

IN THE MATTER OF THE POST OFFICE HORIZON IT INQUIRY

**SUBMISSIONS ON BEHALF OF
POST OFFICE LIMITED**

A. INTRODUCTION

1. These submissions are provided in response to the Chair's invitation dated 21 March 2022 to address the eligibility of three categories of individuals to claim compensation under the existing schemes¹ set up by Post Office and its sponsoring department in government. They take note of, and address, insofar as appropriate in responding to the Chair's invitation, the submissions of Howe+co published with that invitation.
2. The three categories of persons identified in the Chair's invitation are:
 - a. Subpostmasters and Subpostmistresses², managers and assistants³ who were charged with criminal offences and prosecuted by the Post Office but who were acquitted at trial ("**Category A**" cases);
 - b. Subpostmasters and Subpostmistresses, managers and assistants who were charged with criminal offences and prosecuted by the Post Office but whose cases were discontinued or withdrawn before trial ("**Category B**" cases); and
 - c. Subpostmasters and Subpostmistresses, managers and assistants whose appeals were conceded by the Post Office on the grounds that it would not be in the public interest to retry their cases and whose convictions have been overturned by the Crown Court ("**Category C**" cases).

¹ For the avoidance of any doubt, the use of the word "schemes" in this context should not be understood to refer to formal "remediation schemes". Post Office has followed Sir Wyn's invitation to address those compensation mechanisms, whether or not formal "remediation schemes", relevant to the categories below.

² Subpostmasters and subpostmistresses are both types of "Postmaster", but a Postmaster can be a limited company, partnership, limited liability partnership, as well as an individual that contracts with the Post Office in their capacity as a Postmaster in the network.

³ For the avoidance of doubt, references in these submissions to managers and assistants are to individuals appointed, employed or otherwise engaged by Postmasters to work in or operate their branches. They are not appointed by, employed or otherwise engaged by Post Office, save for those working in or operating a Directly Managed Branch.

3. These submissions seek to explain in one place the variety of different mechanisms available to those prosecuted by Post Office for obtaining compensation, as well as their context. This is done in **Part B** below. The specific circumstances of the Category C claimants is addressed in **Part C**. Finally, Post Office, in light of its description of the various different mechanisms, details the avenues to compensation of those in each of the above categories in **Part D**.

B. ROUTES FOR OBTAINING COMPENSATION

4. The Chair's invitation concerns existing schemes for compensation set up by Post Office and its sponsoring department in government. Those are, of course, key (and intended to be relatively straightforward) mechanisms by which Postmasters and where applicable, managers and assistants, may achieve compensation. However, it is important to emphasise at the outset of these submissions that they do not represent the totality of the routes by which Postmasters, managers and assistants may seek redress as against Post Office. Any Postmaster, manager or assistant with a valid claim of any nature may bring a claim against the Post Office. Further, since the Chair's invitation the government has announced that additional funding will be made available to provide further, ex gratia, compensation to those Postmasters who were claimants in the action *Alan Bates and others v Post Office Limited* pursued under a Group Litigation Order in the High Court (the "**Group Litigation**" and the "**GLO Claimants**").

Starting point

5. Any Postmaster, manager or assistant with a valid claim of any nature may bring a claim against the Post Office. Those claims are ordinary civil claims, made in the ordinary way.
6. Subject to defences arising as a matter of the general law (for example, the effect of the Settlement Agreement entered into by the GLO Claimants in the Group Litigation), no Postmaster, manager or assistant is ineligible to make such ordinary civil claims.
7. Further to such claims, Post Office has, with the assistance of government, put processes in place to enable certain types of claims – in particular those expected to involve large, known groupings of Postmasters, managers or assistants with similar, and comparatively straightforward issues – to be handled in a way that allows Post Office to deliver fair compensation across large populations in a principled, consistent and efficient manner. These include:
 - a. The Historical Shortfall Scheme ("**HSS**"), which was set up as part of the settlement of the Group Litigation in order to deal with particular types of claims by Postmasters arising out of the judgments of the High Court in the Group Litigation;

- b. Interim payments for Postmasters, managers and assistants whose convictions are overturned on appeal. These interim payments of up to £100,000 are provided on an expedited basis (within 28 days) of a request for an interim payment being made, to prospective claimants who will likely be offered at least that much, while they and their solicitors formulate their full compensation claims and those claims are worked through; and
- c. The additional compensation recently announced for GLO Claimants, discussed below.

