



# Government Legal Department

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13 January 2023

Your ref:

Our ref: Z2013328/PBJ/JD3

Dear /Madam,

## POHITI – issues relating to IVA or bankruptcy orders

The Inquiry Chair has sought the Department's views on the key issues affecting compensation payments for those applicants under IVA or bankruptcy orders in relation to the various schemes.

Ultimately this seems to come down to differing positions on whether the compensation payments made to those who have been made bankrupt fall within the bankruptcy estate<sup>1</sup>.

Broadly, the department's position in relation to the GLO Scheme is that a payment made under an ex-gratia scheme announced by the Government in 2022 does not constitute an asset, right or claim in existence falling within the bankruptcy estate given:

- (1) the postmasters compromised their claims upon entering into the full and final settlement with the Post Office in December 2019 bringing to an end the GLO litigation;
- (2) such a payment was not in contemplation when postmasters entered into deeds of assignment with their respective trustees in bankruptcy when seeking their permission to participate in the GLO litigation; and
- (3) it also does not constitute a future interest "arising out of or incidental to the claims" against the Post Office.

In contrast, one insolvency practitioner (who acts as trustee for a number of bankrupt postmasters) has the position that it does constitute an asset within the postmaster's bankruptcy estate.

The Department was not prepared to take the risk that the insolvency practitioner would take legal action against the postmasters to recover any interim payments which it chose to make in the absence of agreement about the

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<sup>1</sup> Section 283 of the Insolvency Act 1986 provides that the bankrupt's estate comprises property belonging to them or vested in them at the commencement of the bankruptcy.

Gary Howard - Head of Division

Emma Parker - Deputy Director, Team Leader Planning, Infrastructure & Environment



legal position. It therefore concluded that there were only two options open which would achieve a resolution of the impasse in respect of interim payments:

- to seek a declaration from the court which would give rise to questions relating to standing of the Department, delay, additional costs and handling issues as it would involve multiple bankruptcies; or
- to negotiate individual settlements with the insolvency practitioner to enable payments to be made swiftly.

It adopted the latter route which enabled interim payments to be made before Christmas and avoided postmasters being drawn into further litigation. In doing so, the Department agreed to split interim payments between the insolvency practitioner and postmasters affected. The Department has reserved its position in relation to any final payments to be made to GLO postmasters and is actively considering its approach to this issue. In negotiating these settlements, some postmasters have been able to clear their debts and will now be able to apply to the courts to annul their bankruptcy. If successful, their final payments made under the scheme will not be subject to the bankruptcy.

As regards the OHC, the Department understands that the issue that arises is whether claims for malicious prosecution fall within the bankruptcy estate. Only one insolvency practitioner has taken the view that the compensation vests. The Post Office and their legal advisers, Herbert Smith Freehills, are currently addressing this issue in conjunction with Hudgell Solicitors, who are engaging with the insolvency practitioner concerned on behalf of the postmasters they represent with a view to reaching a settlement.

In relation to the HSS, the Department believes that there are no disputes relating to what is comprised within the bankruptcy estates of postmasters. The Post Office is currently in the process of finalising the principles to be adopted when handling the settlement of claims where bankruptcy is an issue and is working with the Independent Advisory Panel on this matter.

Yours faithfully

[GRO]

**Peter Johnson**  
**For the Treasury Solicitor**

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