

The Post Office Horizon IT Inquiry

Chair's Progress Update on Issues relating to Compensation



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Executive Summary

1. Over the last two years, representatives of Post Office Limited (“the Post Office”) and Ministers¹ on behalf of the United Kingdom Government and/or the Department for Business, Energy and Industrial Strategy (“BEIS”) have asserted that sub-postmasters² who have suffered pecuniary and non-pecuniary losses as a consequence of data produced by the Horizon IT System (“Horizon”) should receive compensation which is “full and fair” and that it should be delivered promptly. Since the settlement of the litigation between Bates and others v Post Office Limited (“the Group Litigation”) two schemes have been put in place by the Post Office and/or BEIS with a view to achieving those stated aims and a third is currently being developed. The schemes in existence are: (i) the Historical Shortfall Scheme (“HSS” or “the Scheme”); and (ii) a scheme to provide interim and final payments for sub-postmasters convicted on the basis of evidence generated by Horizon whose convictions have been quashed, sometimes referred to now as “the Overturned Historic Convictions Scheme” (a phrase which I will adopt in this Summary). The scheme under development is a scheme to provide further compensation for all the Claimants in the Group Litigation who are not eligible for compensation under the Overturned Historic Convictions Scheme which I will refer to as “the Group Litigation Scheme”.
2. During Human Impact Hearings in February, March and May 2022 I became concerned that some of the features of HSS and the Overturned Historic Convictions Scheme might be impacting adversely upon the twin goals of delivering full and fair compensation payments to all those entitled to such payments and also delivering them promptly. Accordingly, on 9 May 2022, after receiving written submissions on behalf of those Core Participants represented by Howe+Co Solicitors (“Howe+Co”) and Hudgell Solicitors (“Hudgells”), the Post Office and BEIS, I published my provisional view upon certain issues relating to compensation which I had identified as being, apparently, anomalous. I also announced that I intended to hold hearings at which Core Participants and/or their recognised legal representatives could make oral submissions about my provisional views and, further, address a number of issues which I identified in a separate document entitled “Submissions on Issues of Compensation” (“the Compensation Issues”) which I published on 10 May 2022.
3. In advance of the hearings, I received a number of very detailed written submissions. I heard oral submissions over 2 days on 6 July and 13 July 2022. I did not hear evidence at these hearings, although many references were made to aspects of the evidence already provided to the Inquiry in written and oral form.
4. Between 13 July 2022 and 5 August 2022, I received written submissions and communications from individuals and on behalf of institutions which I had not invited. To a very limited extent these communications and submissions provide information about events or announcements which have occurred since 13 July 2022. However, much of their content consists of argument upon contentious issues which were fully debated in writing and orally at the hearings. As it happens, however, nothing which has been sent to the Inquiry since 13 July 2022 has deflected me from the conclusions which I had reached on

¹ The word “Minister”, in the context of ministerial announcements, is used to mean either the Secretary of State for Business, Energy and Industrial Strategy or other Ministers within that Department.

² The term sub-postmaster is used to mean sub-postmasters, sub-postmistresses, their managers and assistants and any person employed by the Post Office or its predecessor companies who claim to have suffered loss by reason of the Horizon IT System unless the context dictates otherwise.

the basis of the information available to me as of 13 July 2022. On 12 August 2022, I received a short letter from the legal representatives of BEIS containing purely factual information relating to interim payments to applicants under the Group Litigation Scheme.

5. I have always understood that I cannot reach definitive conclusions about all the relevant issues relating to compensating sub-postmasters without hearing evidence. However, I was confident that I could reach conclusions upon many important issues relating to the three schemes identified above on the basis of the evidence already provided to the Inquiry and the written and oral submissions I anticipated receiving. As it happens, my confidence has not been misplaced and, as will appear, I have reached a number of conclusions about these schemes. I must stress, however, that there will be a further detailed investigation of issues relating to compensation in Phase 5 of the Inquiry at which evidence will be heard.
6. My key conclusions in respect of HSS, the Overturned Historic Convictions Scheme and the Group Litigation Scheme are as follows.

The HSS

7. I welcome the express commitment within the Scheme to provide fair compensation even if that means departing from established legal principles. However, I will be able to judge whether that crucial objective has been achieved only after I have completed my investigations in Phase 5 of the Inquiry.
 - 7.1. Both the Post Office and BEIS accept that there have been avoidable and, therefore, unwarranted delays associated with the Scheme. The Post Office and BEIS have formally apologised for unnecessary delay in the implementation and administration of the Scheme.
 - 7.2. I accept that the pace of making offers of compensation has quickened considerably during the course of the last 12 months. Ultimately, there is a balance to be struck between speed of decision-making and ensuring that offers which are made are full and fair.
 - 7.3. I know of no proper explanation for the delays in determining whether those applications which were made after 27 November 2020 should be rejected or accepted into the Scheme. The delay in determining many if not all of these applications is wholly unacceptable, and, in my view, it remains largely unexplained.
 - 7.4. I am also very concerned that under the Scheme it is the Post Office which makes the definitive and final determination as to whether a late application is accepted or rejected. In my view, any applicant whose claim is rejected by reason of it having been made after 27 November 2020 should have the right to have that decision reviewed by the Independent Advisory Panel and the Scheme should be amended to make that clear.
 - 7.5. I am not persuaded that I should characterise the process for determining the offers of compensation payments to applicants as lacking in independence. The process is capable of delivering full and fair offers to applicants. Whether it has done so will be under investigation in Phase 5.
 - 7.6. In any event, if an offer is not acceptable to an applicant, he/she need not accept it, and there are processes open to applicants in which a person or body other than the Post Office determines the amount of compensation which should be paid. In my view, this is

a sufficient safeguard for applicants provided that they are able to obtain legal assistance when appropriate.

- 7.7. Save in one respect, I do not consider it likely that the application form used in HSS would have been unduly difficult for applicants to understand and complete. If necessary, however, this can be the subject of investigation in Phase 5.
- 7.8. My reservation in relation to the application form relates to how Question 24 would have been understood in the absence of guidance as to its meaning. On any view, it is most unfortunate that there was no guidance upon answering this question until sometime in September 2020. Whether the failure to issue the Guidance at the proper time had the effect of causing applicants to omit legitimate heads of claim can only be determined after hearing evidence. No doubt that issue can be examined in Phase 5 together with any other evidence, if any, tending to show that applicants failed to present all their legitimate claims when answering this question.
- 7.9. Appropriate legal assistance and advice in respect of most of the higher value claims yet to be determined is likely to be essential. The fees allowed for advising on offers which are made henceforth should be increased to levels commensurate with the work reasonably carried out by an applicant's lawyer. Further, in all cases in which an offer is rejected, the Post Office should, thereafter, fund the applicant's reasonable cost of obtaining legal advice, assistance and representation as the dispute resolution process unfolds. The Scheme should be amended to provide for payment of reasonable legal fees as described in this paragraph.
- 7.10. The provision of funds for instructing lawyers henceforth cannot, of course, remedy any instances of injustice which have already occurred through lack of legal funding. Whether there have been instances of injustice on account of the absence of funding for lawyers must await Phase 5.
- 7.11. The Scheme's Terms of Reference should be amended to make express provision for the making of interim payments in cases where the personal circumstances of the applicant justify such a payment or when there are agreed and quantified heads of loss which can be paid over while the process of determining other claims proceeds.

The Overturned Historic Convictions Scheme

8. This is not a formal remediation scheme. If applicants are aggrieved by decisions of the Post Office, at present, they must engage in dispute resolution processes or resort to litigation. That situation has some unfortunate consequences – see below.
- 8.1. I am pleased to report that, in the vast majority of cases, interim payments have been made within 4 weeks or thereabouts of applications being made to the Post Office. That is in accordance with assurances which were given at or about the time this Scheme was announced.
- 8.2. Interim payments have been refused in 3 cases. I have reservations about the decision making in these cases for reasons I express at paragraph 93 of the Update.
- 8.3. The Post Office should not be the final arbiter of applications for interim payments if the claim is rejected. A person or panel, independent of the Post Office, should be appointed to determine such claims. That person or panel could also have a role in relation to final compensation payments – see paragraph 8.5 below.

- 8.4. Claimants in the Group Litigation who were acquitted of Horizon related offences should now be included in the Overturned Historic Convictions Scheme and be eligible for interim payments.
- 8.5. There should be contingency planning now as to how disputes about final compensation payments are to be resolved in the event that negotiated settlements are not possible. There is a need either for a formal remediation scheme or at minimum an independent advisory panel as an intermediate step before litigation or formal dispute resolution.
- 8.6. If appropriate contingency planning occurs so that appropriate methods of resolving disputes are in place, there is no need for persons whose convictions have been quashed to have the option to have their claims determined within the Group Litigation Scheme.

The Group Litigation Scheme

9. This Scheme is in its infancy. It is anticipated by all concerned, however, that a remediation scheme will be necessary.
 - 9.1. This Scheme will emerge after discussions and negotiations between a number of parties. It is vital that these discussions and negotiations are undertaken within weeks and should not stretch over many months.
 - 9.2. I welcome the agreement between Justice for Subpostmasters Alliance (“JFSA”) and BEIS relating to interim payments for eligible Claimants in the Group Litigation.
 - 9.3. If Claimants in the Group Litigation who were acquitted of Horizon related offences are not included in the Overturned Historic Convictions Scheme, they should receive interim payments in the Group Litigation Scheme which takes account of those circumstances as well as their calculated share of the fund of £19.5m made available by the Government.
 - 9.4. I welcome the commitment to make final compensation payments to the Claimants in the Group Litigation which are equivalent to that available to sub-postmasters who were not part of the Group Litigation and the willingness to make available funds to pay the reasonable fees of lawyers engaged to promote and advise upon the claims put forward.
 - 9.5. The Group Litigation Scheme should be administered expeditiously. Self-evidently, there is a clear and compelling need to finalise and pay further compensation to the Group Litigation Claimants as quickly as reasonably possible.
10. This document is a Progress Update relating to one, albeit important, aspect of the Inquiry’s work. It contains my views on the steps which BEIS and POL are taking and have taken to fulfil commitments to provide compensation which is “full and fair”. I will follow closely the extent to which the views I have expressed are acted upon and, in particular, whether they are acted upon promptly. If it becomes clear in the coming weeks that progress is too slow – in particular in finalising a Group Litigation Scheme and/or making payments thereunder - I will very likely determine that I should deliver to the Minister an interim report pursuant to section 24(3) of the Inquiries Act 2005 containing specific recommendations. Further, I might very well conclude, then, that I should convene a further hearing relating to compensation issues at short notice.

Progress Update on Issues relating to Compensation

Introduction

1. Over the last two years, representatives of Post Office limited (“the Post Office”) and Ministers³ on behalf of the United Kingdom Government and/or the Department for Business, Energy and Industrial Strategy (“BEIS”) have asserted that sub-postmasters⁴ who have suffered pecuniary and non-pecuniary losses as a consequence of data produced by the Horizon IT System (“Horizon”) should receive compensation which is “full and fair” and that it should be delivered promptly. Since the settlement of the litigation between Bates and others v Post Office Limited (“the Group Litigation”) two schemes have been put in place by the Post Office and/or BEIS with a view to achieving those stated aims and a third is currently being developed. The schemes in existence are: (i) the Historical Shortfall Scheme (“HSS” or “the Scheme”); and (ii) a scheme to provide interim and final payments for sub-postmasters convicted on the basis of evidence generated by Horizon whose convictions have been quashed, sometimes referred to now as “the Overturned Historic Convictions Scheme” (a phrase which I will adopt in this Update). The scheme under development is a scheme to provide further compensation for all the Claimants in the Group Litigation who are not eligible for compensation under the Overturned Historic Convictions Scheme (“the Group Litigation Scheme”).
2. During the Human Impact Hearings in February, March and May 2022 I became concerned that some of the features of HSS and the Convictions Scheme might be impacting adversely upon the twin goals of delivering full and fair compensation payments to all those entitled to such payments and also delivering them promptly. Accordingly, on 9 May 2022, after receiving written submissions on behalf of those Core Participants represented by Howe+Co Solicitors (“Howe+Co”), Hudgell Solicitors (“Hudgells”), the Post Office and BEIS, I published my provisional view upon certain issues relating to compensation which I had identified as being, apparently, anomalous. I also announced that I intended to hold hearings at which Core Participants and/or their recognised legal representatives could make oral submissions about my provisional views and, further, address a number of issues which I identified in a separate document entitled “Submissions on Issues of Compensation” (“the Compensation Issues”) which I published on 10 May 2022.
3. In order to facilitate the management of these hearings, I indicated that any Core Participant who wished to make oral submissions at the hearings should first file written submissions by a specified date⁵ which addressed the issues I had identified.
4. I received written submissions on behalf of the following Core Participants -
 - Core Participants represented by Howe+Co.