GLO Settlement

- 8. Before addressing in detail each of the key schemes in question, it is necessary to understand the background to the GLO settlement, which informs GLO Claimants' entitlements under these schemes. As the Inquiry is aware, the Group Litigation was settled by the Settlement Deed of 10 December 2019 (the "**Settlement Deed**"), by which stage the High Court had handed down its judgment following the trial of the common issues ([2019] EWHC 606 (QB)) and the trial of the Horizon issues ([2019] EWHC 3408 (QB)). A further trial in relation to "measure of loss" issues was scheduled to take place next but, in the event, did not proceed as a result of the settlement.
- 9. **General position** GLO Claimants are not entitled to bring (subject to some narrow caveats discussed below), further claims against Post Office.
- 10. That is because their claims were settled by the Settlement Deed, in "*full and final settlement*" of those claims.⁴ A total of £57.75m was paid by Post Office pursuant to that settlement, including £15m in respect of legal costs and disbursements.
- 11. Post Office has publicly recognised that the GLO Claimants themselves received very little from that settlement after legal and litigation funding costs (said to be £46m in total) had been paid. Its Chairman, Mr Tim Parker, wrote to government on 25 May 2021, suggesting that an *ex gratia* payment to the GLO Claimants might be one way to offer further compensation to them, to make up for the litigation funding costs they incurred in the Group Litigation. Post Office does not know what proportion of the settlement sum was allocated to different GLO Claimants falling into different categories, as Post Office was not party to the apportionment.
- 12. **Distinction between convicted and non-convicted subpostmasters and subpostmistresses** Post Office agrees with the submissions of Howe+co that a claim for malicious prosecution is available as a matter of law to a person who is its subject, including

⁴ Settlement Deed, clause 4.1.

those who have been acquitted or against whom a prosecution has been discontinued. It is also accepted that a civil prosecution can give rise to a claim for malicious prosecution.

13. For the GLO Claimants, however, the availability of such remedies in this case is affected by the terms of the Settlement Deed.

14. The GLO Claimants included both convicted individuals and non-convicted individuals. Although claims for malicious prosecution were advanced by both groups, at the time there were important distinctions between them:

14.1 In order to recover damages for malicious prosecution, individuals with criminal convictions would first have needed to have their convictions set aside on appeal. Those who were successful (like those among the 73 whose convictions have since been set aside) would then be entitled to pursue claims for malicious prosecution (and, subject to the remaining elements of the tort being met, might well expect to recover the most substantial damages). However those whose convictions were not set aside (including those among the 32 who have either failed on appeal or withdrawn their appeals), would not be entitled to bring claims for malicious prosecution at all.

14.2 The claims brought by individuals who were prosecuted but not convicted were different in that they were not contingent on the outcome of a criminal appeals process. Their claims were therefore “ripe”, in that they were capable of being advanced at the time.

15. It was therefore agreed as part of the settlement that claims for malicious prosecution by claimants with criminal convictions would be exempt from the full and final settlement release (as explained by Howe+co at paragraph 11, by reference to the Settlement Deed). That was because no claim could yet be brought of that nature.

16. However, that exemption did not extend to claimants who were prosecuted but not convicted (a point not reflected in Howe+co’s submissions) whose claims were settled in the course of the settlement of the GLO.

17. The distinction is reflected in the Settlement Deed:

- a. The Settlement Deed provides that the Settled Claims “*shall not include*” “*Claims against the Defendant for Malicious Prosecution*” (Clause 4.2.2).

