

**POST OFFICE HORIZON IT INQUIRY**

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**DECEMBER 2022 SUBMISSIONS ON COMPENSATION  
FROM HUDGELL SOLICITORS**

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1. Hudgell Solicitors represent:
  - (i) 72 Claimants under the Historical Shortfall Scheme;
  - (ii) 71 persons whose convictions have been overturned; and,
  - (iii) 6 persons involved in the Group Litigation Scheme.
  
2. Whilst there has been weekly constructive dialogue between Hudgell Solicitors and HSF, as well as regular constructive discussions between Hudgell Solicitors and executives at POL, we regret to say that many of our clients are justifiably frustrated at the delays in the authorisation of settlements and decisions as to reasonable costs to be incurred in preparation of their cases. With that overarching point in mind, these submissions identify and address some of the specific practical issues arising in connection with different types of compensation claims made by Hudgell clients. They address those issues in the following order:
  - a. Compensation under the Historical Shortfall Scheme;
  - b. Compensation for SPMs with Overturned Historic Convictions; and,
  - c. Compensation for the Group Litigation Claimants

**a. Compensation under the Historical Shortfall Scheme (§§133 to 152 of the Progress Update)**
  
3. The Chair's Progress Update on Issues relating to Compensation ('the Progress Update') published in August 2022 expressed conclusions in respect of a number of issues raised

in written and oral submissions by the Core Participants. We provide this update by reference to the paragraph numbering adopted in the Progress Update. We believe that only a very few HSS applicants are represented by lawyers other than Hudgell Solicitors. Accordingly, the only information we are able to draw on to found these submissions is that drawn from our own cases.

**(i) Independence Issues (§§138 to 141)**

4. In submissions to the Inquiry in July of this year, Hudgell Solicitors raised a concern that heads of damage were being missed by those operating the HSS and raised questions as to how that might happen.
5. We are conscious that the Inquiry intends to review the operation of the HSS in Stage 5 but at this point respectfully update the Inquiry that the concern identified in July persists. Only three HSS applications where Hudgell Solicitors are instructed have reached the stage where a Good Faith Meeting ('GFM') has taken place and a decision has been made by the Panel on whether or not to make a revised offer. In each case, a significantly improved offer has been made and each case demonstrates how the compensation to be paid to Claimants can be significantly affected by failure to identify appropriate heads of claim. Full details of the three cases are set out in **Appendix A** to this document but we provide a summary as follows.
6. **Case 1** received a net<sup>1</sup> offer of **£46,799.52** on 9 December 2021. She contacted Hudgell Solicitors who reviewed her claim and submitted statements and evidence on her behalf on 7 March 2022. Just over eight months later, on 10 November 2022, she received a revised net offer of **£140,126.37**. That significant difference was accounted for by compensation for loss of earnings she experienced following her resignation. That had not been considered in the panel's original decision.
7. **Case 2** received a net offer of **£3,752.26** on 27 January 2022. That was comprised of payment for a shortfall of £2,000 and associated interest. A GFM took place on 1 July 2022 and a revised offer was received on 17 November 2022. That revised offer was

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<sup>1</sup> Any offer is net of income tax.

greatly increased to **£63,331.89**. It included compensation for losses arising from resignation and distress and inconvenience. Those heads had not been considered by the original Panel.<sup>2</sup>

8. In **Case 3**, the applicant received a net offer of **£21,691.23** on 31 March 2022. There was a GFM on 20 June 2022. He received a revised offer of **£34,862.61** on 17 November 2022, the same day as **Case 2** and just a week after **Case 1**. In his case, the Panel had initially not provided any compensation for two heads of damage subsequently identified by Hudgell Solicitors.
9. In each of those three cases, the identification of additional, obvious damage led to significantly increased offers capable of affecting the wellbeing of the Claimants as they try to get their lives on track.