³ See footnote 1 in the Executive Summary.

⁴ See footnote 2 in the Executive Summary.

⁵ Originally the specified date was 31 May 2022, but a number of Core Participants sought and were granted extensions of time for filing their submissions.

- Core Participants represented by Hudgells.
- Core Participants represented by Hodge Jones & Allen.
- The National Federation of Sub-postmasters (“NFSP”).
- The Post Office.
- BEIS.
- United Kingdom Government Investments (“UKGI”).

All the Core Participants listed above, save one, indicated that their advocates of choice would make oral submissions at the hearings I had indicated would take place. The exception was NFSP; their Chief Executive Officer, Mr. Calum Greenhow, indicated that NFSP would rely upon their written submissions.

5. I also received written submissions on behalf of named persons (all of whom are now Core Participants) drafted on their behalf by a barrister, Mr. Paul Marshall and a letter dated 30 May 2022 from Freeths LLP, the solicitors who had acted for the Claimants in the Group Litigation. Mr Marshall is not the recognised legal representative of the persons for whom he submitted written submissions, but his submissions were made with their knowledge and consent.
6. All these written submissions together with supporting documents were disclosed to all Core Participants and they have all been published on the Inquiry’s website. Further, a Bundle of Documents was prepared for use at the hearings and the index for that Bundle has, also, been published.
7. The hearings took place on 6 and 13 July 2022. On 6 July, I heard oral submissions from Leading Counsel to the Inquiry, Leading Counsel for the Post Office, Counsel for UKGI and Leading Counsel for those Core Participants represented by Howe+Co. On 13 July I heard oral submissions from Counsel for BEIS, Leading Counsel for the Core Participants represented by Hudgells, Counsel for the Core Participants represented by Hodge Jones & Allen, and, very briefly for a second time, from Leading Counsel for the Core Participants represented by Howe+Co.
8. The dates of the hearings were chosen to enable the Core Participants to be represented by their advocates of choice. However, because there was a gap of a week between the two hearings, it was inevitable that the Inquiry would be provided with further written material in the days between the two hearings. All these documents, save for the emails from 2 individual Core Participants, have been disclosed to all Core Participants and published on the Inquiry’s website. As I indicated at the hearing on 13 July, I decided against publishing the emails from the 2 individual Core Participants; however, as I also explained, the substance of the emails constituted a request to me that I continue to involve myself in all issues relating to compensation.
9. The hearings on 6 and 13 July 2022 were open to the public and they were broadcast on the Inquiry’s YouTube channel.
10. I am grateful to all those who provided me with written and oral submissions. I have considered them all. I have been able to refresh my memory of the oral submissions from the transcripts of those submissions.

11. The written submissions I received did not simply address those issues I had identified on 10 May 2022 in the Compensation Issues or the provisional views I had expressed on 9 May 2022. Further, between my announcement of the hearings and their taking place and, indeed, during the week between the two hearings, events took place and announcements were made which impacted significantly upon some of the issues I had identified in the Compensation Issues. Accordingly, I have concluded that it would not be appropriate in this Update simply to address the responses to my provisional views and the submissions which relate specifically to the contents of the Compensation Issues. Instead, I have decided to take this opportunity to consider and reach conclusions upon whether, as of now, the stated aims of the Post Office and BEIS to provide full and fair compensation promptly are being fulfilled. I appreciate that I will return to consider this aspect of the Inquiry's work during Phase 5 when I will receive significant written and oral evidence about all aspects of delivering compensation. In my view, however, an assessment of whether the stated aims of the Post Office and BEIS are being delivered cannot wait until I produce my final report. If there are flaws in the processes which have been or will be set up to deliver compensation it is far better that I identify them now and indicate, where that is possible, what should be done to remove them.
12. It will come as no surprise to anyone to read that, even after the oral hearings closed on 13 July 2022, I received written communications from some of those who have an interest in this Update. All relevant communications sent to me since 13 July 2022 will be disclosed to Core Participants, and, in due course, published on the Inquiry's website.

The existing and proposed schemes for providing compensation

The Historical Shortfall Scheme (“HSS” or “the Scheme”)

A description of the Scheme

13. HSS is a voluntary remediation scheme which came into existence following the settlement of the Group Litigation. The Deed of Settlement which brought an end to the litigation laid the foundation for the Scheme⁶ and the Scheme itself was published by the Post Office on 1 May 2020.
14. In its written submissions of 8 April 2022, the Post Office say that HSS was designed and set up “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” (paragraph 20). It suggests that it was also designed to allow offers of compensation to be made to applicants “on a fair and principled basis, following existing judicial guidance given in the Group Litigation, in a more streamlined way” (paragraph 22) In paragraph 6 of its submissions of 31 May 2022, the Post Office explain that as well as being designed to be “streamlined” the Scheme was also designed to be “user-friendly”. The Post Office stress that from the outset offers of compensation made under the Scheme would be determined with regard to applicable legal principles, including the judgments handed down in the

⁶ See Clauses 9.4, 9.5 and Schedule 6 of the Settlement Deed.

Group litigation, but would not be constrained by them. Rather, offers of compensation could and would be made *“in line with broad considerations of fairness”*.

15. From its inception, HSS had specific eligibility criteria. It was open only to applicants who were or had been in direct contractual relations with the Post Office. The application had to relate to shortfalls which had arisen in respect of *“previous versions of Horizon (sometimes referred to as Legacy Horizon, Horizon Online or HNG-X)”*. Only certain categories of persons were entitled to bring a claim on behalf of others e.g. it was necessary for a personal representative to make an application on behalf of a deceased person. The applicant had to agree to be bound by the Terms of Reference of the Scheme.
16. The eligibility criteria also contained specific exclusions. Claimants in the Group Litigation were excluded from being eligible to seek compensation under HSS as were all persons (including the Group Litigation Claimants) who had been convicted of criminal offences related to their time with the Post Office. As at the opening date of the Scheme persons were not eligible for compensation if they had entered into any settlement agreement with the Post Office other than as part of the *“Initial Complaint Review and Mediation Scheme”* which had commenced in 2013 or as a result of *“Network Transformation or other scheme”*. However, after the Scheme had been open for some time the provision which excluded persons who had entered settlement agreements with the Post Office was changed so that the only operative exclusion related to persons who had entered into settlement agreements after 16 December 2019 (the date of the Horizon Issues judgment handed down by Fraser J).
17. In its original manifestation (i.e. the version published on 1 May 2020) HSS consisted of two documents which were published on a discrete website. They were an application form and the Scheme’s Terms of Reference.
18. The original application form began by setting out information about how applications were to be made. It then set out the eligibility criteria for the Scheme in 6 numbered paragraphs in bold type (summarised in paragraphs 15 and 16 above).
19. The remainder of the form comprised a series of questions/requests for information. The first 18 questions were designed to elicit relevant personal information about the applicant, his or her branch and other details referable to his/her time with the Post Office. Questions 19 to 23 were designed to provide information about shortfalls suffered by the applicant, whether the shortfall had been paid to the Post Office and what action had been taken by the Post Office in respect of shortfalls. Question 24 was as follows: -

“Have you experienced any other losses that are directly related to the alleged shortfall(s) in respect of which you would like to claim?”

If the answer to that question was Yes, the applicant was asked to provide a description of the nature of the alleged loss and the date thereof and specify how the loss arose because of the alleged shortfall and the value/size of the loss. Questions 25 to 28 related to what were called *“Miscellaneous matters”*. Question 29 asked applicants to describe why they believed that they had been treated unfairly by the Post Office and question 30 was, in effect, a request to produce any documents held by applicants to support their claim. The application form concluded with a space for applicants to provide any further relevant information not covered in the previous questions and a *“Statement of Truth”* followed by a space for the applicant’s signature.

20. No part of the application form made any specific reference to any time limit for making an application. In fact, however, there was a time limit; applications had to be submitted by midnight on 14 August 2020 i.e., applicants had a little more than 3 months in which to make an application.
21. This time limit was to be found in the Scheme's Terms of Reference. Paragraph 3 provided:
- "All applications to join the Scheme must be received by the Post Office by midnight on Friday 14 August 2020. If they are not, Applicants will not be eligible to join the Scheme unless Post Office agrees otherwise."*
22. In June 2020 the Post Office published a revised application form. This form incorporates the Scheme's Terms of Reference which, hitherto, had been contained in a separate document. As a consequence, the time limit for making an application is referred to within the application form itself. As of that date, the time limit for submitting an application was still said to be midnight on Friday, 14 August 2020. Save for the incorporation of the Terms of Reference into the form, the revised application form published in June 2020 is identical (or, if not identical, very similar) to the application form published in May 2020.
23. HSS did not close on midnight of 14 August 2020. The Post Office decided that it should remain open to applicants for a further period of 15 weeks, i.e. until 27 November 2020. The Post Office explain that decision as being a consequence of there being a change in the eligibility criteria to permit applications from sub-postmasters (other than Group Litigation Claimants) who had entered into settlement agreements with the Post Office prior to the settlement of the Group Litigation.⁷
24. Since 1 May 2020, the Post Office has produced and published additional documents relating to HSS. They are documents entitled:
- I. "Eligibility Criteria";
 - II. "Terms of Reference of the Historical Shortfall Scheme Independent Advisory Panel" (the "IAP Terms of Reference");
 - III. "Consequential Loss Principles and Guidance" ("the Guidance"); and
 - IV. "Questions and Answers".
25. The document entitled "Eligibility Criteria" reflects the change in the criteria to which I referred in paragraph 23 above and, presumably, this was published in the summer of 2020. The IAP Terms of Reference which the Post Office disclosed to the Inquiry for the purpose of the hearings on 6 and 13 July is a version of the document which was approved on 3 February 2022, but I have seen nothing at this stage of the Inquiry to suggest that any earlier version was substantially different. The Guidance is undated. Leading Counsel for the Post Office, in her oral submissions, said:
- "Now the Guidance was introduced on 1 October 2020 at which point Post Office wrote to all applicants to the Scheme at that stage to communicate that update and the availability of the Guidance. Post Office also published a press release about the Guidance and*

⁷ See Written Submissions on behalf of the Post Office, dated 31 May 2022, paragraph 23 and footnote 17 thereof.

published it on the Scheme website, so any applicants who hadn't applied by that point would be made aware of it from the website itself."

In his oral submissions, Counsel for BEIS told the Inquiry that the Guidance was sent to all applicants in October 2020 and was published and signposted on the front page of the HSS website during September 2020.

