

The Post Office Horizon IT Inquiry

Chair's Statement on Issues relating to Compensation



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Introduction

1. On 15 August 2022 I published a document entitled *Progress Update on Issues relating to Compensation* (“the Progress Update”) in which I set out a number of conclusions which I had reached about two compensation schemes being operated by Post Office Limited (“POL”) known as the Historical Shortfall Scheme (“HSS”) and the Overturned Historical Convictions Scheme (“OHCS”). I also made some preliminary observations about a scheme which was then in the process of being developed by the Department for Business, Energy and Industrial Strategy (“BEIS”) and which I referred to as the Group Litigation Scheme (“GLS”). The Progress Update followed hearings which took place on 6 and 13 July 2022 at which lawyers for a number of Core Participants made oral submissions which built upon written submissions which they and others had sent to me in advance of the hearings. One of my principal concerns, at that time of the hearings and when I published the Progress Update, was that there had been undue delays in making offers/payments of compensation (final and/or interim) under the HSS and OHCS and that insufficient progress was being made towards finalising the terms of the GLS.
2. On account of the delays which had occurred, as identified in the Progress Update, I raised the possibility that should there be undue delay in responding to my conclusions in relation to the HSS and the OHCS and/or in finalising the terms of the GLS I would “*very likely determine that I should deliver to the Minister¹ an interim report pursuant to section 24(3) of the Inquiries Act 2005 containing specific recommendations*”. I also made it clear that I might hold a further hearing “*at short notice*”.
3. Public Hearings in relation to Phase 2 of the Inquiry opened on 11 October 2022. By that time, I had become aware that POL and BEIS had responded positively to many of the conclusions I had reached and observations which I had made. Accordingly, I decided the best way forward was to hold another hearing on compensation issues, which I scheduled for 8 December 2022.
4. In advance of that hearing I invited written submissions: I received such submissions on behalf of POL, BEIS, the Core Participants represented by Howe+Co, the Core Participants represented by Hudgell Solicitors (“Hudgells”), the Core Participants represented by Hodge Jones & Allen and from Freeths LLP who acted for the Claimants in the GLO and who are acting for a number of those Claimants who are pursuing compensation through the GLS. At the hearing on 8 December 2022 I heard oral submissions on behalf of POL, BEIS, the Core Participants represented by Hudgells, the Core Participants represented by Hodge Jones & Allen and the Core Participants represented by Howe+Co.
5. The oral submissions made at the hearing on behalf of the Core Participants represented by Hodge Jones & Allen were made by Edward Henry KC. He is the leading counsel instructed to act for these Core Participants in the Inquiry. I should make it clear, however, that I received two sets of written submissions on behalf of these Core Participants; one set drafted by Paul Marshall of counsel who is instructed to pursue the compensation claims on behalf of clients of Hodge Jones & Allen; the other set drafted by Paul Marshall, Edward Henry KC and Flora Page (the barrister instructed to assist Edward Henry KC at the Inquiry).

¹ In this Statement the words “Minister or Ministerial” (as appropriate) are used as a short form for describing the Secretary of State or other Minister of the Crown to whom reference is being made.

6. In the light of the written and oral submissions I have received I have reached the clear conclusion that it is not necessary to submit an interim report to the Minister pursuant to section 24(3) of the Inquiries Act 2005 at this stage. Rather, as I was encouraged to do by the representatives of the SPMs (regardless of whether or not I submitted an interim report), I intend to monitor progress being made in delivering compensation under the HSS, OHCS and GLS by holding another hearing in relation to compensation issues in April 2023.² Further, I leave open the possibility that I will deliver an interim report on compensation once Phase 5 of the Inquiry's work has been completed. My reasons for proceeding in this way will emerge as this Statement unfolds.

Events and Decisions since my Progress Update

7. The narrative set out in this section of my Statement should be read in the light of the key conclusions of my Progress Update which are set out in paragraphs 7 to 9 of the Executive Summary. As in that Summary, I consider the HSS, OHCS and GLS separately.