**(ii) Delay (§§133 to 137)**

10. The Progress Update identified some areas of delay in the operation of the HSS.
11. One of the concerns of the Inquiry was that no decision had been made on whether to accept late applications into the HSS (see §§80, 136 and 137 of the Progress Update). The position now is that late applications have been *provisionally* accepted into the HSS but reasons for the lateness of the applications have been requested. Those reasons have been supplied in each case, but thus far there has been no confirmation that the application has been *fully* accepted into the Scheme and no first offers have yet been made in any of the cases.
12. There have regrettably also been significant delays in the operation of the HSS beyond the stage of first offers. A date for a GFM is usually only possible some two months after a request for such a meeting. As can be seen from the three cases summarised at §§6 to 8 above it has been between four and seven months until a revised offer is made after a GFM. Those three are the only Hudgell cases to reach the stage where a decision has

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<sup>2</sup> Case 2 is a good illustration of how it would be wrong to automatically conclude that the earliest cases to be dealt with by the Scheme were the most straightforward.

been made as to whether to make a revised offer. (It follows that thus far an increased revised offer has been made in each Hudgell case to proceed to GFM).

13. Hudgell Solicitors have so far conducted GFMs in 11 cases. They are awaiting decisions as to revised offers in 9 cases. A further 16 GFMs are scheduled to take place from January onwards and 10 Claimants have requested a date for a meeting but are still awaiting one. There are other cases pending. In each case, it is the view of Hudgell Solicitors that heads of loss have been missed.
14. Only one Hudgell case has reached the stage where a mediation is to take place. Mediation was requested on 21 September 2022. A reply with a proposed date was not received until 24 October 2022 and the mediation is now not scheduled to take place until 26 January 2023.
15. Plainly, the concern of the Chair (expressed at §135 of the Progress Update) that the fulfilment of the targets that Post Office and BEIS had set themselves for making HSS offers should not be achieved at the expense of a proper and thorough appraisal of individual applications before an offer of compensation is made, is one which the Inquiry may wish to return to in Stage 5.
16. The reasons for the various delays in the consideration of late applications and the process beyond first offers are not known to the Claimants but they are very frustrating and place great pressure on the Claimants to accept offers in order to avoid continued financial hardship.
17. As the Inquiry is aware, there were significant delays in the making of offers of compensation in cases where Claimants had been declared bankrupt. Moreover, as is set out at §73 of the Progress Update, at the July hearing:

*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.*

18. Offers in those cases have now begun to be made but, regrettably and as predicted, most of the damages under the terms of such settlement are being paid for the benefit of the Official Receiver. The Official Receiver is receiving first call on any compensation relating to financial losses. We have attached two examples as **Appendix B** by way of illustration. First, in **Case 4**, the HSS panel decided on an award of **£259,359.00**. The applicant has now been offered **£8,000.00** of that award and the Official Receiver is to receive **£251,359.00**. The applicant had run a successful business as a SPM for 20 years. His business was ruined and he suffered with poor mental health after the shortfalls he experienced. The £8,000 is intended to compensate him for his distress. The rest is for the Official Receiver. Second, in **Case 5**, out of an award of **£24,999.32**, the applicant has been offered **£4,500.00** whilst the Official Receiver is to receive **£20,400.32**. The Official Receiver has no authority other than to settle the debts of the bankrupts in full. With compensatory interest applying, the likelihood is that any award for financial losses will very often be completely swallowed up when those debts are paid. The issues surrounding bankruptcy are often complex and frequently require specialist legal assistance. Compensation is intended to put the Claimant in the position they would have been in if they had not been adversely affected by the unreliability of Horizon. As matters currently appear to Hudgell Solicitors, the HSS takes no account of whether the root cause of bankruptcy was or may have been shortfalls generated by Horizon software. The Claimant is left to take this up with the Official Receiver on their own.
19. At the hearing of 13 July 2022, Mr. Chapman said that he was not at that stage in a position to deal with the redacted letter we supplied to the Inquiry. We respectfully suggested that the Inquiry may wish to raise questions as to how real fairness can be achieved for bankrupt Claimants<sup>3</sup>.
20. Delays have also been occasioned as a result of difficulties in agreeing reasonable costs to carry out work beyond the fixed costs<sup>4</sup> allowed in connection with HSS claims. The Chair concluded at §146 of the Progress Update:

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<sup>3</sup> See p.38:20 of the transcript of 13 July 2022.

<sup>4</sup> The Inquiry was made aware at the last hearing on compensation that a fixed fee of £1,000 is available for a Claimant to consult with a lawyer after receiving an offer.