26. The document entitled "Questions and Answers" is also undated. It is reasonable to infer that this document was published (although at this stage I do not have definitive evidence to confirm that) and it is also reasonable to infer that it was produced prior to 14 August 2020, since the document refers to that date as being the date by which Post Office were to receive all applications under the Scheme.
27. Not surprisingly, both in written submissions and during the course of the oral submissions on 6 and 13 July, very significant attention was paid to the terms of the application form, the Scheme's Terms of Reference, the IAP Terms of Reference and the Guidance. I have described the application form already in some detail; I turn next to describe the main features of the Scheme's Terms of Reference, the IAP Terms of Reference and the Guidance.
28. As I have already explained, the Scheme's Terms of Reference requires that all applicants "agree" the Terms of Reference and submit their applications to the Post Office by the specified date(s). Clause 7 of the Terms specifies, in summary, the process to be followed upon receipt of an application. First, it is screened for eligibility. Second, assuming the application meets the eligibility criteria, it is investigated, and the result of the investigation is provided to an independent advisory panel in the form of a written report. That panel then recommends an offer of compensation to the Post Office and, assuming the Post Office accepts that recommendation, the offer is communicated to the applicant.
29. In the event that an offer is accepted, a legally binding settlement agreement is concluded between the Post Office and the applicant. In the event that an applicant is dissatisfied with an offer, a "*Dispute Resolution Procedure*" can be invoked by the applicant as provided by paragraph 8 of the Scheme's Terms of Reference. In summary, this process begins with a "*good faith meeting*" between the applicant and a representative of the Post Office. If the dispute is not resolved at that meeting, an "*escalation meeting*" between the applicant and a member of senior management of the Post Office takes place. If the dispute is still not resolved, it is referred to a specified mediation service. Paragraph 8.5 of the Scheme's Terms of Reference specifies that all good faith meetings, escalation meetings and mediations are carried out on a confidential and "*without prejudice*" basis to ensure each party is able to engage in an open and meaningful fashion, and paragraph 8.6 specifies that any settlements which result from these processes will be on a full and final basis, and will not be capable of being reopened, save in the event of fraud.
30. Paragraph 8.7 contains two clauses which deal with the situation in which the dispute between the parties is not resolved by any of the stages so far described. Paragraph 8.7.1 provides that disputes relating to sums totalling not more than £10,000 will be resolved by recourse to civil proceedings in the County Court pursuant to the Small Claims Track, and paragraph 8.7.2 provides that disputes relating to sums totalling more than £10,000 will be referred to and finally determined by arbitration under the Arbitration Act 1996.
31. I should also mention paragraphs 6 and 10 of the Scheme's Terms of Reference. Paragraph 6 provides: -

“Once an application has been made, either party may write to the other to request relevant information. The parties shall cooperate with one another in providing any information which the other party may reasonably request. Information obtained and provided in relation to each application should be proportionate to the circumstances of that application.”

Paragraph 10 contains a commitment by the Post Office to act in good faith.

32. Under the IAP Terms of Reference, the “*Historical Shortfall Scheme Independent Advisory Panel*” was constituted to “*assess eligible claims*”. The Terms of Reference included an overriding objective in the following terms:

“1. The task of the Panel is to assess and recommend to Post Office a fair outcome for Eligible Claims made to the Scheme for shortfall losses and consequential losses.

2. The Panel’s objective is to assess Eligible Claims by applying the principles and standards set out in Section E below.

3. The Panel will aim to assess and recommend outcomes on Eligible Claims in a timely manner, having regard to the need to ensure sufficient care and consideration is given to each claim to provide a fair recommendation.”

33. The Independent Advisory Panel consists of a number of legal specialists, forensic accounting specialists and retail specialists. Each individual application is considered by a panel of three comprising one each of those specialists which then makes a recommendation to the Post Office. In advance of a panel meeting a case assessor will have produced a written report upon the application under consideration which will contain a suggested offer of compensation. The case assessor attends the meeting of a panel as a “*case presenter*”. Having considered the case assessor’s report and any oral observations made by the case assessor the panel makes its recommendation to the Post Office. Thereafter, the Post Office, acting through a committee known as the “*Historic Shortfall Scheme Approvals Committee*” considers the recommendation and makes an offer of compensation to the applicant.

34. If a panel considers that a claim requires further investigation prior to the making of a recommendation, it can refer the claim back to the investigation stage for further enquiries to be made – see paragraph 26 of IAP Terms of Reference. If it requires expert assistance to make a recommendation, the Panel may recommend to the Post Office that such expert assistance is obtained at the Post Office’s expense – see paragraph 27 thereof.

35. Section E of the IAP Terms of Reference (paragraphs 28-32) provides guidance as to the principles which should be applied when assessing an application. It is worth quoting paragraphs 30, 31 and 33 in full:

“30. In formulating its recommended offer, the Panel may recommend the making of an offer to the Postmaster if, guided by broad considerations of fairness, the Panel considers that doing so would produce a fair result in all the circumstances of a particular case. For the avoidance of doubt, in doing so, the Panel’s discretion will not be confined solely to the specific heads of Consequential Loss claimed by the Postmaster, but will take into account any facts and matters which the Panel considers will produce a fair result on the facts of a particular case.

31. Many Eligible Claims will relate to Shortfall Losses and Consequential Losses suffered a significant number of years ago. In order to draw a line under the issues caused by previous versions of Horizon and treat Postmasters who have been affected fairly, the Scheme (including the Panel) will not apply the laws of limitation in its assessment of Shortfall Losses or Consequential Losses, but shall deal with each claim on the basis that it is not barred by the expiry of any relevant limitation period. Post Office's rights to rely on limitation defences outside the Scheme (including in any subsequent litigation or arbitration proceedings commenced under the Dispute Resolution Process) are strictly reserved. Given the large number of applicants to the Scheme, claims may take some time to investigate and assess. Post Office is therefore willing to agree, in respect of each applicant, that time will not run for limitation purposes from the date the applicant joined the Scheme to the date on which the applicant receives their offer letter."

"33. Where:

*a. there is evidence that the shortfall in question existed and was paid; and
b. there is no evidence that the shortfall was caused by something other than a potential issue with Horizon, for the purposes of this Scheme the presumption is that the shortfall is a Horizon Shortfall."*

36. Finally, in relation to the IAP Terms of Reference, I draw attention to paragraphs 34 and 35. Paragraph 34 specifies that a panel should apply the Guidance when considering losses other than Shortfall losses. Paragraph 35 provides discrete guidance in respect of personal injury claims where insufficient evidence has been provided for a claim to succeed without further medical and / or expert evidence. In those circumstances, a panel may recommend the making of an offer to the applicant which the Panel considers to be fair. In the event that this occurs, the applicant will have the option of accepting the offer or obtaining such further evidence as may be necessary in order to pursue a personal injury claim *"in accordance with the ordinary legal standards relevant to such claims, including as to proof of causation and assessment of damages"*.

37. Both the IAP Terms of Reference and the Guidance contain definitions of the phrases *"Shortfall Loss"* and *"Consequential Loss"*. Shortfall Loss is defined to mean the amount of a Horizon shortfall that the Postmaster has repaid or is regarded by the Post Office as still owing. Consequential Loss is defined to mean financial or non-financial loss that is not a Shortfall Loss. The Guidance consists of five sections. For the purposes of this Update, it is necessary to mention only two, namely Section 3 headed *"Key Principles"* and Section 5 headed *"Type of Loss"*. The Key Principles are:

- *"Applicants bear the burden of proving on balance of probabilities the consequential loss which they claim, although*
- *Where an applicant is unable to satisfy the burden of proof in relation to their claim, it may nonetheless be accepted in whole or in part if that outcome is considered to be fair in all the circumstances.*
- *Claims which are supported by evidence are more likely to be successful.*
- *Greater weight will be attached to contemporaneous evidence and / or factual evidence that is undisputed or verifiable.*

- *When assessing a claim, the Panel will take into consideration any relevant evidence held by the Post Office.*
- *In assessing a claim, the findings of the Common Issues Judgment and the Horizon Issues Judgment which are relevant to the claim will be applied together with any relevant legal and accounting principles applicable to the assessment of damages for breach of a legal duty.”*

38. Section 5 recognises that there is no exhaustive list of the types of consequential loss which may be claimed by an applicant. However, it highlights the following potential types of loss, together with the nature of the evidence which might be expected to exist to support such a claim. The types of loss identified are loss of earnings, loss of profits, loss of property, loss of opportunity/loss of chance, penalties/general or increased costs of financing, bankruptcy/insolvency, incurred legal and professional fees, stigma/ damage to reputation, and personal injury/harassment.

39. In written and oral submissions, Leading Counsel for the Post Office provided more detail as to the personnel involved in various stages of the process described above.⁸

40. The task of determining whether an application meets the eligibility criteria of the Scheme is undertaken by a case assessor who is member of staff of Herbert Smith Freehills, the solicitors appointed by the Post Office. If an application fails to meet the Eligibility Criteria, the applicant is so notified, and his/her application is rejected. The Independent Advisory Panel has no role at this stage.

41. If the case assessor is satisfied that an application meets the eligibility criteria, it is then referred to a person who is a member of the Specialist Case Review Team at the Post Office i.e. an employee of the Post Office. That person undertakes an investigation of the application and provides a written report to the case assessor.

42. The case assessor considers the investigation report and provides “*an initial assessment and recommendation based only on applicable legal principles, which is then presented to [an] Independent Advisory Panel for their consideration*” – see paragraph 31.d. of the Written Submissions on behalf of the Post Office, dated 31 May 2022.

43. As well as the recommendation of the case assessor, an advisory panel is provided with the initial investigation report compiled by an employee of the Post Office and a complete set of supporting documents. The panel members then undertake their own assessment of the application and submit a recommended outcome to the Post Office, i.e. it makes a recommendation about whether and, if so, how much compensation should be offered to an applicant.

44. Following receipt of the panel’s recommendation, the Post Office (through its Approvals Committee) decides the outcome of the application. An outcome letter is prepared by Herbert Smith Freehills and in the higher value cases the outcome letter is reviewed by the panel so as to ensure that they agree with its terms.

45. The outcome letter sent to an applicant lists all the documents which were considered by the panel prior to the formulation of an offer of compensation. Prior to acceptance or rejection of an offer the applicant can seek disclosure of all or any of the documents so

⁸ These processes are those which are used in higher value claims; a more truncated procedure is used for claims categorised as “lower value” the definition of which can be found at paragraph 49 below.

listed if he/she is so minded. This is the first time, in the process, when disclosure of written material is given to an applicant unless an applicant has invoked paragraph 6 of the Scheme's Terms of Reference and made a written request to the Post Office for documents or information earlier in the process.

Progress under the Scheme

46. By the extended closing date of 27 November 2020, the Post Office had received 2,523 applications. Of those, 2,368 applications met the eligibility criteria; 155 applications did not. I assume (since I have received no information to the contrary) that the unsuccessful applicants to the Scheme were notified of the decisions made in their cases and they have accepted that they do not qualify for compensation under the Scheme.
47. At the hearing on 6 July 2022 the Inquiry was informed by Leading Counsel for the Post Office that, as of that date, 1,659 applicants had been made offers of compensation under the Scheme. Of those, 1,300 applicants had accepted offers in settlement and 92 applicants had rejected the offers made to them. According to the HSS website, as of 2 August 2022, 1,729 applicants had been made offers and 1,360 applicants had accepted the offers made to them.
48. As of 6 July 2022, 115 applicants have engaged the Dispute Resolution Process. 31 of those applicants had reached agreement with the Post Office on the amount of compensation. None of the 115 applications had reached the stage of mediation by 6 July. As of 2 August 2022, there were 100 applicants who were engaged in dispute resolution.
49. I note that the Post Office decided to consider, first, those applications which were comparatively simple to understand and involved claims for compensation involving a shortfall of up to £8,000, with an additional claim for distress and inconvenience – referred to in the written and oral submissions as “*lower value claims*”. By 6 July 2022, offers of compensation in 688 lower value claims had been made, of which all but 10 had been accepted.
50. Very few applicants have, to date, availed themselves of the opportunity to take legal advice at the expense of the Post Office in respect of offers of compensation made to them. Paragraph 19 of the IPA Terms of Reference specifies that the sum of £400 is available towards the cost of legal advice where the Post Office offers to pay an applicant's claim in full or “*largely in full*”; in all other cases Post Office contributes £1,200 if a contribution is sought. Of those who have accepted offers of compensation, two applicants obtained legal advice at the expense of the Post Office. Of those who have rejected their offers in compensation, 13 have obtained such legal advice.
51. Leading Counsel for the Post Office acknowledged in her oral submissions that those claims which remain to be determined and/or are already the subject of dispute, are those which are more complex and potentially more valuable and, therefore, likely to be difficult to resolve. She accepted that the take-up of legal advice at the expense of the Post Office may increase when offers in settlement are made in these more contentious cases.
52. Leading Counsel acknowledged, too, that there have been significant delays since HSS was first launched in May 2020. The reasons for delay are now well documented. First, the Post Office underestimated the numbers of applications. It was expected that applications would be numbered in the hundreds, whereas, as I have said, applications within the extended specified time limit exceeded 2,500. Second, the number of applications was

such that Post Office could not provide “*full and fair compensation*” from its own resources. It had to seek and obtain further funding from HM Treasury. That funding was not arranged and announced until March 2021. Third, it became clear to the Post Office that it had recruited insufficient numbers for the Independent Advisory Panel, with the consequence that further members had to be sought and appointed. Fourth, the claims for compensation made by applicants have a very wide range in terms of their value and complexity. The lowest claim advanced under the Scheme is £15.25, whereas the highest claim is put at several million pounds. Inevitably, there has been a need to develop appropriate procedures and practices for handling such wide-ranging and different claims.