- b. Malicious Prosecution is defined as "*Claims by the Convicted Claimants against the Defendant for Malicious Prosecution*". Convicted Claimants are, in turn, defined as "... *individuals who have been convicted of criminal offences*" (clause 7.1.1).
- c. The reason for excepting convicted claimants from the settlement release is acknowledged in clause 7: they "*cannot proceed with their claims in the Action for Malicious Prosecution, or with claims that would be barred by res judicata by reason of their conviction, unless those convictions are overturned.*" Very different outcomes might follow claims in malicious prosecution in the event that convictions were overturned (which the Post Office recognises could result in significant awards) or were not (in which case no award would be due), making it difficult to settle such claims prior to that position being made clear.
- d. No such exemption was agreed in respect of any other malicious prosecution claims.

18. As a result:

- a. Postmasters who are GLO Claimants and who were convicted, are entitled to continue claims for malicious prosecution against Post Office in the event that their convictions are overturned. As such, they will be entitled as part of that claim to seek interim payments from Post Office, which will be considered and, where appropriate, paid out in accordance with the process and considerations described at paragraphs 27 to 30 below.
- b. Postmasters who are GLO Claimants and who were not convicted, cannot bring such claims against Post Office. Their claims were fully and finally settled as part of the GLO settlement. They are thus not eligible to seek interim payments on those claims.

19. However, the additional compensation announced for GLO Claimants (described below) will, as Post Office understand it, create a route by which the latter group will be able to claim further compensation from government to make up for the fact that £46m of the £57.75m settlement was lost to legal and litigation funding costs. In particular, it will cover all the Postmasters referred to in Howe+co's submissions dated 25 February 2022, in particular Suzanne Palmer, Suzan Hazzleton, Thomas Brown, Rita Threlfall, Mujahid Aziz Faisal and Kevin Palmer as they all were GLO Claimants who were not convicted.

The Historical Shortfall Scheme

20. The HSS was set up pursuant to the Settlement Deed. It is a voluntary scheme, set up and designed to deal with particular types of claims, most notably claims for shortfalls and related losses such as those arising from suspensions and terminations as well as associated consequential loss, arising out of the judgments of the High Court in the Group Litigation. Other claims, which may raise novel issues, are not included within this voluntary scheme.

21. The HSS is, unlike other mechanisms for payments to Postmasters, managers and assistants, a formal “remediation scheme”, with published eligibility criteria and specific rules.
22. In short, it is designed to allow offers to be made to applicants with particular types of claims, on a fair and principled basis, following the existing judicial guidance given in the Group Litigation, in a more streamlined way. There is a streamlined and user-friendly claims and appeals process. Other benefits include giving applicants the benefit of a presumption that certain shortfalls were caused by Horizon, by suspending the running of time for limitation purposes while claims are being considered by the HSS, and facilitating fair offers in certain circumstances where the application of strict legal requirements (for example where evidence is lacking) might not lead to a result which the person on the street would consider fair. It is also aimed at ensuring consistency of approach to similar claims whilst acknowledging the need for settlements on an individualised basis.
23. The key eligibility criteria for the HSS were (materially) as follows:⁵
- a. An applicant must have had a contract directly with Post Office⁶. This meant in essence that Postmasters were eligible, whereas managers and assistants without a contract directly with Post Office were not. This is because the Common Issues Judgment in the Group Litigation concerned the meaning and effect of the contracts with Postmasters, and thus it was appropriate for mechanisms to be put in place for those claims to proceed expeditiously.
 - b. The application had to relate to shortfalls which arose in respect of previous versions of Horizon.⁷ Again, these were matters addressed in the High Court judgments in the Group Litigation and allowed for the matters to be progressed speedily through the HSS.
 - c. The application could not involve or relate to any criminal convictions (this did not include cautions).⁸ As such, convicted Postmasters were ineligible. Postmasters who were not convicted were eligible. At the time the HSS was established, no convicted Postmasters had yet had their convictions overturned (or dismissed). It was therefore too early to address matters arising out of those convictions.

⁵ Which can be found here: https://www.onepostoffice.co.uk/media/47798/historicalshortfallscheme_eligibilitycriteria_october-2020.pdf (accessed 4 April 2022).

⁶ HSS Eligibility Criteria, Clause 1.

⁷ HSS Eligibility Criteria, Clause 2.