The Historical Shortfall Scheme

8. POL has achieved its target of making offers of compensation to 95% of those applicants who had applied for compensation by 27 November 2020 by 31 December 2022. As of 7 December 2022, offers in settlement had been made to 2240 applicants and, of those, 1804 had reached agreement with POL upon a settlement figure for all their claims. As of the same date, 134 applicants had not received any kind of offer. Assuming that additional offers in settlement were made between 7 December and 31 December 2022 and assuming, too, that in some further cases in which offers have been made settlement has been agreed, there would still appear to be at least 100 applications which were received before 27 November 2020 in which no offers have yet been made. Additionally, there are something like 350 to 400 applications which remain unresolved notwithstanding that POL has put forward at least one offer in settlement to the applicants in question. Although POL anticipate that offers in settlement will be made to all applicants yet to receive an offer early this year (which I interpret to mean by February 2023 at the latest), there appear to be formidable difficulties to surmount before the unresolved applications (most if not all of which are accepted by POL to be the most complex) can be finalised. In POL's written submissions (paragraph 8) it acknowledges that there are 201 cases in which offers have been made (and presumably rejected) which are *"being actively supported through the HSS Dispute Resolution Procedure by the Dedicated Dispute Resolution Team"*. POL also acknowledges that offers are yet to be made in what it describes as cases of *"specific complexity"*. Examples of such cases are those in which insolvency is an issue, where there are requests for outstanding information, claims on behalf of limited companies which have been dissolved and the small number of applications in which prosecuted SPMs were acquitted of the charges brought against them.

² The date in April when this hearing will take place will be announced as soon as a suitable venue is secured.

9. Notwithstanding the additional personnel which POL has recruited to administer the HSS and determine applications, the plain fact is that there are a significant number of applications unresolved more than 2 years after the applications were made. Further, they are, in all probability, the most difficult cases to resolve so that the time scale for resolution cannot be gauged simply by reference to POL's assurance that offers in settlement will be made early this year. I am not persuaded as yet that the complex applications within the HSS are being processed with sufficient vigour notwithstanding that I accept that a balance has to be struck between speed of decision making and ensuring that offers in settlement are full and fair. However, an assessment of this aspect of the operation of HSS can only be made properly after taking evidence in Phases 5.
10. It is clear to me that the fact of insolvency after dismissal or resignation from their branch is a major difficulty in the way of settlement for a number of SPMs.³ I must stress that it is not open to me to resolve the individual legal disputes which have arisen between POL, an SPM and their Trustee in Bankruptcy as to how, if at all, compensation under HSS should be apportioned between the SPM and their Trustee in Bankruptcy. However, it is part of my role to assess whether the commitment made by POL and BEIS to provide compensation to those who are eligible which is *full and fair* has been or will be delivered. In relation to a very technical area of the law such as insolvency I cannot do that without appropriate legal advice. That is why I have resolved to obtain my own legal advice on a range of issues related to insolvency many of which will have been suggested to me by the Core Participants.
11. There is a danger, of course, that my obtaining legal advice on these issues will itself delay settlement of these cases. I am obviously alive to that danger. That is one of the reasons why I will hold yet another hearing specific to compensation issues in April 2023. If unresolved by then, the issues relating to insolvency will feature prominently at that hearing. Meanwhile, I wish to stress that POL and the applicants to HSS should do all that they reasonably can to resolve the insolvency issues which confront them and they should not "sit back" and wait for me to disclose the legal advice which I will receive in due course.⁴
12. I welcome POL's willingness to make hardship payments and interim payments as described in its written submissions.⁵ That will assist those SPMs whose applications are proving very difficult to resolve and who may be in need of financial redress urgently. I also welcome POL's decision to pay the reasonable legal costs of those applicants within HSS whose applications were unresolved on 10 October 2022. As at 30 November 2022, 26 applicants had requested funding from POL for legal advice – a figure which is somewhat lower than I would have expected given that the number of outstanding applications runs into hundreds. Perhaps more significantly, no application for legal funding had been approved by 8 December 2022. If, as appears to be possible, there are a significant number of applicants with unresolved complex cases who do not have legal representation the sooner they seek to instruct lawyers and the sooner POL approves a costs budget for those lawyers the better. Given the very substantial sums which POL has paid out to its own lawyers to administer the HSS and the significant sums it must be paying to the independent panellists who have been appointed under the scheme, it would be most unfortunate if there was undue delay in the instruction of lawyers to represent applicants due to the level of fees for those lawyers being pitched at

³ As at 6 December 2022 there were at least 72 applications in which insolvency was an issue; this information was provided to me orally by Ms Gallafent KC at the hearing on 8 December.