53. However, the Post Office contends that delay, in the main, has been confined to periods in 2020 and 2021. It argues that progress during 2022 has been much more encouraging. It has set itself a target of making offers in 95% of the eligible applications by the end of 2022. Given that most applications in which no offer in settlement has yet been made are complex in nature, that is an ambitious target. Nonetheless, both in its written submissions and in the oral submissions made by Leading Counsel, the Post Office expressed confidence that it can reach that target.

54. That brings me conveniently to the role played by BEIS and UKGI in the administration of the Scheme. BEIS has set the Post Office the target of making offers in settlement in respect of every application made and accepted under the Scheme by 31 December 2022. In oral submissions on behalf of BEIS, Counsel was at pains to stress that it is one of the department’s central objectives to ensure that all applicants are “*promptly, fully and fairly compensated for their financial losses, distress and the hardship they have experienced over many years*”. In order to explain the role which BEIS has assumed in relation to the Scheme, Counsel relied upon part of the written responses of the Government to the Report of the Business, Energy and Industrial Strategy Committee, entitled “Post Office and Horizon – Compensation Interim Report”. The Report itself was published on 17 February 2022 and the Government’s response, published on 14 April 2022, contains the following paragraph:

“*Government’s Role*”

The Government has responsibility for providing the funding for settlement payments, agreeing significant decisions in relation to the settlement strategy and monitoring the Post Office’s progress towards reaching final settlements. BEIS, supported by UKGI, has been involved in the design of the compensation programme and holds regular monitoring, decision making and working group meetings, both internally and with the Post Office. This includes sign off on processes, principles and oversight on initial cases. This is to ensure that negotiations are advancing in line with the Government’s desire to see timely and fair compensation delivered to Postmasters.”

55. At first blush, that passage might be thought to be referable to compensation schemes involving sub-postmasters and others whose convictions were quashed, but in his oral submissions Counsel for BEIS relied upon that passage as accurately describing the role of BEIS in respect of all compensation schemes.

56. In its written submissions dated 31 May 2022 (paragraph 19), BEIS accepts that offers in response to applications under HSS during 2021 were made more slowly than initially intended and anticipated. The reason for that situation, maintained Counsel, was as described by the Post Office (summarised by me at paragraph 52 above).

57. Like the Post Office, however, BEIS maintains that progress during 2022 has been satisfactory and, as I have said, it has set the Post Office the very ambitious target of making offers of settlement in all cases which have met the eligibility criteria by 31 December 2022.
58. The role of UKGI in the HSS is encapsulated by paragraph 4 of its written submissions, dated 1 June 2022. I quote:
- “4. UKGI supports BEIS in its handling of the compensation schemes and wider processes, including in its interactions with POL, as part of its role as shareholder representative for POL. UKGI also regularly meets with and provides challenge to POL on operational and strategic issues concerning compensation, including in relation to (i) the Historical Shortfall Scheme (“HSS”), in respect of which, a UKGI representative attends meetings of the BEIS Steering Committee as an observer...”*
59. As I mentioned at the hearing on 6 July 2022, the role of UKGI will be scrutinised more closely during Phase 5 of the Inquiry at hearings which will take place next year.
60. Neither the Scheme’s Terms of Reference nor the IAP Terms of Reference make specific provision for the making of interim payments of compensation. Nonetheless, as of 6 July 2022, the Post Office had made 28 such payments. Leading Counsel for the Post Office told me that such payments had been made to some elderly applicants, to applicants who had demonstrated severe financial or personal hardship and to applicants who were suffering from terminal illness.
61. By 6 July 2022, the Post Office had received 186 applications for compensation under the Scheme which had been delivered to the Post Office after midnight on 27 November 2020. It has yet to determine, definitively, whether to accept some or all these applications. At paragraph 23 of its written submissions of 31 May 2022, the Post Office explain that it is *“actively considering how best to address”* these applications. When Leading Counsel for the Post Office made her oral submissions, she was unable to provide me with any update as to how the Post Office intended to deal with these applications. That state of affairs was still subsisting on 13 July 2022 when Counsel for BEIS was addressing me.
62. As is clear from the Scheme’s Terms of Reference, the Post Office quite deliberately retained, and still retains, the ability to accept an application notwithstanding that it was made after 27 November 2020. The Scheme is silent, however, about the principles or criteria which the Post Office will apply when determining whether to accept an application which is late.
63. During the Human Impact Hearings, I read evidence and heard oral evidence to the effect that some applications for compensation under the Scheme had been rejected on the basis that they had been submitted after the closing date of 27 November 2020. It is not yet clear to me how many, if any, late applications have been finally accepted or rejected but in each case the numbers are likely to be very small at the moment. At the oral hearings on 6 July and 13 July 2022, there was no attempt by the Post Office or BEIS to explain how the very many late applications still undetermined are to be treated going forward.

Criticisms of HSS and the response thereto

64. In the written submissions filed on behalf of the Core Participants represented by Howe+Co, a number of criticisms were made about the Scheme. Some of these criticisms

were emphasised during oral submissions by Leading Counsel at the hearing on 6 July 2022. The main criticisms advanced were as follows although not in any order of priority.

65. First, the Scheme makes no specific provision for the making of interim payments and, as a matter of fact, interim payments have been made in very few cases. It is strongly suggested that in relation to those applications which are still undetermined in which there is potential for protracted delay by reason of disputed heads of claim, and/or in those applications in which certain heads of claim are agreed, prompt interim payments should now be the norm.
66. Second, applicants to HSS have been confronted with an onerous process which was difficult to navigate. In practice, applicants have been expected to provide documentary proof to substantiate heads of claim when, as must have been well known to the Post Office, many of their losses occurred years, if not decades, ago and documentary evidence would very likely be unavailable to them. Indeed, in many instances an applicant's failure to have relevant documentation to support a claim was compounded by the fact that documents had been taken from them by the Post Office and not returned. Further, Question 24 on the application form (which concerned losses other than shortfall losses – see paragraph 19 above) is unclear in its terms and no guidance was published about the type of losses which would be regarded or accepted as "*consequential losses*" until September/October 2020, i.e. at a time when very many applications had already been made.
67. Third, offers of compensation are determined by the Post Office and, accordingly, the Scheme is not truly independent. The recommendations made to the Post Office by a panel are not binding and it matters not that, to date, the Post Office has never rejected a recommendation made by a panel.
68. Fourth, the Scheme does not provide for the reimbursement of reasonable legal expenses incurred by applicants in formulating claims for compensation and/or undertaking necessary investigation and evidence gathering. The level of fees allowed for obtaining advice about compensation offers is far too low. The Scheme should, from the outset, have provided for an applicant's reasonable legal fees to be paid by the Post Office in addition to the compensation paid to an applicant.
69. Fifth, and linked to the absence of proper provision for the funding of appropriate legal services for applicants, it is suggested that many eligible applicants have failed to make applications to the Scheme because "*they felt powerless*" to challenge the Post Office in the event of a dispute.
70. Sixth, the suggestion is made that applicants to the Scheme may have accepted offers in settlement which did not reflect the true value of their claims. That came about, so it is said, because of the combined effect of applicants feeling inhibited about challenging the Post Office and feeling unable to do so without appropriate legal advice and assistance.
71. During the hearing on 6 July 2022, Leading Counsel emphasised most of the points which I have summarised above. Additionally, he developed a detailed argument to seek to demonstrate that there had been unwarranted and unconscionable delay in the rolling out and administration of the Scheme. He pointed out, in particular, that the Settlement Deed was concluded on 10 December 2019, that the Scheme was rolled out on 1 May 2020, and yet it is only now, more than two years later, that those administering the Scheme are beginning to grapple with the most complex and challenging cases.

72. Hudgells act for nearly all the Core Participants who have had convictions quashed. However, it is apparent that they are also acting for, or at least assisting, many of the applicants to HSS. In the Written Submissions presented on behalf of the Core Participants represented by Hudgells, there were a number of similar criticisms of the Scheme to those which had been advanced on behalf of the clients of Howe+Co. The Written Submissions contended that these criticisms were based upon an analysis of “*a cohort of approximately 70 cases*” (see paragraph 4 of the Submissions) and upon their assessment of some of the evidence given during the Human Impact hearings.
73. In his oral submission on 13 July 2022, Leading Counsel instructed by Hudgells made a number of discrete points in criticism of HSS. First, he suggested that the Scheme made no proper provision for applicants to obtain expert evidence at the expense of the Post Office when that was reasonably necessary to advance their claims. This problem has been and is particularly acute, he maintained, in respect of those applicants who wish to pursue claims for compensation for personal injuries. Second, he argued that paragraph 31 of the IAP Terms of Reference (see paragraph 35 above) was drafted in such a way that there was at least a possibility that if an applicant rejected an offer made by the Post Office and pursued dispute resolution to a contested arbitration, the Post Office might seek to rely upon a limitation defence in respect of losses which had crystallised many years previously. He suggested that this would be unfair and a clear disincentive to an applicant to reject an offer in settlement and pursue dispute resolution processes in order to obtain a more favourable outcome. Third, he drew attention to the plight of those applicants who had been made bankrupt because of apparent shortfalls generated by Horizon. Leading Counsel pointed out that neither the Guidance nor any other published document gave any real clue as to how this thorny issue would be dealt with in formulating a compensation offer. A redacted letter was produced to the Inquiry to demonstrate that in many cases a Trustee in Bankruptcy might have first call on that part of any compensation payment which related to financial losses and the argument advanced that it would be most unfair if large parts of compensation payments were swallowed up in an applicant’s bankruptcy when many, if not all, of the applicants who were made bankrupt claimed that their bankruptcy was a direct consequence of reliance upon Horizon data. A fourth criticism advanced by Leading Counsel was that the outcome letter sent to applicants simply listed the documents which had been relied upon to formulate the offer of compensation. He maintained that the letter should always be accompanied by all the documents relied upon and which underpinned the offer of compensation. It should not be incumbent upon an applicant to request such disclosure of information. The fifth criticism of the Scheme was that there was no express provision within it for making interim payments of compensation. Further, although, as a matter of fact, a small number of interim payments had been made no criteria had been published as a guide to those who might wish to pursue an application for such a payment. Additionally, many applications for compensation were broken down into a number of different heads of loss. In cases where certain heads of loss were agreed, but others disputed, there was no good reason why the agreed heads of loss could not be paid as an interim payment. While it might be appropriate to focus upon final offers in settlement in the lower value claims, or where the claims were easily justified or rejected (as the case may be), it was not appropriate to withhold any payments of compensation in the more complex cases until a final amount could be agreed when agreement was possible in respect of some of the heads of claim.
74. Leading Counsel was also at pains to point out and emphasise delay in decision making on the part of the Post Office and/or BEIS. He complained, in particular, of delay in determining whether applications for compensation made after 27 November 2020 would be rejected on the grounds that the Scheme had closed before the applications were made

or determined on their merits. He complained, too, of delay in reviewing whether reasonable legal costs would be paid to applicants whose claims under the Scheme remained unresolved. He asked me, in effect, to express disapproval of these delays given the actual and potential adverse impacts upon individuals which had been and would be occasioned by such delays.

