

Post Office Horizon IT Inquiry

**On behalf of Core Participants
Tracy Felstead, Seema Misra, and Janet Skinner**

Annex to Submissions on Compensation: 24th June, 2022

1. We ask that we may be permitted to amend our submission to this extent and apologise for any inconvenience.
2. The process for the compensation of Category B claimants is subject to complex issues of real and apparent conflicts of interest, which may be without precedent.
3. The Post Office's conduct enabled a culture of secrecy to flourish, actively or passively resulting in a multitude of systematic failures in the performance of their duties, in both Criminal and Civil litigation.
4. It failed repeatedly to discharge its responsibilities before the Criminal and the Civil courts over many years. These failures may possibly, after impartial investigation, give rise to criminal proceedings.
5. That prospect is not fanciful, because the Post Office has violated so many norms, ethical, evidential, procedural, and substantive, before the courts, that it is likely to be found to have acted in bad faith towards the SPMs in both criminal and civil litigation. The true depth of its wrongdoing is yet to be plumbed but that which is already known is so disturbing that a police investigation is not to be lightly dismissed.
6. The question we posed, in our submission on compensation, was how could it sensibly be thought appropriate that the Post Office and its lawyers, HSF, should continue to play any part in the determination of "fair compensation" given:
 - a. The protracted history of the Post Office's profound wrongdoing before the Courts; and
 - b. The manifestly unfair contract of settlement HSF negotiated on its behalf.
7. The question (after much thought) was answered purely on pragmatic grounds, namely that HSF should continue to act on the Post Office's behalf for reasons of expediency alone, given that the prospect of their removal would lead to increased costs, profound

uncertainty, and further protracted delay, all of which would be deleterious to the Post Office's long-suffering victims.

8. This position, reluctantly arrived at, may have failed to give due weight to:
 - a. The appearance of justice, so far as a conflict of interest;
 - b. The grave turpitude attending the conduct of the Post Office; and
 - c. The fact that HSF would still be on the record acting as the Post Office's solicitors ('the retainer'.)
9. The consequences resulting from the continuing retainer would be (on reflection) not merely unpalatable (which was evident from the outset) but also unacceptable. This is because HSF would remain contractually and professionally bound to act in the best interests of the Post Office, and their professional duty would be to protect the Post Office's interests at the expense of the claimants.
10. Moreover, given that the Post Office, as currently envisaged, remains responsible for the determination of what would be fair compensation in all the circumstances, an inveterate conflict of interest remains at the heart of this process, which is not merely procedural but substantive, in that fairness cannot be objectively ascertained.
11. The principles of natural justice, we submit, militate in favour of the following:
 - a. The Post Office should terminate the continuing retainer of HSF; and
 - b. Expressly consent to/permit HSF to be retained by BEIS;
 - c. This authority should disclaim any duty of confidence HSF was bound by during the currency of its retainer by the Post Office, and indemnify HSF in respect of any advice it provides to BEIS, subsequent to the termination of that retainer;
 - d. Previous assurances or undertakings by the Post Office as to its waiver of legal professional privilege, and the extent of that waiver, should not be withdrawn;
 - e. BEIS should retain HSF immediately upon the Post Office giving consent.
12. Much will depend on a spirit of candour, which would enable this proposal to be implemented swiftly. HSF would then be retained for both 'final' and 'further' compensation claimants. Disclosure problems should not be insurmountable given that BEIS and Her Majesty's Treasury owns the Post Office.
13. We submit these revised proposals having further reflected on the propriety of the Post Office's continuing role, even as a mere conduit for compensation, given the professional obligations HSF owes towards it. As the monies earmarked for compensation are wholly derived from public funds, our revised submission would rationalise the compensation process, and guarantee that Government (which has repeatedly stated that the compensation process should be full, fair and fast) has oversight and control of it.
14. Should this submission not prove workable, as a consequence of obstruction by the Post Office, or any other body, that would be unfortunate. In such regrettable circumstances, we would stand on our original submission of 22nd June.

Edward Henry QC
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Hodge Jones & Allen solicitors

24 June 2022