⁴ Insolvency issues also arise in the OHCS and the GLS. Paragraphs 10 and 11 apply equally to those Schemes. To avoid repetition I will not repeat the paragraphs in the sections of this Statement when dealing with those Schemes.

⁵ Paragraphs 15 and 16 of the Written Submissions of POL dated 1 December 2022.

levels which are unrealistically low. This may be the subject of fruitful investigation during Phase 5.

13. I turn to the issue of late applicants i.e. those whose applications to HSS were made after 27 November 2020. At paragraph 7.3 of the Executive Summary of the Progress Update I wrote:

"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 in the Scheme. The delay in determining many if not all of these applications is wholly unacceptable, and, in my view, it remains largely unexplained."

At paragraph 7.4 I explained that any person whose application to HSS was rejected on the basis that it was made after 27 November 2020 should have the right to have that decision reviewed by the Advisory Panel.

14. In accordance with the timetable laid down by me, POL (as well as other Core Participants) filed an opening statement dealing with various aspects of the Inquiry's work on 4 October 2022. At paragraph 26 of that statement POL recorded that it *"fully accepts that ... the delay in determining whether...applications received after 27 November 2020 should (or could) have been accepted into the scheme was wholly unacceptable and POL apologises for this delay."* POL went on to explain that it had made a *"proposal"* to BEIS and a funding request thereby creating the clear impression that POL had asked BEIS for funding so as to enable POL to determine the late applications. The written opening statement filed by BEIS on the same date made no mention of how late applications were to be determined. However, on 6 October 2022 there was a Ministerial announcement to the effect that funding would be made available for the late applications to be determined. When Mr Chapman, counsel for BEIS, addressed me orally about this issue he gave me the impression that the funding was made available not merely to determine the applications but also to pay appropriate sums of compensation. At this stage, I did not consider it appropriate to seek to *"pin down"* Mr Chapman on that point; the opening statements and oral presentations were being made about a wide range of issues.

15. On 1 December 2022 Mr Chapman and Mr Henderson authored written submissions in advance of the hearing on 8 December 2022. At paragraph 8 they wrote that BEIS had confirmed that funding was available for SPMs who had applied to HSS after the 27 November 2020 deadline *"so that they can receive any compensation due to them"*. That seemed to me and still seems to me to be an assertion that those who applied for compensation after 27 November 2020 would receive compensation notwithstanding the late application, provided they satisfied the other eligibility criteria in HSS. At paragraph 9 of those same submissions BEIS suggested that POL had written to 228 SPMs *"who have been in touch about late claims to confirm that they will be considered"* which reinforced the view I had formed.

16. However, that understanding is not entirely consistent with the written submissions produced by POL.⁶ These submissions suggest that late applicants are required to explain the reason for the delay in making their applications presumably so that an assessment can be made about the merits of permitting a late application to go forward. However, this section of the submissions concludes (paragraph 12) by asserting that *"Post Office expects that there will*

⁶ The detail is set out at paragraphs 11 to 13 of the Written Submissions of POL dated 1 December 2022.

be very few, if any, applications that will be deemed to be ineligible on the grounds of the absence of a reason for its lateness”.