75. Finally, Leading Counsel raised concerns about what he called the “*operational independence*” of the independent advisory panels. He suggested that there was, at the very least, a possibility that the panels would be unduly influenced by recommendations made to them by the case assessors, especially since there was a need to deal with applications promptly and the case assessors acted as “presenting officers” at panel meetings. It was suggested that the Inquiry should investigate how often Independent Advisory Panels had made recommendations to the Post Office in a sum which was greater than the case assessor had suggested.
76. Hodge Jones & Allen now represent 5 Core Participants who have, by any measure, suffered a great deal as a consequence of decisions made in reliance upon Horizon data. None of those 5 Core Participants were eligible to make applications under HSS since they were claimants in the Group Litigation and three of them were convicted of criminal offences in reliance upon evidence generated by Horizon. That being so, and entirely understandably, the written submissions filed on behalf of these Core Participants and the oral submissions made by Counsel on 13 July 2022, did not relate specifically to HSS.
77. The written submissions filed on behalf of the NFSP explained that they were not involved in any of the discussions which preceded the rolling out of HSS. Nonetheless, NFSP has provided assistance to current and former members in making applications to the Scheme and it has contacted the Post Office on behalf of current and former members about the progress of their claims. Additionally, being concerned about the delays in the administration of the Scheme, in December 2021 Mr Greenhow made an enquiry of the Post Office as to whether such delays had been occasioned by the departure from the Post Office of Mr Declan Salter, who had held a senior oversight position. Mr Greenhow had been assured that Mr Salter’s departure had not caused or contributed to any delay.
78. NFSP was also concerned about the level of legal fees payable by the Post Office to applicants who sought legal advice about whether they should accept offers of compensation. I regard it as implicit in the submissions made on behalf of NFSP that they consider it important that applicants to the Scheme should be reimbursed the reasonable cost of obtaining necessary legal advice about offers in settlement which are made to them rather than be provided with a fixed sum regardless of the complexity of the particular case.
79. Both the Post Office and BEIS acknowledged and apologised for the delays which have occurred in administering HSS. In summary, they both accept that there was a significant delay following the opening of the Scheme on 1 May 2020 before any offers of compensation were made and that many of the offers which were made in the early stages were in respect of lower value claims which were comparatively easy to process and assess. They acknowledge that, in the main, those applicants with very substantial claims and/or difficult claims to assess are still waiting for offers of compensation notwithstanding that more than 2 years has elapsed since the opening of the Scheme. However, both the Post Office and BEIS maintain that the rate at which offers of compensation have been made over the last year or so has accelerated and, as I have said the Post Office have a target of making offers of 95% of cases by 31 December 2022 and BEIS expects that offers will have been made in all cases which satisfy the eligibility criteria by that date.

80. The available data supports the view that there has been an increase in the rate at which offers of compensation have been and are being made. When I published my first Progress Update on 15 September 2021, I reported that 474 offers of compensation had been made by 13 August 2021 of which 447 had been accepted. In the Government's Response to the Report of the BEIS Committee, it was reported that, as at 25 of March 2022, 1,106 offers in settlement had been made of which 911 had been accepted. The figures for July and August this year are as set out at paragraph 47 above.
81. Neither the Post Office nor BEIS have advanced any reason (either in written or oral submissions) why it has taken so long to determine whether applications for compensation which were made after 27 November 2020 should be rejected or accepted. A decision on this issue is said to be "*under review*" but, to date, no substantial information has been provided to the Inquiry about the process for determining these late applications.
82. Neither the Post Office nor BEIS rule out the possibility that an amendment to HSS will be made, going forward, to permit applicants whose claims are unresolved to claim the reasonable cost of obtaining legal advice and assistance over and above the £1200 currently on offer for advice about offers of compensation. A decision on this issue is also said to be under review.
83. In respect of the other criticisms made of HSS, the Post Office and BEIS, in the main, reject them. They reject the criticisms made of the application process itself. They hold to the view that the Scheme is user friendly (or at least sufficiently so) and that it can be navigated sensibly by non-lawyers. They argue that the settlement rate is very high, as a proportion of offers made, which supports their view that the Scheme is understood by lay people. When expert opinion is considered necessary, there is a mechanism for obtaining such evidence at the expense of the Post Office in which the applicant whose claim is under consideration has a role⁹ and each panel is made up of persons with wide-ranging expertise. The very low take-up, to date, of the funding for legal advice in respect of offers of compensation is a further indicator that the Scheme and the principles for assessing compensation are understood by very many applicants. They maintain that the process for determining each application is fair and submit that decision-making on offers of compensation is independent of the Post Office. Both the Post Office and BEIS point out that all the members of the Independent Advisory Panel are distinguished experts in their field and very capable of making decisions based on their own collective judgment. It is very unlikely that panel members would be improperly influenced by case assessors. The Inquiry was told that all offers of compensation made by the Post Office to date were in the sum suggested by the independent advisory panels and that in some instances the panels had suggested a higher sum than that which had been recommended by the case assessor. There is no need for all the documentation provided to panels to be provided, automatically, to applicants when an outcome letter is sent to them. It is sufficient that applicants are alerted to their availability. The making of interim payments (except to alleviate very substantial hardship or provide some compensation to the very elderly) would be inconsistent with the aim of providing full and fair compensation promptly.
84. The Post Office draw particular attention to those provisions of the Scheme which mandate the Post Office to make offers which are fair - even to the extent of departing, where appropriate, from settled legal principles relating to compensation if fairness so demands. They also emphasise the presumption contained within paragraph 33 of the IAP Terms of Reference (see paragraph 35 above) as demonstrating the commitment to ensure that

⁹ See IPA Terms of Reference paragraph 27.

applicants to the Scheme are treated fairly. Overall, both BEIS and the Post Office maintain that HSS has delivered and is delivering full and fair compensation albeit for some, at least, this had not been delivered promptly.

Interim and Final Compensation payments for persons whose convictions have been quashed (“Overturned Historical Convictions Scheme”)

85. As at the date hereof, 81 people convicted of criminal offences of dishonesty in reliance upon evidence adduced from Horizon have had their convictions quashed. The convictions of 64 people have been quashed by the Court of Appeal (Criminal Division) on appeal from Crown Courts around England and Wales. 17 people have had their convictions quashed at Southwark Crown Court on appeal from Magistrates’ Courts around England and Wales.
86. On 22 July 2021, the Minister announced that funds would be made available to the Post Office so that interim payments of compensation of up to £100,000 per person could be paid to those whose convictions for offences of dishonesty, which were reliant upon evidence generated by Horizon, had been quashed.
87. Shortly after that announcement had been made, Herbert Smith Freehills, on behalf of the Post Office, produced an application form which was used by applicants to claim an interim payment. It is widely accepted that all claims for interim payments have been determined promptly and that payments have also been made promptly. The Post Office say that in most cases payments have been made within 28 days of receipt of the application and there is no reason to suppose otherwise.
88. As of 6 July 2022, 69 applications for interim payments had been considered and, as I understand it, all applications, save for the three discussed at paragraphs 91 to 93 below, have been successful.¹⁰
89. The rationale underpinning the making of interim payments to those whose Horizon related convictions have been quashed is that such persons would have very good prospects of a successful claim for compensation against the Post Office for malicious prosecution. In the Settlement Deed which brought an end to the Group Litigation, the rights of convicted claimants to bring claims for malicious prosecution against the Post Office were expressly preserved in the event that their convictions were quashed.
90. The announcement made by the Minister in relation to interim payments was not confined to persons who had brought claims against the Post Office in the Group Litigation. Interim payments are available to all persons whose Horizon related convictions are quashed i.e. as the Horizon related convictions of persons are quashed it is open to those persons to seek an interim payment.
91. As I indicated in paragraph 24 of the document which I published on 9 May 2022,¹¹ there are 3 Core Participants whose convictions have been quashed but whose applications for interim payments of up to £100,000 have been rejected by the Post Office. They are Mrs

¹⁰ Since 13 July 2022 6 persons have had their *Horizon* related convictions quashed and, presumably, they have applied or will apply for interim payments.

¹¹ “*Provisional view of the Chair on compensation issues relating to prosecuted sub-postmasters*”.

Adedayo, Mr Kalia and Mr Patel. In summary, the Post Office rejected each application because they concluded that there was evidence in each case independent of that which was generated by Horizon (alleged confessions) which was capable, if accepted, of justifying convictions. Accordingly, at least arguably say the Post Office, the prosecution of these individuals was justified and their prosecution was not malicious. The quashing of the convictions of these individuals was not opposed because, according to the Post Office, it would not have been in the public interest to have opposed that course of action.

92. At paragraph 27 of the same document, I explained that I needed to guard against making myself the arbiter of disputes between Post Office Limited and Mrs Adedayo, Mr Kalia and Mr Patel about whether they were eligible for interim payments. It is not my function, under the Inquiry's Terms of Reference, to determine such disputes and, in any event, I have no power to compel the Post Office to comply with any view which I might express or any determination I might make. However, I am entitled to consider whether any scheme for providing compensation is fair and/or is being administered with fairness.

93. I have three concerns about the fairness of the process for decision-making and the decision-making itself in relation to Mrs Adedayo, Mr Kalia and Mr Patel. These concerns would apply equally to any other persons who may, in the future, be treated similarly by those responsible for deciding whether interim payments should be paid. First, the Post Office is the final arbiter of whether they should be awarded such payments. There is no mechanism (save for starting legal proceedings in the civil courts or engaging in other dispute resolution processes such as binding mediation or arbitration) whereby an interim payment can be ordered against the Post Office. The interim payment scheme administered by the Post Office has no mechanism within the scheme itself whereby an independent person or panel can scrutinise and review decisions made by the Post Office and, where it is appropriate to do so, direct that a refusal to make an interim payment should be overturned. Second, I am concerned that the reasoning deployed by the Post Office to justify the refusal of interim payments in the cases of Mrs Adedayo, Mr Kalia and Mr Patel could not be used to justify the refusal of interim payments to those whose convictions are quashed by the Court of Appeal (Criminal Division) with the consequent possibility of unfairness between applicants.¹² Third, the Post Office have been at pains to point out that the refusal of an interim payment does not mean that the claim upon which it is based cannot be pursued as part of the claim for final compensation. I find it difficult to understand the logic of that position unless it is predicated upon the proposition that further and more persuasive evidence may become available in support of a claim. I say that because, stripped to its essentials, the reason why the Post Office has refused interim payments is because they assert that the convictions in those cases in which payments have been refused are supported by evidence independent of Horizon. If, as seems likely, all the relevant evidence relating to the convictions of Mrs Adedayo, Mr Kalia and Mr Patel was before the Post Office when they refused interim payments, on what basis can a final payment of compensation include a payment for malicious prosecution whereas an interim payment predicated upon proving that tort is refused?

94. I have one further concern in relation to the making of interim payments. On a literal interpretation of the Minister's announcement of 22 July 2021 only those whose convictions are quashed are eligible for interim payments. Persons who had been prosecuted for offences of dishonesty on the basis of Horizon generated evidence but acquitted either

¹² It is not appropriate in an Update of this kind to identify and detail the legal arguments underpinning this observation. However, such arguments are developed fully in the written submissions dated 4 April 2022 filed on behalf of the Core Participants represented by Hudgells.

after a trial or upon the direction of the trial judge are not eligible for such payments. At the time of the Minister's announcement, this may have been understandable given that the rights to bring claims for malicious prosecution by those whose convictions were quashed had been reserved, expressly, in the Settlement Deed in the Group Litigation whereas acquitted persons who were Claimants in the Group Litigation had accepted payments of compensation which were in "*full and final settlement*" of their claims.¹³ However, BEIS has now agreed to make further payments to the Claimants in the Group Litigation. In those circumstances why should acquitted persons not receive an interim payment?

95. I turn to the issues raised in written and oral submissions regarding final payments of compensation for convicted persons whose convictions have been quashed. The prospect of the Post Office (funded by BEIS) making final compensation payments was first raised in an announcement to Parliament by the Minister on 14 December 2021.
96. To date, the numbers who have submitted claims for final compensation are small. In the written submissions made on behalf of the Post Office (dated 31 May 2022) the Inquiry was informed that 8 claims for final compensation had been received - of which 2 were fully quantified, 2 were partially quantified and 4 were unquantified. In their written submissions of 5 July 2022, the Post Office said that they had received 3 further claims and further information about a previously submitted claim. That state of affairs still subsisted when I was addressed by counsel for BEIS on 13 July 2022.
97. As I understand it there is no formal process for applying for a final payment under the Overturned Historic Convictions Scheme. Applicants simply submit their claims in as much or as little detail as they see fit and then a dialogue ensues between the applicants and/or their representatives and the Post Office. I am aware that there have been a series of discussions, including without prejudice discussions, between Hudgells acting on behalf of their clients and lawyers acting for the Post Office and/or BEIS concerning the principles which should underpin offers of final compensation under this scheme.
98. Just before the hearing on 6 July 2022 an announcement was made to the effect that Lord Dyson, a former Justice of the Supreme Court and the Master of the Rolls between 2012 and 2016, had been jointly instructed by Hudgells and the Post Office to carry out what is described as "*a neutral evaluation*" of the likely award of damages for non-pecuniary losses should the persons whose convictions had been quashed bring civil proceedings for malicious prosecution before the courts. It was stressed to me that although Lord Dyson's evaluation of these claims would not be binding, the clients of Hudgells on the one hand and the Post Office and BEIS on the other would pay very close attention to Lord Dyson's views. That is hardly a surprise given the status Lord Dyson enjoys in the legal and wider community.
99. The announcement made by the Minister on 14 December 2021 relating to final compensation payments was silent about whether applicants for compensation would recover legal fees reasonable incurred in advancing their claims. However, BEIS has confirmed that the Post Office will pay "*claims for reasonable legal costs incurred as part of any final settlements reached*"- see paragraph 32 of the written submissions of BEIS dated 31 May 2022. No doubt that is in recognition that these claims will include some of the most difficult to resolve.