*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.*

21. However, the process of agreeing to pay for work to be done on HSS claims by Hudgell Solicitors has been protracted and is not resolved. It was first suggested that Hudgell Solicitors should present a costs proposal for each case. Pursuant to that instruction, outline costs were produced and supplied in 19 cases. Those outline costs were met with a general request for further information. Further information was therefore provided in a sample of cases but nothing further has been heard as at the date of these submissions. This is delaying substantial work being undertaken on a significant number of cases. Considering that Post Office intends to spend £76 million on its own legal costs and administration of the HSS<sup>5</sup> and less than £100,000 has thus far been spent on the legal fees of Claimants, such delays in the authorising of legitimate work on the part of Claimants are to be regretted. That is especially so when experience suggests that attention to the claims can lead to greatly increased offers to Claimants.
  
22. We also wish to draw to the attention of the Inquiry that not a single medical report has been authorised in an HSS claim in any case in which Hudgell Solcitors is instructed. The vast majority of the SPMs who had their convictions quashed have been found by medical experts to have suffered mental health issues amounting to personal injury through their experiences. Plainly, the potential for Claimants suffering personal injury following problems with Horizon generated shortfalls is not confined to those who were prosecuted or part of the GLO. Failure to authorise the instruction of a medical experts for HSS claimants means that they are being treated differently to others. That approach has had substantial implications for applicants. We have attached as **Appendix C** a typical example of the approach to medical issues under the HSS. Hudgell Solicitors understand that there is a need to deal with claims expeditiously and the commissioning

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<sup>5</sup> See Appendix F – p.6 -letter from the Minster for Enterprise and Markets, Kevin Hollinrake MP, to Darren Jones MP, Chair of the BEIS Committee, dated 17 November 2022.

of a medical report may delay the making of a first offer, but it is also important that applicants are properly compensated for any personal injury they have suffered. A broadbrush approach to this issue risks serious injustice.

**(iii) The Application Process (§§ 142 to 145 of the Progress Update)**

23. The burden of proof in the absence of documentation remains a significant issue for many Claimants. Huggell Solicitors have seen arbitrary deductions made in shortfall loss cases of 0%, 10% & 20% with no apparent basis other than an absence of documentation and application of the “principles of fairness”. Reductions on the basis of an absence of documentation is particularly frustrating for Claimants because Post Office Limited encouraged them to make up any shortfalls in cash as can be seen at p.77 of POL00000105. They were quite simply instructed to “*plac[e] the cash for the amount of the loss in your till*”. Compliance with the instructions on p.75 of POL00000105<sup>6</sup> would inevitably have meant that documentation of any losses would be absent.
24. Another cause for concern is that Post Office does not ordinarily apply normal principles of loss in calculating loss of earnings claims and consequential losses arising. It is submitted that what should happen is that a yearly earnings figure at the time of cessation of contract should be identified and that should be multiplied by the number of years until either retirement or a return to prior termination earnings before deducting actual earnings in the interval.
25. Instead, Post Office uses the Network Transformation Scheme Leavers Payment. That is a redundancy based package calculation of up to 27 months pre-cessation salary. Moreover, the HSS takes into account that Post Office could have terminated the applicant’s contract at any point with three months’ notice. We provide an example at **Appendix D**. This is **Case 4** referred to at §18 above, where it was explained that he had run a successful business for 20 years. There would have been no reason for him to have been given three months notice.
26. That approach is therefore not always appropriate and can lead to a significant underpayment compared to the true loss. In addition, Post Office routinely include in

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<sup>6</sup> Appendix G

their calculation of compensation any other cessation losses such as the value of a retail business and/or the loss of value on sale or disposal of a property as an aggregate award. The absence of documentation enables Post Office to adopt this potentially unjust approach. We are able to provide many examples of this.