17. I accept that following the receipt of the Progress Update some time would, inevitably, have gone by before POL and BEIS reached a decision about how late applications would be treated, notwithstanding the unacceptable delay which preceded the Update. However, since the announcement made by BEIS on 6 October 2022 many weeks had elapsed before the hearing on 8 December 2022. As of that date there was still a lack of complete clarity as to how late applications were to be treated. Accordingly, in the light of the statements made by BEIS and POL in writing prior to 8 December 2022 and orally at the hearing on 8 December, it seems to me that fairness now demands an unequivocal statement to the effect that all applications received by POL but made after 27 November 2020 will be accepted into the HSS provided all the eligibility criteria set out in the HSS are met: i.e. no application already received by POL will be refused on the basis that it was made after 27 November 2020. To require applicants to explain the delay in making an application when, as a matter of course, it will be accepted if all other eligibility criteria are met is, in my view, wholly unnecessary.
18. In their written and oral submissions Mr Moloney KC and Mr Stein KC set out a number of criticisms of the HSS which were illustrated by specific cases with which they were familiar. Mr Moloney specified 3 aspects of the HSS which were open to criticisms. One criticism related to the delays in the various stages of the Scheme which were spelled out at paragraphs 11 to 22 of his written submissions. The delays identified were: (a) those related to late applicants (b) those related to the operation of the HSS following rejection of first offers (c) those related to applications in which insolvency is a live issue and (d) those related to the assessment of or disputes about what constitute reasonable legal costs. I understand entirely why Mr Moloney has drawn my attention to these matters. At this stage, however, in the absence of the evidence which will become available during the course of Phase 5 it is difficult for me to say more about delay than I have set out above. The second aspect of the HSS which Mr Moloney highlighted was a lack of independence in the administration of the Scheme. As I explained in the Executive Summary at paragraph 7.5, I consider that the Scheme is capable of delivering full and fair compensation to applicants. Whether it has done so, however, will be scrutinised with care in Phase 5. The third complaint raised by Mr Moloney related to what he described as “the application process” by which he meant that arbitrary deductions from claims were being made on the basis of lack of documentary proof of certain claimed losses and heads of claim such as loss of wages or other similar consequential losses were being measured inappropriately – see paragraphs 23 to 26 of his written submissions. This criticism, too, can only be investigated in Phase 5 – as it will be.
19. Mr Stein KC made similar points in his written and oral submissions. I hope he will forgive me for saying that his points about delay, equality of arms in relation to legal representation and the independence of those administering the HSS have been covered above (so far as they can be at this stage) at paragraphs 8 to 18.
20. Mr Sathyan Shiju has made an application under the HSS. At the hearing I assumed that Mr Shiju was represented by Mr Henry KC although Mr Henry did not make any oral submissions relating to Mr Shiju’s application. However, Mr Shiju’s application under the HSS is the subject of detailed consideration in the written submissions of Mr Marshall at paragraphs 47 to 66. As everyone familiar with my Terms of Reference accepts, I cannot determine compensation in individual cases. Nonetheless, Mr Marshall’s written submissions about Mr Shiju’s application, if supported by evidence adduced in Phase 5, will call for a detailed response from those who have considered his application to the HSS.

The Overturned Historic Convictions Scheme

21. POL estimate that there may be more than 700 persons who were convicted on the basis of data produced by Horizon and who may be entitled to have their convictions quashed. As at 8 December 2022, 83 persons, convicted on the basis of data produced by Horizon, have had their convictions quashed. The vast majority of those 83 persons have received interim payments under the OHCS of at least £100,000.⁷
22. In the Progress Update I expressed concern about whether 3 individuals who had been refused interim payments of £100,000 under this Scheme, even though their convictions had been quashed, were being treated fairly. Those 3 individuals are represented by Hudgells and they have agreed to attempt to resolve their disputes with POL through independent mediation.⁸
23. I also expressed concern that the OHCS did not include within its terms of reference persons within the Group Litigation Order (GLO) who had been prosecuted but who had been acquitted. That concern has been overtaken by events in that those persons who were prosecuted but acquitted such as Ms Palmer and Ms Arch can now pursue claims for compensation (including interim payments) arising from their arrest and prosecution under the GLS. Those very few persons who were prosecuted but acquitted and who were not Claimants in the GLO have been treated by BEIS/POL as being within the OHCS.
24. The majority of the applicants in the OHCS are represented by Hudgells. However, both Howe+Co and Hodge Jones & Allen represent individuals who were wrongly convicted and whose convictions have been quashed. I understand that a number of individuals (who are not Core Participants in the Inquiry) have made applications to this Scheme either in person or via other solicitors.
25. Prior to the hearing on 6 July 2022 it was announced that Lord Dyson had been appointed to perform what was called an “*Early Neutral Evaluation*” of the likely award of general damages for non-pecuniary losses arising as a consequence of the malicious prosecution of those whose convictions had been quashed. The appointment of Lord Dyson arose out of discussions between Hudgells and POL and I made reference to this initiative at paragraph 98 of my Progress Update. I understand that Lord Dyson considered, in detail, the cases of 10 persons whose convictions had been quashed. All of those persons are represented by Hudgells.
26. Both POL and Hudgells regard the work undertaken by Lord Dyson as being very valuable in helping to resolve claims for general damages for non-pecuniary losses under the OHCS. That is hardly a surprise. However, the full details of Lord Dyson’s work is known only to POL and Hudgells. Although there has been a degree of information sharing with a number of lawyers who represent applicants whose convictions have been quashed that sharing is subject to a confidentiality agreement with each lawyer and, as I understand it, the lawyers

⁷ Recently the amount payable by way of an interim payment has increased to £163,000 and those who have received £100,000 will be entitled to a “top-up”.