¹³ It may be that acquitted persons who were not party to the Group Litigation were entitled to an interim payment, but no such persons have yet come forward as far as I am aware.

100. It has also been confirmed by BEIS that persons who were prosecuted for crimes of dishonesty in reliance upon Horizon generated evidence but acquitted can also submit claims for final compensation in accordance with the announcement on 14 December 2021 provided those persons were not Claimants in the Group Litigation. Currently, however, prosecuted but acquitted persons who were Claimants in the Group Litigation cannot make such an application.
101. It is, of course, possible that the claims of all those whose convictions have been quashed will be settled to the applicants' satisfaction through a process of negotiation between their lawyers and those acting for the Post Office. That being so, it is tempting for me to allow that process of negotiation to continue without any kind of intervention from me. However, in my view, there are a number of factors which need spelling out and proper consideration at this stage.
102. First, although many of the persons whose convictions have been quashed are represented by Hudgells, as the numbers of persons with quashed convictions grow (with the consequence that there is the potential for negotiations occurring with a number of different firms of solicitors) how will information be shared, if at all, about the principles which have underpinned concluded settlements? Although every case is likely to have unique features, there are also likely to be cases which enjoy some or even many common features. In this context, for example, it may be thought to be very important that a consistent approach is taken to all claims in which a person has suffered imprisonment or has been made bankrupt. That can only happen if there is a sharing of information amongst all interested persons or principles upon which there is agreement between the Post Office and applicants are published. These issues were highlighted in the written submissions dated 22 June 2022 made on behalf of three persons who were (and are) represented by Hodge Jones & Allen and whose convictions had been quashed. It was strongly submitted on their behalf that final compensation should be calculated according to fair and transparent published principles which are applied in a transparent manner – points which were reinforced in the oral submissions made by Counsel.
103. Second, if settlements do not prove to be possible through negotiation how is the ensuing dispute to be resolved? Is an individual applicant going to be left with a choice of pursuing alternative dispute procedures or litigation in the courts or will there be a formal remediation scheme available or other defined dispute resolution process which can be accessed by persons whose convictions have been quashed? In her oral submissions on behalf of the (by then four) clients of Hodge Jones & Allen, Counsel was clear that her clients favoured a remediation scheme being put in place to deal with compensation payments should negotiations fail. The suggestion was made in writing on behalf of BEIS that a formal remediation scheme has not been pursued, to date, because this was not favoured by the Core Participants represented by Hudgells. It is true that in one email in the distant past (January 2021), Hudgells expressed the view that their clients would not participate in a "Post Office Scheme" but, in my view, that email was not intended to convey the impression that there was an objection to a formal remediation scheme which was sufficiently independent of the Post Office. Certainly, I did not understand Leading Counsel representing the clients of Hudgell to argue against a scheme which was sufficiently independent of the Post Office in his oral submissions to the Inquiry. Nor was there any objection to such a scheme from Howe+Co or Leading Counsel instructed by them on behalf of those of their clients whose convictions have been or will be quashed.
104. Third, should Claimants in the Group Litigation who were acquitted of Horizon related offences but who have valid claims for malicious prosecution become part of the

negotiation process involving persons whose convictions had been quashed and should that also be the case for Claimants in the Group Litigation against whom judgments had been obtained in civil proceedings given that they, too, may have valid claims for malicious prosecution. Counsel who made oral submissions on behalf of Ms Nichola Arch (who successfully defended charges of dishonesty at the Crown Court) urged me to the view that Ms Arch should have a choice as to whether her claim for final compensation should be considered alongside persons whose convictions have been quashed or considered as part of any scheme for providing further compensation to non-convicted Claimants in the Group Litigation. No doubt the same point could be made on behalf of Mr Lee Castleton who was sued in the courts by the Post Office and against whom a judgement was obtained which, he says, resulted in his bankruptcy.

105. The process of resolving the claims of those who were wrongly convicted may still be in its early stages, but, even so, there is a strong argument to be made that contingency plans should be made now so that if negotiations fail there is a clear and smooth path from negotiation to dispute resolution.

106. On 3 August 2022 the Inquiry received a letter of the same date from the legal representatives of BEIS which explained that it was “*open to the provision of additional interim payments*” in cases involving persons whose convictions had been quashed where a final claim has been quantified and certain elements are agreed and/or hardship can be established. The Inquiry was also informed that the Post Office has made some additional interim payments to applicants who have provided a computation of their claims where parts of those claims are agreed, and it is considering making interim payments on hardship grounds in a number of other cases. This must be a welcome development for those applicants who have sought and are seeking further interim payments and those who might welcome such payments in the near future.

107. In Written Submissions dated 24 June 2022 those acting for Hodge Jones & Allen suggested that Herbert Smith Freehills should cease to act for the Post Office in the Overturned Historic Convictions Scheme; instead they should be instructed by BEIS. That had not been the stance they had taken in their submissions of 22 June. The reasons for this suggestion are set out in some detail but the core point relied upon appears to be that the Post Office and Herbert Smith Freehills, acting together, would not be able to deliver full and fair compensation or, at least, there is a genuine belief held by many sub-postmasters (including the clients of Hodge Jones & Allen) that they would not deliver such compensation. The written submissions of the Post Office could not address this issue because they were filed on 31 May 2022. In her oral submissions Leading Counsel met this point by asserting that the Post Office will not be the final arbiter of the claims being pursued by those who are currently seeking to negotiate a settlement within the Overturned Historic Convictions Scheme. In her words “*the final arbiter would be the courts*”.

Further Payments to the Claimants in the Group Litigation (“Group Litigation Scheme”)

108. On 22 March 2022 the Minister announced that “*the Chancellor will make additional funding available to give those in the GLO group compensation similar to that which is available to their non-GLO peers*”. In the written submissions filed on behalf of BEIS on 31 May 2022 it was confirmed that the Department’s intention was that Claimants in the Group Litigation would “*receive equivalent compensation to that available to SPMs who were not*

part of the group litigation".¹⁴ In his oral submissions on 13 July Counsel used the word "similar" as opposed to the word "equivalent" and, accordingly, I take it that these words have been and are being used interchangeably and I proceed on that basis.

109. The written submissions of 31 May 2022 went on to reveal that there had been a meeting on 30 March 2022 attended by the Minister and representatives of the Justice for Subpostmasters Alliance ("JFSA") and Freeths LLP at which those present had agreed that there would be collaboration on developing compensation arrangements through weekly meetings of a working group comprising Departmental officials, JSFA representatives and solicitors from Freeths. Such meetings began on 7 April 2022 although no concrete proposals in relation to these arrangements had emerged by 31 May 2022 when the written submissions were filed.

110. By letter dated 30 May 2022 Freeths LLP wrote to the Inquiry setting out in brief information about their own involvement with BEIS and JFSA. They informed the Inquiry that it was their understanding that a scheme should be established to ensure that the "*GLO Claimants should receive financial redress on an equivalent basis to that available to those postmasters who were not part of the group litigation*".

111. On 30 June 2022 the Minister announced in Parliament that "*the Government intends to make an interim payment of compensation to eligible members of the GLO, who are not already covered by another scheme, totalling £19.5m*".¹⁵ He also indicated that in parallel the Department would be working towards delivering a final compensation scheme for Claimants in the Group Litigation and that the Department would be appointing Freeths LLP to "*access the data and methodology they developed in relation to the distribution of the 2019 settlement*" on the grounds that since Freeths LLP had acted for the Claimants in the Group Litigation they had "*vital knowledge and expertise*" which would allow the compensation scheme to be designed quickly. The Minister also confirmed in his announcement that the Claimants in the Group Litigation who participated in the Group Litigation Scheme would be able to recover reasonable legal fees incurred in furtherance their claims.

112. When I was addressed by Leading Counsel on behalf of the clients of Howe+Co on 6 July 2022 I was told that there had been discussions between Mr Enright of Howe+Co and officials of BEIS and that Mr Enright had been told that all legal representatives of eligible Claimants in the Group Litigation would be included in further discussions about the design of a compensation scheme.

113. By letter dated 12 July 2022 the legal representatives of BEIS informed the Inquiry that the representatives of JFSA had suggested to BEIS that the £19.5m set aside for interim payments to eligible Claimants in the Group Litigation should be distributed "*pro rata to their shares of the 2019 High Court settlement in the Bates and others v Post Office Ltd case*". The Inquiry was also told that this proposal was acceptable to BEIS and, accordingly, a contract had been concluded with Freeths LLP to deliver the payments. It was then anticipated that payments would be made "*within a few weeks*".

¹⁴ See paragraph 38 of the Submissions.

¹⁵ I understand the phrase eligible members of the GLO to mean all the Claimants in the Group Litigation save for those whose convictions have been or will be quashed and who, therefore, fall within the Overturned Historic Convictions Scheme.

114. The letter of 12 July also provided information about the process for designing a scheme for delivering final compensation payments. I need not recount what is set out in the letter at pages 2 and 3 since discussions between interested parties on a draft scheme have started but are still ongoing.
115. During his oral submissions on 13 July 2022, Counsel for BEIS emphasised that the Department would consult with all the legal representatives of Claimants in the Group Litigation before publishing a final compensation scheme. He re-affirmed, too, that the final compensation scheme would contain provisions relating to the payment of the reasonable legal expenses incurred by applicants to the scheme.
116. As I indicated earlier in this Update (paragraph 7 above) I was addressed briefly on 13 July 2022 by Leading Counsel for the Core Participants represented by Howe+Co. He told me that discussions had occurred between his instructing solicitor and an official of BEIS which had produced a tentative timetable for delivery of the interim payments to eligible Claimants in the Group Litigation. In short, the target for payment would be 3 weeks, approximately, from 13 July.
117. The letter from the legal representatives of BEIS dated 3 August 2022 is silent as to whether any interim payments have been made to eligible Group Litigation Claimants in accordance with this timetable. Additionally, the letter of 3 August makes no express reference to the tentative timetable for making interim payments mentioned at the hearing on 13 July. However, by letter dated 12 August 2022, the legal representatives of BEIS informed the Inquiry that interim payments to applicants had begun and that, as of 10 August 2022, 170 payments had been made. The Inquiry was also informed that many more interim payments would be made in the coming days, although difficulties remained in making such payments to persons who had been made bankrupt and in some “complex cases”.
118. The letter of 3 August 2022 provides information as to the timetable for formulating a final compensation scheme. The letter suggests that an outline of the scheme will be sent to “GLO members” (which I take to be a reference to all eligible Claimants in the Group Litigation) in September this year. The timetable for finalising the terms of the scheme and implementing it thereafter will depend upon the reaction of the eligible Claimants in the Group Litigation to the outline of the scheme provided to them.
119. In her oral submissions, Counsel for the Core Participants represented by Hodge Jones & Allen suggested that those applicants for compensation whose convictions had been quashed and who had been part of the Group Litigation should be permitted, if they so choose, to seek final compensation payments under the Group Litigation Scheme as opposed to the Overturned Historic Convictions Scheme. In the letter of 3 August referred to above the legal representatives of BEIS explain why they oppose that suggestion.
120. The Group Litigation Scheme is still in its infancy. The written and oral submissions on behalf of BEIS explain the difficulties which have been involved in finding a legal basis for funding further compensation payments and which prevented an announcement about further compensation being made prior to 22 March 2022. I am prepared to accept that considerable thought and care was necessary to ensure a proper legal basis for making further compensation payments to the Claimants in the Group Litigation since, of course, a very large majority of the Claimants had accepted payments in full and final settlement of all their claims against the Post Office. To the credit of all those involved, a legal basis was found. That said, the issue which is of concern to me is whether prompt action has been

taken since March 2022 and is being taken now to deliver the further compensation which has been promised. I return to that issue in my Conclusions.