⁸ HSS Eligibility Criteria, Clause 5.

d. The HSS was not open to GLO Claimants, who were receiving sums pursuant to the Settlement Deed at the time the Scheme was established.⁹

24. For applicants to the HSS who explained that they had been left in difficult circumstances and could be irretrievably impacted by any delay to their compensation, interim payments were made available.

25. The deadline to apply to the HSS has now passed. The terms of the HSS when it was open to applications did not prevent those who chose to pursue claims in the ordinary way from doing so. There is no prohibition on those who did not join the HSS from doing so now, following its closure.

Interim payments for Postmasters, managers and assistants whose convictions are overturned on appeal

26. There is no formal “*scheme*” for the payment of compensation to Postmasters, managers and assistants bringing malicious prosecution claims. Those claims are being advanced by solicitors representing those claimants in the ordinary way. As Post Office understands the position, the solicitors acting in such cases include Hudgell Solicitors (who represent the majority), Aria Grace Law, Aliant Law, Howe+Co, Clarke Kiernan, John Donkin Law and Brewer Harding & Rowe Solicitors.

27. However, for those whose convictions are overturned on appeal, Post Office and the government have put into place a mechanism for interim funds to be released quickly rather than waiting for those claims to reach finality before any payment is made.

28. On 22 July 2021, Post Office and the Department for Business, Energy & Industrial Strategy announced that Postmasters, managers and assistants whose convictions were overturned could apply for an interim compensation payment of up to £100,000 each.¹⁰ These interim payments were made available to those who had been convicted, who it was considered were likely to receive greater sums in due course. It was thus important that they were not kept out of funds. As at 31 March 2022, 69 applications for interim compensation had been made, out of which 66 have been paid.

29. For Postmasters, managers and assistants whose convictions are not yet overturned, they are not yet able to make a claim (at least in malicious prosecution) as they have not yet established the tortious requirement that the conviction be overturned.

⁹ HSS Eligibility Criteria, Clause 6.

¹⁰ <https://www.gov.uk/government/news/government-to-fund-initial-compensation-package-for-vindicated-postmasters> (accessed 8 April 2022).

30. For GLO Claimants who were not convicted, as above, they have received full and final settlement of their claims and thus cannot claim further (subject to the additional compensation recently announced for the GLO Claimants). For GLO Claimants whose convictions were overturned, 8 have brought claims for final compensation so far, and these are being progressed.
31. There have as yet been no claims brought by Postmasters, managers or assistants against Post Office outside the HSS other than by GLO Claimants for Postmasters who were acquitted or whose prosecution was dismissed, but government has confirmed that funding is available should such claims, which Post Office is committed to addressing, be made.

Further compensation for the GLO Claimants

32. The small sums ultimately received by the GLO Claimants have caused unfairness. Post Office has echoed the calls of those, including the GLO Claimants, who have maintained that further funding should be made available to rectify that unfairness.¹¹
33. HM Treasury on 22 March 2022 made the welcome announcement that additional, *ex gratia*, compensation will now be made available to the GLO Claimants.
34. Post Office understands that full details in relation to that compensation are still to be worked though between government and the Justice for Subpostmasters Alliance. It is hoped that the availability of this additional funding will finally allow all GLO Claimants to receive fair recompense.

Further schemes/arrangements under consideration

35. There are a wide variety of other potential claims which could be brought against Post Office (including those which were not made by the deadline for application to the HSS). Post Office intends to deal with all such claims in good faith and further processes may be set up to make dealing with such claims more efficient.

¹¹ See, for example, the statement made by Nick Read, the Chief Executive Officer of Post Office, on 8 April 2021. Available here: <https://www.onepostoffice.co.uk/media/48626/nick-read-post-office-future-past-and-present.pdf> (accessed 4 April 2022).