⁸ It is not entirely clear to me whether the mediation will relate to the full claims of these individuals or whether it is confined to the issue of interim payments. However, both Hudgells and POL seem to be content with the process upon which they have agreed. It remains to be seen whether mediation will succeed and, if it does not, what will follow.

(other than Hudgells) do not have access to all the information which was taken into account by Lord Dyson in respect of his evaluation of each of the cases which he considered.

27. At paragraph 102 of my Progress Update I drew attention to the need for transparency and consistency in operating the OHCS. The impression which I have, at the moment, is that there is no transparent scheme in any real sense; rather there are ongoing negotiations in respect of the individual claims between POL and (in the vast majority of cases) the lawyers representing the individuals whose convictions have been quashed. In the main, so far, the negotiations have been concerned primarily with the proper award to be made in respect of non-pecuniary losses.
28. This last observation is founded upon the statistical information which I was given by POL and Hudgells in their written submissions. Hudgells report that as of 1 December 2022 it had submitted 40 applications for non-pecuniary losses in respect of clients whose conviction had been overturned; in respect of those applications 27 offers had been made and settlement had been achieved in 25 cases. In POL's written submissions it is suggested that a total of 51 applications for non-pecuniary losses had been received as at 1 December 2022; 27 offers in settlement had been made. That would mean that although 11 applications had been made by persons who were either unrepresented or represented by lawyers other than Hudgells only 2 offers in settlement had been made to persons not represented by Hudgells.
29. In her oral submissions Ms Gallafent KC provided further information about applications in relation to non-pecuniary losses. She told me that there had been a total of 53 applications received by 8 December 2022. There had been offers in settlement in 33 of these applications and settlement had been achieved in 26 cases.
30. While I accept that some progress has been made in negotiating settlements relating to non-pecuniary losses the reality appears to be that comparatively little progress has been made in negotiating full and final settlements in respect of all losses and/or in respect of pecuniary losses. As of 1 December 2022, 2 persons whose convictions were quashed had reached a full and final settlement of their pecuniary and non-pecuniary losses. Additionally, 6 persons had submitted full schedules of pecuniary losses. It must be remembered that a Ministerial announcement to the effect that those whose convictions have been quashed would be entitled to final payments of compensation under the OHCS was made on 14 December 2021. The settlement of 2 cases in the space of a year is, on any view, a very slow rate of progress. Hudgells complain about delays on the part of POL (paragraphs 29 to 32 of their Written Submissions); POL encourages applicants to bring forward detailed schedules of their claims (paragraph 33 of their Written Submissions). Without evidence and an investigation of the type which will occur in Phase 5 it is not possible for me to assess the merits of their contentions.
31. Hodge Jones & Allen represent 4 Core Participants who are applicants under the OHCS. Mr Henry's oral submissions did not touch upon their particular cases; rather he set out to seek to persuade me that all those who had been wrongly prosecuted (which included 4 of his clients) and whose convictions had been overturned had a claim for compensation not just for malicious prosecution but additionally for damages flowing from what was described in summary as the intentional denial of information/material to which convicted defendants were entitled in law. That issue, no doubt, will be advanced with vigour by Mr. Marshall who represents those 4 Core Participants in their applications under the OHCS.
32. I should, however, mention the information provided to me by Mr Marshall in his written submissions about the case of Mr Vijay Parekh, one of the clients of Hodge Jones & Allen

who has made an application under the OHCS. Mr Parekh was the SPM at a Post Office branch between 2006 and 2009. On 30 April 2009 a shortfall of £74,880 was discovered at audit and Mr Parekh was suspended, dismissed and prosecuted for theft of that sum. Upon advice, Mr Parekh pleaded guilty to stealing £74,880 and in January 2011 he was sentenced to 18 months imprisonment. Between the dates of his plea and sentence Mr Parekh raised £74,880 and paid it over to POL. On 23 April 2021, Mr Parekh's conviction was quashed. In his written submissions Mr Marshall asserts that POL made no attempt to re-pay £74,880 to Mr Parekh following the quashing of the conviction even though, as he maintains, POL could not reasonably have thought that it had a legal basis for retaining the money. On 5 October 2022 POL was asked to explain this state of affairs. On 1 December 2022 an offer was made by POL to re-pay the money together with interest.