121. In his oral submissions made on 13 July 2022 Leading Counsel for the clients of Howe+Co invited me to fix a date, this year, for a further hearing so that I can formally monitor the progress which is (or is not) being made towards providing further compensation payments to the eligible Claimants in the Group Litigation. I am not convinced that I should do that at this stage. If it becomes clear in the coming weeks that progress towards finalising a scheme and/or making payments thereunder is too slow, I will very likely determine that I should deliver to the Minister an interim report pursuant to section 24(3) of the Inquiries Act 2005 containing specific recommendations. Further, I might very well conclude, then, that I should convene a hearing at short notice.
122. The letter of 3 August from the legal representatives of BEIS takes issue with some of the contents of a letter written by Mr Paul Marshall to the Inquiry and dated 22 July 2022. The Inquiry did not disclose that letter to any core participant; however, Mr Marshall, himself arranged or authorised its disclosure to BEIS and other Core Participants.

Written Submissions by Mr Paul Marshall

123. Since the announcement that the non-statutory inquiry which existed prior to June 2021 was being converted into an inquiry under the Inquiries Act 2005, Mr Marshall has sent letters to the Inquiry from time to time and written submissions on various aspects of the Inquiry's work. In respect of the Compensation Issues Mr Marshall filed written submissions dated 31 May 2022 on behalf 6 named persons of whom 3 were Core Participants. On 23 June 2022 Mr Marshall filed what he described as a "Supplemental Submission" on behalf of 4 of those 6 persons. The letter of 22 July 2022 was sent on behalf of 5 of the 6 named people upon whose behalf Mr Marshall filed written submissions on 31 May 2022.
124. The written submissions filed on 31 May 2022 and 23 June 2022 have been made public - see paragraph 6 above.
125. In my view, the submissions of 31 May 2022 were focussed, in the main, upon 3 topics. They were (i) the principles to be applied in calculating final payments of compensation in respect of Claimants in the Group Litigation whose convictions had been quashed; (ii) the mechanisms and processes for determining those payments; and (iii) whether applicants for final payments of compensation would have access to appropriate legal advice and assistance at the expense of the Post Office.
126. The points made by Mr Marshall concerning topics (ii) and (iii) are sufficiently rehearsed above by reference to the written and oral submissions made by others.
127. I have considered with care what, if anything, I should say about Mr Marshall's topic (i). In short, I have concluded that I should say nothing except for the following. The principles underpinning the assessment of compensation in HSS are well known. The Post Office and BEIS subscribe to the view that all applicants in whatever scheme they apply should receive "equivalent" compensation. Self-evidently that does not mean they should receive identical amounts; it means that compensation for each applicant should be assessed by reference to agreed or determined criteria. Mr Marshall's elucidation of the principles which he considers should be applied to the assessment of compensation for his clients is without doubt of considerable interest to those who will have the task of negotiating their

settlements. He raises arguments about the scope of the principles to be applied which, I have little doubt, will lead to a fierce debate either in negotiation or in dispute resolution procedures or litigation. I simply cannot persuade myself, however, that my terms of reference permit me to either to comment upon or seek to adjudicate upon the principles which should be applied in assessing compensation where that would involve considering a number of very detailed arguments on issues of law many of which might be hotly contested and disputed. On a more pragmatic level, of course, I certainly could not comment or adjudicate upon Mr Marshall's contentions without giving BEIS, the Post Office and UKGI the opportunity to rebut any arguments of Mr Marshall which they wish to contest. That would involve this Inquiry devoting a disproportionate amount of time to potentially controversial legal issues. The proper forum for Mr Marshall, or anyone else, who wishes to stretch or reduce the boundaries within which compensation should be assessed is the forum in which the amount of compensation is to be determined i.e. in negotiation and/or within the framework of the various schemes or in litigation. I am precluded by section 2(1) of the Inquiries Act 2005 from ruling upon or determining any person's civil liability. It would not be appropriate for me to seek to circumvent that statutory provision by making "recommendations" about or reaching "conclusions" upon the proper measure of compensation to be applied in particular factual circumstances.

128. Mr Marshall's submissions of 23 June 2022 are, as he himself describes them, supplemental. They are a detailed, and if I may say so, very interesting further examination of topic (i). However, for the reasons explained above I say nothing more about them.

129. Mr Marshall's letter of 22 July 2022 consists of written submissions by way of a commentary on aspects of the submissions made to me at the hearings on 6 and 13 July. Whereas I have been prepared to take account of new information (or the lack of it) which has come to my attention since the end of the hearings on 13 July it would not be appropriate for me to take account either of the written submissions made by Mr Marshall on 22 July 2022 or the response to those submissions contained in the letter on behalf of BEIS dated 3 August 2022. To rule otherwise would make it virtually impossible for me to complete this Update within a reasonable period of time as I promised all participants in the oral hearings I would do.

Conclusions

130. The commitment given by BEIS and the Post Office to provide compensation which is "*full and fair*" is not the traditional stance taken by a Defendant in our adversarial system of civil litigation. In the courts, Claimants are entitled, within proper legal limits, to maximise their claims and Defendants (within such limits) are entitled to minimise the amount they have to pay, if found liable. Negotiations to settle a claim are usually conducted with those parameters very much in mind.

131. However, all those who are entitled to claim compensation from the Post Office for wrongs they have suffered as a consequence of Horizon are entitled to expect that the offers made to them will be a genuine appraisal by the Post Office of what is full and fair compensation. Of course, there are bound to be cases in which the applicant and the Post Office have genuinely different views about what constitutes a full and fair settlement. The commitment by the Post Office to reaching a full and fair settlement does mean, however, that the Post Office should never attempt to reduce a claim to a sum below that which they regard as full and fair. Put more crudely, the normal negotiating tactics often found in hard

fought litigation in the courts should have no place in the administration of the schemes for compensation already in being and the scheme about to be brought into effect. I turn from those introductory words to my conclusions about HSS, the Overturned Historic Convictions Scheme and the emerging Group Litigation Scheme.

HSS

132. I welcome the commitment within the Scheme to providing fair compensation. The provision which allows fair compensation to be paid, even if that means ignoring legal principles usually applied in civil litigation, is a clear indicator that the mantra “*full and fair compensation*” is not just a form of words but a genuine commitment. In Phase 5 I will be able to judge whether the actions of the Post Office correspond with the words they use.

Delays

133. I am conscious that I am yet to hear detailed evidence which will allow me to reach definitive conclusions about the extent and causes of delay in formulating, implementing, and administering the Scheme. Nonetheless, both the Post Office and BEIS accept that there have been avoidable and, therefore, unwarranted delays associated with the Scheme. They acknowledge that a long period of time elapsed between the Scheme’s opening and the arrangement of the necessary funding which would allow payments to be made to applicants. They accept, too, that the numbers of likely applicants to the Scheme was very significantly underestimated which meant that the Post Office could not fund the Scheme from its own resources and that there were, to begin with, insufficient personnel recruited to the Independent Advisory Panel. The numbers of applications considered has accelerated over time but in the early stages of the administration of the Scheme progress was comparatively slow. Post Office and BEIS have formally apologised for unnecessary delay in the implementation and administration of the Scheme.

134. I accept that the pace of making offers has quickened considerably during this year and, perhaps, for some months before that. I have drawn attention to the numbers of offers of compensation which have been made since the time of my first Progress Update – see paragraphs 47 and 80 above.

135. The Post Office’s target of making offers of compensation by 31 December 2022 in 95% of the applications which have been identified as eligible under the Scheme is an ambitious one but, the target having been announced, the Post Office will, no doubt, strive to accomplish it. The target set by BEIS of making offers in 100% of such case by 31 December is, obviously, even more difficult to achieve. I am concerned that the fulfilment of these targets should not be achieved at the expense of a proper and thorough appraisal of individual applications before an offer of compensation is made. There is a balance to be struck between speed of decision-making and ensuring that offers which are made are full and fair.

136. I know of no proper explanation for the delays in determining whether those applications which were made after 27 November 2020 should be rejected or accepted into the Scheme. The better part of 21 months has now elapsed since the apparent closure of the Scheme. On any view, that is more than enough time to formulate principles and/or criteria by which judgments could be made about whether to reject or accept an application. On the basis of the exchanges I had with Leading Counsel for the Post Office and with Counsel for BEIS, I cannot help suspecting that there may be tension between how the Post Office wishes to approach this issue and the stance which BEIS and/or HM Treasury wish it to

adopt. On any view, however, the delay in determining many if not all of these applications is wholly unacceptable and it remains largely unexplained.

137. I am also very concerned that under the Scheme it is the Post Office which makes the definitive and final determination as to whether a late application is accepted or rejected. The Independent Advisory Panel is not involved in this part of the decision-making process. I regard that as an obvious flaw in the Scheme. In my view, any applicant whose claim is rejected by reason of it having been made after 27 November 2020 should have the right to have that decision reviewed by the Independent Advisory Panel and the Scheme should be amended accordingly.

Independence Issues

138. I am not persuaded that I should characterise the process for determining the offers of compensation payments to applicants as lacking in independence. It is true that the first assessment of what offer should be made is undertaken by a case assessor who is an employee of the solicitors retained by the Post Office and that the final determination of any offer to be made is undertaken by the Post Office itself. However, the role of the Independent Advisory Panel should not be underestimated. The Panel is comprised of distinguished professionals with considerable expertise. In my view, it is overwhelmingly likely that the members of the Panel can assess objectively the recommendation of the case assessor and adopt that recommendation as their own only when they consider that to be the justified course on the basis of all the information before them. Further, there is a means of checking that all relevant information has been put before a panel whose decision may be called into question since all the information provided to individual panels is disclosed to applicants if such disclosure is sought. I appreciate that the Post Office retains the power to depart from a panel's suggested settlement offer. However, it had never done so by 13 July 2022 notwithstanding that offers have been made in approximately 66% of the cases admitted as eligible under the Scheme.

139. The acceptance rate of the offers which have been made so far is very high. No doubt, in part, that is because many of the cases determined have been lower value cases. However, the acceptance rate is an indicator that offers are being put forward in good faith and with proper regard to the overriding consideration that compensation payments should be full and fair.

140. In any event, if an offer is not acceptable to an applicant, he/she need not accept it. If any offer is rejected there follows what might be called a discussion phase in which, no doubt, each side puts their point of view as to the merits of the offer in question. If the discussion phase fails a mediation takes place and, if that fails, the parties head for the county courts (the Small Claims Track) or arbitration depending upon the amount involved. Ultimately, there is a process open to an applicant in which a person or body other than the Post Office determines the amount of compensation to be paid. In my view this is a sufficient safeguard for applicants provided, of course, they are able to obtain legal assistance when appropriate – as to which see paragraph below 146 to 149 below.

141. Subject to the proviso mentioned in the preceding paragraph, I do not consider there is any basis for criticising, as lacking in independence, the basic structure of the process leading to the making of offers of compensation or the processes in place for determining an award of compensation should an applicant reject an offer in settlement made by the Post Office.