C. SPECIFIC ISSUES IN CATEGORY C CASES

36. As set out above, convicted Postmasters, managers and assistants whose convictions are overturned can apply for interim compensation pending the final resolution of their claims made against Post Office.¹²
37. There are however three cases where individuals who have given evidence to the Inquiry have not been offered interim compensation. The specific circumstances of those cases are addressed below.
38. Mr Kalia, Ms Adedayo and Mr Patel have not been offered interim compensation because there were real doubts about whether those individuals would be able to advance a successful claim for malicious prosecution in due course.
39. That is for the following reasons:
- 39.1 All three cases were referred for appeal by the Criminal Cases Review Commission ("**CCRC**") before the decision in *Josephine Hamilton and Others v Post Office* [2021] EWCA Crim 577, where the Court of Appeal (Criminal Division) ("**CACD**") provided guidance on the circumstances in which a criminal appeal would succeed.
- 39.2 The CACD has since determined that it is only convictions where the reliability of Horizon evidence was "*essential*" to the original conviction which ought to be set aside on appeal. In cases where there is independent evidence, including confession evidence, explaining the shortfalls which gave rise to the conviction, the CACD or the Single Judge at the permission stage have on all occasions declined to quash the conviction (see the cases of Fell (reported at *Hamilton & Ors v Post Office Ltd* [2021] EWCA Crim 577), Rehman, Patel, Vaja, Vyas and Wallace). Each of the decisions to refer a case for appeal which have been made by the CCRC since the decision in *Hamilton* has applied the *Hamilton* test.
- 39.3 The issue presented by these three cases arises from the procedural difference between appeals against convictions in the Magistrates Court, where the right of appeal following a referral by the CCRC is to the Crown Court, and appeals against convictions in the Crown Court, where the corresponding right of appeal is to the CACD. Unlike the position in the CACD, which is a review of the safety of the original conviction, Crown Court appeals proceed by way of retrial.

¹² The funding provided by government for interim payments does not presently include category C cases, but this does not preclude those applicants from applying and Post Office has resolved to consider each case on its own merit.

- 39.4 In any retrial, Post Office has a duty as prosecutor to consider the Full Code Test in the Code for Crown Prosecutors in deciding whether to proceed with a prosecution. This means considering both (1) whether there is a realistic prospect of conviction; and (2) whether the prosecution is in the public interest.
- 39.5 In each of the three cases, Post Office took the view that limb 1 of the Full Code test could be satisfied following a reinvestigation because there was a contemporaneous confession to theft, followed by a subsequent guilty plea, and it was not suggested at any stage during the original prosecutions that those confessions were unreliable:
- i. As set out in the CCRC's Statement of Reasons (at page 5), Mr Parmod Kalia was interviewed by Post Office following the discovery of a shortfall during an audit of his branch. In the course of the interview he admitted to theft. Mr Kalia subsequently repeated this admission in a contract meeting on 20 August 2001. In December 2001, Mr Kalia's solicitors wrote to Post Office confirming that Mr Kalia accepted taking money to recover investment losses. Mr Kalia's solicitors' notes recorded that Mr Kalia said that there had been 3 or 4 incidents where he had amended the paperwork by making out a paying-in slip to his own giro bank account. This meant payment would be received but no actual money would change hands. The money was then paid back in full on 18 July 2001. Mr Kalia went on to tell his solicitors he used the money to purchase shares. He did not have to pay for the shares for 10 days and his intent was to sell within the 10 day period and take the profit made. However, if the shares instead decreased in value, he had to make good the losses or pay in full. Mr Kalia said he was dealing on a daily basis in an attempt to cut short his losses and retrieve some financial ground. Mr Kalia later pleaded guilty on 17 December 2001 to one count of theft at Bromley Magistrates' Court (see page 5 of the CCRC's Statement of Reasons);
 - ii. Ms Oyeteju Adedayo was interviewed under caution. It was not in dispute that, at some point prior to Ms Adedayo's interview under caution, a piece of paper containing her written confession was created and signed by her and by the auditor. In her interview, Ms Adedayo admitted to having taken the money to repay family members who had lent her and her husband £50,000. These family members were demanding repayment. Ms Adedayo had attempted

to raise the money owed via a loan but she was unsuccessful in doing this. She subsequently pleaded guilty to three allegations of false accounting at Medway Magistrates' Court on 19 January 2006 (see page 5 of the CCRC's Statement of Reasons);

- iii. During the course of an interview by Post Office investigators on 10 February 2011, Mr Vipinchandra Patel accepted that he had used Post Office money to pay bills and keep his business afloat. At that stage, he did not suggest that problems with Horizon were the reason for his conduct. On 6 June 2011 at Oxford Magistrates' Court Mr Patel pleaded guilty to fraud between 11 August 2010 and 9 December 2010 (see page 5 of the CCRC's Statement of Reasons).