33. I have read about only one side to this story. On any view, however, it does not make for happy reading and the facts recited above strongly suggest that there is as yet no proper structure within the OHCS for ensuring that sums which must be due to SPMs are paid over promptly upon quashing of a conviction.

34. I do not underestimate some of the difficulties faced by the applicants for compensation in formulating their claims; nor do I underestimate the difficulties which POL face in responding appropriately to the claims of those who were wrongly convicted especially in those cases where there are high value claims for pecuniary losses and in those cases in which insolvency is an issue. However, on any view, the rate of progress towards final settlements for those who were wrongly convicted is too slow. I welcome the fact that further or top-up interim payments will be made available to applicants but, in my view, there is now a clear need for an injection of urgency into the process of compensating those who were wrongly convicted.

35. It must not be forgotten, too, that the current applicants to the OHCS represent no more than about 15% of those whom POL consider might have a claim for compensation. I remind everyone of the view I expressed at paragraph 8.5 of the Executive Summary to the Progress Update:-

“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.”

I have heard or read nothing which has altered that view which was expressed nearly 5 months ago.

The Group Litigation Scheme

36. As at 15 August 2022 this Scheme was in its infancy. At that time, however, it was anticipated by all concerned that a remediation scheme would be necessary. On 7 December 2022 there was a Ministerial statement in Parliament about the Scheme and a document entitled *“Additional compensation for GLO Members: scheme process”* (“the Scheme Document”) was published. In his oral submissions on 8 December 2022, Mr Chapman, for BEIS, explained that the Scheme would be administered by BEIS; that it would be overseen by a distinguished Advisory Board and that claims under the Scheme would be determined by an independent panel. The likely start date for the submission of claims is Spring 2023.

37. The Scheme Document contains further detail as to the operation of the Scheme. There is no need to set out the detail in this Statement.

38. However, I think it important to stress the following.

39. First, all claims under the scheme must be resolved by 7 August 2024. The funding for payments under the scheme has been obtained by the Government in reliance upon statutory provisions which dictate that the funds must be used for their allocated purpose by that date. That means that approximately 550 claims will have to be considered in the course of the next 20 months. The experiences gained in administering the HSS and OHCS demonstrate how challenging this will be.

40. Second, BEIS has indicated that the reasonable costs of legal representation will be paid to applicants under this Scheme. At page 12 of the scheme document some details relating to costs are provided. Although the document itself does not specify the level of costs which will be allowed for submitting a claim, there appeared to be a general expectation at the hearing on 8 December 2022 amongst the legal representatives of GLO Claimants that the sum of £900 would be the standard fee paid in respect of preparing and submitting a claim. This level of fee for preparing claims was the subject of forceful criticism by the lawyers engaged on behalf of the GLO Claimants.

41. I was not surprised. My (now considerable) experience is that the preparation of a detailed claim in support of a wide variety of pecuniary and non-pecuniary losses can take many hours to prepare and may involve counsel as well as solicitors. Further, the preparation of a detailed and structured claim at the outset is, for the most part at least, the best means of ensuring that costs are not wasted further down the line by claims being amended or even re-vamped. I have been provided with examples of cases in the HSS of claims being prepared at the outset (admittedly without the assistance of lawyers) which become much larger (quite justifiably) once lawyers become involved. I fear that the same thing will happen if the costs of preparing and submitting claims are unnecessarily restricted. My view is that it is usually a false economy to unduly restrict the amount of costs which are allowed for preparing and submitting a claim – especially a claim of high value.

42. As it happens BEIS has clarified its position in relation to fees for submitting claims to GLS. In a letter to the Inquiry dated 4 January 2023 BEIS wrote:-

“The Department’s letter of 8 December to legal representatives made clear that the £900 is an allowance intended to enable lawyers to start this work. It added that further cost allowances for the remaining phases up to and including the submission of claims would be published in the next few weeks.