**b. Compensation for SPMs with Overturned Historic Convictions (§§153 to 164 of the Progress Update)**

27. The Early Neutral Evaluation ('ENE') conducted by Lord Dyson proved effective in providing the parameters for settlement of non-pecuniary loss claims in Overturned Historic Conviction ('OHC') cases. They have been progressing well since Lord Dyson's provided his ENE report at the end of July.
28. At the time of writing these submissions the following details can be reported:
- 40 - Non-pecuniary loss schedules have been submitted
  - 27 – Offers have been made in response by Post Office
  - 25 – Settlements have been agreed
  - 15 – Payments have been made
29. The position in respect of claims for pecuniary losses is less happy. As previously reported, two claims have been settled and paid in full. They remain the only claims for pecuniary losses to have been settled.
30. In respect of four other cases, final settlement proposals have been awaited for months. **Appendix E** details the progress of those claims. Three were submitted in June 2022 and one in August 2022. There have been requests by Post Office for further information which have all been dealt with expeditiously by Hudgell Solicitors. There have been significant delays by Post Office at each stage and there has still been no substantive response to any of the claims. The reason for the delay in Post Office making proposals for settlement is unknown to Hudgell Solicitors.



31. It was expected that the initial six claims would provide an appropriate framework for the processing of the remaining claims. With the delay of months for a response to the four claims submitted in the summer, that expectation has not materialised.
32. The slow response of Post Office is causing delay of further payments to Claimants. Post Office has agreed to make another £100,000 interim payment to Claimants on account of what they will receive for compensation for Non-Pecuniary Losses. However, those payments have been withheld pending receipt of supporting documentation in relation to pecuniary loss claims.
33. In addition to difficulties encountered by some bankrupt claimants under the HSS (see§18 above), problems have also recently arisen in OHC cases in which bankruptcy is a feature. For those whose cases fall under the auspices of the Official Receiver, their position was successfully resolved with the Official Receiver indicating that they have no further interest. However, there are three additional SPMs whose cases are being dealt with by the insolvency practitioner, Moores. The three SPMs are Noel Thomas, Jacqueline McDonald and David Blakey. Moores initially relinquished interest in the interim payment received by Claimants but, following the receipt of advice from King's Counsel, they have now claimed an interest in parts of the malicious prosecution damages. This has held up payment of damages for non-pecuniary losses whilst the matter is resolved. Although the three SPMs were amongst the first to agree settlement of Non-Pecuniary Losses, and should have received a further payment months ago, they have received nothing since the first interim payment. As the Inquiry was made aware at the compensation hearing in July, that first payment was very soon swallowed up in paying off other debts. The position the SPMs find themselves in is causing significant problems and distress. Post Office has been reluctant to assist in resolving these issues. We reiterate that which is said at §18 above, namely that it is incumbent on Post Office to do all it can when it appears that these bankruptcies were caused by Post Office's actions in the first place.

**c. Compensation for the Group Litigation Claimants**

34. Hudgell Solicitors have taken part in two Round Table Meetings with Post Office Limited and other interested solicitors. The outline for a new scheme has been discussed. It is anticipated that a scheme will be rolled out in early 2023.
35. Hudgell Solicitors have indicated that in their view there is nothing preventing Post Office from accepting applications at this stage and authorising appropriate Stage 1 costs to complete such applications.
36. Once panels are engaged in early 2023 the process of administering those applications can then take place expeditiously.
37. Given delays in other parts of the compensation schemes it is considered highly unlikely that full and fair compensation can be issued to all 555 claimants in a timely manner and before August 2023 without a wholesale escalation of panel resources.
38. Given the scope of the proposed scheme Hudgell Solicitors are concerned that inadequate amounts of compensation will be offered as that deadline approaches. The biggest threat to the success of the scheme at the outset is the size of the panel and the resources available to process applications.

### **Conclusions**

39. Although the ENE process has facilitated significant progress in the OHC Non-Pecuniary Loss claims, the attempted resolution of other compensation issues has too often been characterised by unexplained delay. The position of bankrupt Claimants is also of specific, continuing concern which has not properly been addressed by Post Office or BEIS.
40. We respectfully ask that the Inquiry continue to review the issues relating to compensation as proceedings continue through 2023. Whilst there have been difficulties, Hudgell Solicitors see no reason why most, if not all, current claims for compensation by their clients realistically cannot be resolved in the course of 2023. The Inquiry's

continued attention to the issues around compensation can only help to ensure that the desired closure is achieved.

**HUDGELL SOLICITORS**

**1 DECEMBER 2022**