- 39.6 The CCRC decided to refer the cases for appeal (in the case of Mr Kalia and Ms Adedayo following a Provisional Statement of Reasons rejecting the applications but inviting further submissions). However, as stated above, that was prior to the CACD's decision in *Hamilton*.
- 39.7 Having considered the Full Code Test, Post Office took the view that, although on the facts of these cases the convictions were not an abuse of process (consistent with the test later set down in *Hamilton*) and there could be a realistic prospect of conviction, a retrial was not in the public interest, primarily given the age of the cases and the fact that the individuals concerned had already served their sentences following their respective guilty pleas. Accordingly, Post Office offered no evidence on the appeals. As a result, the convictions were automatically quashed.
- 39.8 The appellants in all three cases have, at varying stages since their prosecutions, including as part of their evidence to the Inquiry, raised doubts as to the reliability of their original confessions (see pages 12-14 of the CCRC's Statements of Reasons for referring Mr Kalia's case and paragraphs 11-15 of Mr Kalia's First Written Statement to the Inquiry, pages 11-14 of the CCRC's Statements of Reasons for referring Ms Adedayo's case and paragraphs 14-17 of Ms Adedayo's First Written Statement to the Inquiry, and page 8 of the CCRC's Statement of Reasons for referring Mr Patel's case and paragraph 17 of Mr Patel's First Written Statement to the Inquiry). However, that has only come some time after the original prosecutions.
- 39.9 That evidence (which has in all three cases either been put forward or expanded upon relatively recently) will need to be evaluated in due course in the context of

the claims that are anticipated to be made. However, the key issue for Post Office (and its government shareholder who has responsibility for administering public money) at the interim compensation stage is that, in all three cases, at no stage during the original prosecutions did any of the three appellants suggest that their confessions were unreliable or say anything regarding the reliability of Horizon that would have triggered Post Office's duties of investigation and disclosure. That has only come later.

- 39.10 This raises an obvious issue as to whether Post Office's decision to prosecute, made in reliance on the unchallenged confession evidence as it stood at the time to explain the shortfall (rather than on Horizon evidence), was malicious.
40. The evidential record in these three cases therefore shows that there were proper (and consequently not malicious) grounds for bringing the prosecutions at the time they were brought, such that offers of interim compensation to Mr Kalia, Ms Adedayo and Mr Patel pending resolution of their claims were not warranted.
41. It is important to emphasise that this decision does not prevent Mr Kalia, Ms Adedayo or Mr Patel from making claims for compensation now that their convictions have been overturned. That has been communicated to their legal representatives, Hudgell Solicitors. There has since been further correspondence on behalf of Mr Kalia and Ms Adedayo. Post Office remains willing to continue those discussions.

D. CONCLUSIONS

42. For persons in Category A and Category B:
- a. Postmasters, managers and assistants are not entitled to compensation from Post Office if they are GLO Claimants who were not convicted. All their claims, including for malicious prosecution, were "*full[y] and final[ly] settle[d]*" in the Settlement Deed. They are therefore not entitled under the HSS or to interim payments. However, Post Office wrote to government in May 2021 requesting consideration to be given to the funding of further compensation for the GLO Claimants. Given the government's recent announcement in this regard, the GLO Claimants may be able to obtain further redress from the additional funding that government is making available to them on an *ex gratia* basis.
 - b. All other individuals can claim compensation if and insofar as claims are brought and are proven. Further, Postmasters who were not convicted and not GLO Claimants were eligible for compensation under the more efficient terms of the HSS (including individuals who were cautioned).

43. For persons in Category C, all individuals are entitled to claim compensation if and insofar as claims are brought and sufficiently substantiated. Any applications for interim payments will be considered on their individual merit. Persons in Category C were not entitled to claim under the HSS because, during its currency, no convicted Postmasters had yet had their convictions overturned and it was therefore too early to address matters arising out of those convictions.

8 April 2022