These allowances are being developed by a costs draftsman independent of BEIS, and are the subject of mediation involving the law firms known to be involved.

The Department hopes this reassures claimants of the position in respect of their legal costs.”

43. Third, the reality is that there will be approximately 12 to 15 months to resolve many hundreds of claims submitted under this Scheme. BEIS must administer the Scheme in such a way that no claimant feels pressurised into accepting an offer to avoid the possibility that the end date for payment will arrive and no payment will have been received.

44. I am satisfied that there will be a need for monitoring this Scheme as it unfolds. That monitoring can begin at the hearing which will take place in April 2023.

The Need for an Interim Report

45. The Core Participants represented by Howe+Co, through the written and oral Submissions made on their behalf, invite me to publish an Interim Report which contains a number of specific recommendations.⁹ They are:-

- The cases of those SPMs which are considered to be complex due to insolvency issues should be prioritised.
- BEIS should design and implement a fully formed compensation scheme for GLO Claimants forthwith.
- BEIS forthwith should give effect to my recommendation in the Progress Update that interim payments should be available to SPMs who were prosecuted but acquitted.
- Appropriate funding should be made available so that counsel and experts can be instructed as appropriate in all three schemes.
- The OHCS and GLS should proceed on the basis that full legal representation is available at all stages leading to resolution and that any applicant who wishes to dispute an offer should have the right make oral representations.

46. I intend to involve myself in the issue of insolvency to the extent permissible as indicated above. Self-evidently, this issue is in need of urgent resolution. All the remaining cases in the HSS and OHCS should be considered as a matter of urgency. As soon as I reasonably can I will disclose to Core Participants the legal advice I receive (or at the very least a redacted version of it if that proves to be necessary). Those cases in the GLS which involve insolvency issues will, no doubt benefit from the conclusions which are reached in the other Schemes.

47. BEIS has substantially developed a compensation scheme for GLO Claimants – the GLS - which will be monitored throughout this year.

48. Interim payments have been made available in the GLS scheme to acquitted GLO Claimants and further interim payments can be claimed, as I understand it, once the Scheme is open for claims. I acknowledge the current difficulties being experienced in relation to making interim payments when insolvency is an issue. I repeat that I can see no basis for refusing appropriate interim payments to persons who were GLO Claimants who were prosecuted but acquitted and that is especially so where hardship is proved or imminent.

49. In all three Schemes there is now a commitment by those administering the Schemes to provide reasonable funding for lawyers instructed by the applicants under the Schemes. I cannot assess whether such funding as has occurred or will be provided is reasonable and/or has impacted upon the core objective to provide full and fair compensation without the evidence which will be adduced in Phase 5.

⁹ These suggested recommendations draw heavily upon the circumstances of specific cases in which Howe+Co are involved and which are detailed in the Written Submissions on behalf of their clients dated 2 December 2022.

50. Overall I am not persuaded that anything is to be gained (over and above that which might be gained by a positive response by BEIS and POL to this Statement) by my writing an Interim Report.
51. In his oral submissions Mr Stein KC invited me to recommend that all three Schemes should be subject to overall supervision by a person or body who/which is independent of BEIS and/or POL.
52. I have no doubt that if there were no compensation schemes yet in existence and that I was making a recommendation about a process for compensating wronged SPMs with a blank piece of paper there would be considerable merit in there being one scheme with a completely independent advisory board and independent assessors determining levels of compensation. However, that is not what exists. There are 3 Schemes in various stages of their development which are functioning in substantially different ways. In my view it would not now be possible to appoint a person or board to supervise all the schemes without there being a significant risk of substantial delay as a result. In relation to all schemes that would be very undesirable. In relation to the GLS, however, such delay could be disastrous.
53. No Core Participant, save for those represented by Howe+Co invited me to submit an Interim Report under section 24(3) of the 2005 Act to the Minister. POL invited me not to do so.
54. All things considered, I do not consider there to be a need for an Interim Report pursuant to section 24(3) of the Act at this stage. I will continue to monitor compensation issues as and when necessary as well as considering those issues in detail in Phase 5 of the Inquiry after which I will re-visit the need for an Interim report.

A handwritten signature in black ink, appearing to read 'Wyn Williams', with a horizontal line drawn underneath it.

Sir Wyn Williams

9 January 2023

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