appeals will be successful so there may be a high level of admin costs incurred but the average uplift may be lower, particularly measured against the highest claim values.
- Whilst we have modelled admin costs based on the information we have available from the current GLO process, we will look at options to reduce these costs to achieve better VfM for this delivery approach.
- We expect these costs to impact on the 24/25 to 25/26 financial years, which will run beyond the current SR period and will require HMT agreement. However, we expect that a large proportion of the overall cohort will be settled by the end of FY 24/25 as they may wish to accept the £75k offer.
- The table below sets out assumptions for the appeals process.

Amount (£m)/Uptake	Low uptake (10%)	Medium uptake (25%)	High uptake (50%)	Very High uptake (100%) +
Operational costs				
	£6m	£9m	£14m	£23m
Claimant legal costs				
	£4m	£7m	£11m	£20m
Compensation costs				
<b>10% uplift</b>	£7m	£12m	£19m	£34m
<b>25% uplift</b>	£17m	£29m	£49m	£85m

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<b>50% uplift</b>	£35m	£58m	£97m	£171m
<b>100% uplift</b>	£69m	£116m	£195m	£342m

- We have used the GLO scheme to arrive at an indicative estimate for admin and legal costs for an appeals process as the design of the process is intended to be closely modelled on GLO delivery. As such, we have assumed c.£10,000 on average for admin costs per claim and £11,000 for legal/professional costs per claim based on the moderate complexity category in the GLO cost tariff. In practice, these costs may be lower as there will not be as many stages to the HSS appeals process and the claims are not being developed from scratch.
- Central uptake figures are based on a total estimated eligible population of c.650 postmasters with claims above £75K. This is based on Post Office's central assumption of the number of claimants coming forward following mail-out to inform of the £75k policy. In practice, there may also be some postmasters with claims under £75k who would choose an appeal rather than accept the fixed sum uplift. Each scenario includes an additional c.160 claims currently in the HSS dispute resolution process (DRP who are not expected to take up the £75k fixed sum award (as these have been presumed to be transferred over to the new appeals process), settled and offered top-up claims to £75k and our forecast of future late claims (with the 25% uptake assumption applied). There are an estimated c.240 DRP claims that we believe could accept the £75K fixed payment.

*Approach to additional compensation costs*

- To estimate a range for the potential cost of additional compensation through an appeals process we have looked at different scenarios for both uplifts that might be applied in an appeal and for the overall number of appeals/rate of appeal.
- For uplifts we have compared against the average HSS settlement for claims above £75K which is a value of £181k, and we have considered scenarios where 10%, 25%, 50% or 100% of that figure is applied in additional compensation.
- For the appeal rate, we have applied different scenarios to provide a range of outcomes in the number of appeals brought forward (note, c.160 current DRP claimants above £75k are added in all scenarios);
  - 10%, 25% and 50% of the non-DRP, late applications of HSS population above £75K of (c. 1450), claimants
  - 30%, 45%, 70% of the non-DRP, original applications of HSS population above £75k (c.280)
- Note that in our analysis all appeals are currently modelled as being successful – i.e. we have not included a scenario for any claimants in which admin costs are incurred and no additional compensation uplift awarded. This assumption will be reviewed for future modelling.



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- The main challenge with an appeals process is the time it will take to deliver, which works against the desire to deliver swift compensation more generally. We expect appeals process to push HSS delivery timeframes into FY 25/26, beyond the current agreed funding period. The set-up time is likely to be around 5-6 months with a further 12 months for delivery, although this will depend on the closure date for the scheme (you will be receiving advice on the issue of HSS closure separately).
- As highlighted in paragraph 7 there is a risk that expectations are heightened by the announcement of an appeals process and those applying into it may expect to receive significant uplifts; leading to criticism or attempts to challenge the outcome. Officials are of the view that the HSS independent panel has carried out its role fairly based on the information provided by claimants. For this reason, it is likely that in some cases (particularly those which have gone through the HSS dispute resolution process) individuals will receive a modest uplift or may receive no uplift at all. It is difficult to fully assess the extent to which this risk may materialise, and it is likely to be unavoidable given the strength of feeling on this issue from the Business and Trade Select Committee and the Advisory Board. However, we are confident that offering the right to appeal is most likely to help the Government to draw a line under the issues.
- The slower delivery time is to some extent mitigated by the fact that those appealing will have already received compensation and decisions on appeals are therefore somewhat less time critical. There may also be some operational efficiencies to be gained considering the Department is already taking on the delivery of redress for newly overturned convictions following the legislation. Furthermore, the only way to achieve greater redress more quickly without an appeals route would be to set a very high fixed award, which would be easier to administer but would carry significant overpayment risk.
- There is significant uncertainty regarding costs with estimates dependent on the impact of the fixed sum payments and how many late applications are received prior to the scheme's closure. Furthermore, there would be significant administrative costs associated with setting up the process and assessing claims.