Criticisms of the Application Process

142. I turn to the criticisms which have been made of the application form and the lack of appropriate guidance to an applicant faced with the form. However, first this should be set in context. The vast majority of the persons completing the application form will be relatively mature in age and will have accumulated business experience as a sub-postmaster. Many will have considerable experience of running a small business apart from a Post Office branch. Of those lacking in much business experience, very many will have been employed in responsible occupations prior to running a Post Office branch. All this means that most, if not all, applicants to HSS will be mature people with considerable experience of reading and digesting formal documents.
143. In the main, I do not consider it likely that the application form would have been unduly difficult to understand for a lay person having the experience I have described above. However, without hard evidence (which will become available in Phase 5) I cannot reach a definitive conclusion one way or the other.
144. I say now, however, that I do have reservations about how Question 24 would have been understood in the absence of guidance as to its meaning. On any view, it is most unfortunate that the Guidance was not made available to would be applicants to the Scheme until sometime in September 2020, at best.¹⁶ All those applicants who applied for compensation before the initial specified closing date of 14 August 2020 will have done so without any proper guidance as to how Question 24 should be answered. In my view that was a flaw in the process. I am satisfied that the Guidance should have been published and clearly sign-posted as soon as the Scheme opened. Without the Guidance, this aspect of the application process was not “*user friendly*”.
145. Whether the failure to issue the Guidance at the proper time had the effect of causing applicants to omit legitimate heads of claim can only be determined after hearing evidence. No doubt that issue can be examined in Phase 5 together with any other evidence tending to show that applicants failed to present all their legitimate claims for whatever reasons.

Legal Assistance

146. I understand why, at the outset, BEIS and the Post Office were hopeful that the Scheme could function appropriately without the need for applicants to be represented by lawyers. The very low take up of such funds as are available for legal advice in relation to the offers made by the Post Office is, in my view, a clear indicator that in the lower value claims legal assistance was probably unnecessary given the experience of most applicants. However, it is clear to me that appropriate legal assistance and advice in respect of most of the claims yet to be determined is likely to be essential. BEIS has readily conceded that in the Overturned Historic Convictions Scheme and the Group Litigation Scheme applicants are entitled to be paid the reasonable costs of engaging a lawyer to assist them with all aspects of their claims. In my view fairness to the remaining applicants within HSS demands that the fees allowed for advising on offers which are made henceforth should be increased to levels commensurate with the work reasonably carried out by an applicant’s lawyer. Further, if an applicant wishes to engage a lawyer, in all cases in which an offer is rejected the Post Office should fund the applicant’s reasonable cost of obtaining legal advice,

¹⁶ I appreciate that the document published by the Post Office and entitled Questions and Answers has a short section which purports to explain the scope of the Scheme. However, the questions within that section which refer to losses other than a shortfall loss are perfunctory and of no particular assistance to applicants.

assistance and representation as the dispute resolution process unfolds. In my view, from the point when an offer is rejected, applicants should be in just the same position in relation to payment of legal fees as they would be if they were applicants in the Overturned Historic Convictions Scheme or the Group Litigation Scheme. I simply cannot see why the remaining applicants in the HSS, many of whom having complicated and difficult compensation issues to resolve, should be treated differently, in terms of payment for legal services, from applicants within other schemes who have similar issues to determine.

147. It should also be borne in mind that in the dispute resolution phase the Post Office will, no doubt, be represented by very experienced lawyers whether it be Herbert Smith Freehills or some other firm of solicitors. Reasonable equality of arms demands that the applicants for compensation are also represented by lawyers with appropriate experience and expertise and fairness demands that such lawyers are reasonably funded by BEIS/the Post Office.
148. The provisions relating to the payment of legal fees for advice on offers are to be found in the IAP Terms of Reference (paragraph 19). I suggest this paragraph is removed from those Terms of Reference and new provisions are included in the Scheme's Terms of Reference which reflect the views which I have expressed in this section of the Update.
149. The provision of funds for instructing lawyers henceforth cannot, of course, remedy any instances of injustice which have already occurred. Whether there have been such instances already, e.g. leaving out of account legitimate claims, or accepting reductions in claims because of a lack of documentation, must await Phase 5. However, the provision of funds for legal advice and assistance going forward will provide a substantial bar to the possibility that, in the future, applicants will accept settlements which are substantially lower than the true value of their claims.

Interim Payments

150. I fully accept that in many cases the correct approach has been to reach a final settlement as promptly as possible. However, that may not be possible in a number of difficult and complex cases. How can the making of interim payments be justified for all eligible applicants in the Overturned Historic Convictions Scheme and the Group Litigation Scheme but yet there is a resistance to making interim payments to applicants within HSS except in very narrow circumstances? I appreciate that the Post Office and BEIS say that the making of interim payments might delay the agreement of final compensation payments, but that argument applies with similar force in relation to the other schemes.
151. Some applicants to HSS will now have been waiting for offers in settlement for more than 2 years after making an application for compensation. In my view, there is no good reason, even now that it is being said that all or substantially all offers of final compensation will be made by 31 December 2022, why applicants who can demonstrate a need for an interim payment or who have agreed certain aspects of their claim with the Post Office should not receive appropriate interim payments.
152. In my view, the Scheme's Terms of Reference should be amended to make express provision for the making of interim payments in cases where the personal circumstances of the applicant justify such a payment or when there are agreed and quantified heads of loss which can be paid over.

The Overturned Historic Convictions Scheme

153. On 23 April 2021 the Court of Appeal (Criminal Division) handed down its judgment in R v Hamilton and others in respect of appeals brought by sub-postmasters against their convictions for offences of dishonesty. The convictions of 39 people were quashed. On 22 July 2021 the Minister made an announcement to Parliament indicating that the Government would “*fund interim compensation of up to £100,000 for each postmaster who has had their Horizon-related conviction overturned*”. The Minister’s announcement went on to explain that applicants for interim payments would be required to complete an application form and submit the same to the Post Office and payment would be made within 28 days.
154. I am pleased to say that, in the vast majority of cases, interim payments have been made to those whose convictions have been quashed within 4 weeks or thereabouts of applications being made to the Post Office.
155. Interim payments were refused to 3 applicants - see paragraph 91 above. I have expressed my reservations about the decision making in these cases – see paragraph 93 above.
156. I am firmly of the view that the Post Office should not be the final arbiter of applications for interim payments. I do not understand either the Post Office or BEIS to dissent from that view. However, they both appear to indicate that if applicants wish to challenge a decision of the Post Office in relation to interim payments they should, individually, engage in formal dispute resolution such as mediation or arbitration or start civil proceedings in which they seek damages for malicious prosecution against the Post Office thereby permitting of an application to the court for an interim payment.
157. In my view court proceedings should be very much the last resort for a variety of obvious reasons, not least the expense involved. I am also of the view that individually instigated mediations or arbitrations are to be avoided if possible. Although the Overturned Historic Convictions Scheme is not a remediation scheme properly so called there is no reason why a person or panel cannot be appointed, now, to deal with all issues relating to interim payments which are disputed, in much the same way as Lord Dyson will make neutral determinations relating to the levels of final compensation for non-pecuniary loss. Even if, as with Lord Dyson, the determination of that person or panel is not formally binding on the parties, the likelihood is that the determination would be accepted, if, as I believe would and certainly should be the case, the applicants for interim payments and the Post Office are acting in good faith. Further, such a person or panel could and, in my view, should have an important role to play in disputes relating to final compensation payments – as to which see paragraphs 162 and 163 below.
158. There is also a need, in my view, to consider again one aspect of the scope of the Overturned Historic Convictions Scheme. BEIS has made it clear that the Scheme applies not just to persons whose convictions have been quashed but also to those who were prosecuted but acquitted unless, of course, the acquitted persons were Claimants in the Group Litigation. The total number of persons who were prosecuted but acquitted and who were not Claimants in the Group Litigation is unknown. I am not aware of such persons having been paid an interim payment although, for all I know that might have changed since the hearing on 13 July.
159. I am aware of a number of persons who were prosecuted on the basis of alleged shortfalls which they alleged were falsely generated by Horizon, who were acquitted of the

charges brought against them and who went on to become Claimants in the Group Litigation. Some of those persons gave evidence in the Human Impact hearings and their evidence described how they have suffered substantially notwithstanding their acquittals. This category of acquitted persons is deliberately excluded from the Overturned Historic Convictions Scheme.

160. The only basis for that exclusion was that this category of persons had not reserved their rights to bring claims for malicious prosecution in the Settlement Deed which brought to an end the Group Litigation. They had accepted a payment of compensation in full and final settlement of all their claims.

161. The position has now altered. Claimants in the Group Litigation are now going to receive further compensation payments and, indeed, they are going to receive interim payments. The difficulty is that the interim payments which acquitted Claimants in the Group Litigation will receive will be calculated in such a way that it is very likely that the interim payments which will be paid to acquitted Claimants in the Group Litigation will be very substantially less than the £100,000 paid over to persons whose convictions have been quashed. While I accept that the trauma of conviction and sentence was a very significant factor in the decision to make interim payments at the level of £100,000 to sub-postmasters whose convictions had been quashed those who were acquitted are also likely to have been awarded very significant sums if they had successfully pursued their claims for malicious prosecution. In my view, acquitted Claimants in the Group Litigation should either be brought into the Overturned Historic Convictions Scheme (and then paid an appropriate interim payment) or, if there are thought to be legal difficulties with that course of action, paid interim payments in the Group Litigation Scheme which are properly reflective of the fact that they suffered the trauma of prosecution. If the latter option is thought preferable, I do not consider that there would be a need to disrupt the agreed formula for making interim payments described in paragraph 113 above. Rather, funds should be made available over and above the £19.5m so that appropriate interim payments can be made to acquitted Claimants in the Group Litigation. Given the overall sum which will be necessary to compensate all the victims of Horizon fully and fairly the making of a small number of enhanced interim payments at this stage would, in my opinion, cause no appreciable detriment to the public purse but would be of considerable benefit to the persons receiving the payments.

162. The process of making final payments of compensation to persons whose convictions have been quashed is in its early stages. I repeat my view that there should be contingency planning now as to how disputes relating to final compensation should be resolved if claims are not resolved by the process of negotiation. For my part, I cannot detect any valid objection from the submissions I heard and received to a formal remediation scheme as an intermediate step between negotiation and formal dispute resolution or civil litigation. Even if it is felt that a formal remediation scheme is not the answer, I can see no valid objection to an arrangement whereby a panel with similar powers to the Independent Advisory Panel under HSS is constituted rather than the parties going straight from negotiation to formal mediation/arbitration and/or civil litigation. In its response to the recommendations of the BEIS Committee the Government suggested that Post Office was aware of 708 Horizon related convicted sub-postmasters. To date less than 20% of those persons have sought to have their convictions quashed. If, in the future, substantial numbers of convicted persons come forward is it really being suggested that the way forward is negotiation and then dispute resolution or court with no intermediate step as in HSS?

163. If the views expressed in the paragraphs above are acted upon any panel which is brought into being should also be given the responsibility for resolving disputes about interim payments – see paragraph 157 above.
164. If appropriate contingency planning occurs so that appropriate methods of resolving disputes are in place, I see no need for persons whose convictions have been quashed to have the option to have their claims determined within the Group Litigation Scheme. No doubt if no such planning takes place and, in any event if the need arises, I can return to that issue in Phase 5.

The Group Litigation Scheme

165. This Scheme is in its infancy. That being so, my conclusions can be expressed succinctly.
166. It is anticipated that the Scheme for delivering compensation to eligible Claimants in the Group Litigation will emerge following proper discussions and negotiations between the Claimants' representatives and officials of BEIS. Those discussions and negotiations should be undertaken within weeks and should not stretch over many months. The announcement that further compensation would be paid to Claimants in the Group Litigation was made nearly 5 months ago.
167. I welcome the agreement between JFSA and BEIS relating to interim payments for eligible Claimants in the Group Litigation. Although this methodology may not please everyone it is a straightforward way of delivering interim payments to all eligible Claimants. However, I also consider that Claimants in the Group Litigation who were acquitted of Horizon related offences should receive interim payments which take account of those circumstances – see paragraph 161 above. In my view the issues surrounding interim payments for that small number of people (as far as I am aware) should be resolved as soon as is reasonably practicable.
168. I also welcome the commitment to make final compensation payments to the Claimants in the Group Litigation which is equivalent to that available to sub-postmasters who were not part of the Group Litigation and the willingness to make available funds to pay the reasonable fees of lawyers engaged to promote and advise upon the claims put forward.
169. There is obviously a pressing need to administer the Scheme with expedition once it is constituted. I assume that the Claimants in the Group Litigation received their share of the available fund for compensation shortly after the conclusion of the litigation i.e. approximately 30 months ago. Self-evidently, there is a clear need to finalise and pay further compensation to these people as soon as that can be done justly

Sir Wyn Williams

15 August 2022




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