

IN THE POST OFFICE HORIZON IT INQUIRY

SUBMISSIONS ON ISSUES AFFECTING COMPENSATION FOR APPLICANTS UNDER IVA OR BANKRUPTCY ORDERS

1. These submissions are made on behalf of the victim core participants represented by Howe + Co.
2. We note from the Inquiry's letter dated 16 December 2022 that the Chair has considered the submissions provided to him at the Compensation Hearing on the 8th December 2022 and has taken a decision to obtain legal advice to investigate the issues surrounding bankruptcy.
3. The Chair has sought views on the key issues affecting compensation payments (both Interim and Final) for those applicants under IVA or bankruptcy orders across the various schemes.
4. The Inquiry's letter also stated that the Chair does not require detailed case studies nor details of individual applicants' experiences at this stage.
5. First, it is troubling to those we represent that the written submissions made on behalf of Post Office Ltd (of 1 December 2022) do not address the issues of those SPMs (who were parties to the GLO) and who are in bankruptcy or IVA. Indeed the Post Office submissions are silent on the position of GLO SPMs.
6. The written submissions made (of 1 December 2022) on behalf of BEIS in relation to GLO SPMs in bankruptcy/IVA are brief (para 22 and 23 only), and provide no detail as to the steps that have and will be taken in relation to this category of SPM.

7. From instructions, we can confirm that the key issues affecting compensation payments for those of our clients under IVA and bankruptcy orders are as follows:
8. Following the 2019 Settlement Agreement our clients instruct that they were given to understand that the following actions would be taken:
 - (i) Setting aside historical judgments and proceedings issued by Post Office Ltd in the county court;
 - (ii) Removing charging orders over affect claimants' homes and properties;
 - (iii) Withdrawing Post Office Ltd's debts from bankruptcies;
 - (iv) Writing off outstanding alleged shortfalls;
 - (v) Ensuring that Claimants were reinstated were currently suspended.
9. However, it would appear that the above actions were not taken, or not taken in all relevant cases. In particular our clients advise that POL made no commitment and took no steps to annul bankruptcies at the time of the Settlement Agreement. This resulted in many of our clients having to continue to live with the stigma which was generated by the Horizon scandal.
10. As the Chair will be aware, these ongoing bankruptcy and insolvency issues have led to delays in our clients receiving interim compensation payments. This is because BEIS deemed cases where bankruptcy and IVAs feature as 'complex cases'.
11. We understand from information provided by POL through counsel at the hearing on 8 December 2022 that at that time there were 134 cases in which claims had been made for losses flowing from bankruptcy or insolvency. Many former SPMs who are in great financial difficulty have been placed at the 'back of the queue' by BEIS.
12. We are content to report that, most likely as a result of the hearing on 8 December 2022 and the multiple representations made by Howe & Co to BEIS, many of our clients who have been made bankrupt or who are otherwise subject to IVAs have now received interim compensation payments.

13. However, our clients remain concerned that their receipt of final compensation may be subject to delays. We refer the Chair to the comments of Mr Stein KC at the hearing on 8 December 2022:

“Another reason why the bankruptcy cases should not be sidelined is that it was the actions of the Post Office that bankrupted our clients. Mr Shapps, in Parliament yesterday, in the points he was putting forward as he was addressing the introduction of the GLO scheme, accepted that there were those that had been bankrupted by the Post Office. Those actions, in bankruptcy or turning to an IVA, those individuals are part of a truly shocking public scandal, and the clear duty of the Post Office and its owner, BEIS, is to clear the debts, restore the credit ratings of subpostmasters so that they can begin to live again.” (Transcript. Pages 121-122).

14. Issues have arisen in relation to payment of Trustees’ fees. One of our clients instructs that he received an interim payment in the region of £30,000, but was required to repay a sum of £10,000 to his Trustee. Our clients maintain that Trustees’ fees should not be deducted from compensation payments.

15. This issue appears to be relatively widespread. We note from submissions made by Mr Moloney KC on 8 December 2022 that in some cases that the Official Receiver has been offered sums in cases which significantly exceed those offered to applicants (see transcript at page 61).

16. Our clients are concerned that the compensation that they receive may be similarly swallowed up by the Official Receiver by Insolvency Practitioners or other debtors. We submit that it is incumbent on POL/BEIS to pro-actively resolve these issues through seeking specialist legal advice or assistance and through the bringing of proceedings against Trustees if necessary.

17. A key issue that concerns bankrupt clients is whether POL should take active steps through the courts to annul bankruptcy orders. Annulment or cancellation would place these clients in the same position that they would have been in, had they not been made bankrupt. This is the true aim of compensation.

18. It is unfair that victims of POL in this scandal should still be required to declare that they are bankrupt (or whether they are discharged bankrupts) for purposes of obtaining employment or loans or even for simple matters such as obtaining insurance; a matter that has directly affected our clients. Whilst obtaining annulment might prove costly, it is an important measure which would directly improve the quality of our clients' lives and remove the stains on their characters, which remain as a direct consequence of the actions of POL.
19. It is unclear whether POL and BEIS have resolved the legal dispute with one estate to which counsel for POL referred when addressing the Chair on 8 December 2022 (see transcript at page 32). This potential dispute may refer to one of our client's cases (see in relation to Ms Palmer Transcript 8 December at page 124). We understand that it was anticipated that POL would make progress relatively rapidly in resolving the issue in that case. POL and BEIS must be proactive in resolving any such disputes.
20. It follows that in the event that any bankruptcy or insolvency practitioners or the Official Receiver refuse to agree to the discharge of bankruptcies or resist any applications to annul bankruptcies, it should be incumbent on BEIS and/or POL to make further payments to satisfy trustees or issue legal proceedings, if necessary, to resolve any outstanding legal issues.
21. These are not problems of our clients' making. Victims of this scandal should not be required to divert what monies they receive by way of compensation into satisfying Trustees or the bringing of any such proceedings.

Conclusion

22. The following issues should be considered:

- i. What steps should be taken by the PO to annul the bankruptcy orders affecting SPMs?

ii. What is the fastest and most efficient way of annulling a number of bankruptcies? (i.e groups of SPMs who were made bankrupt in circumstances where such orders should never have been made)

iii. What steps should be taken, and by whom, to restore SPMs credit ratings post-bankruptcy annulment?

iv. What steps should be taken to annul or reverse IVAs and restore credit ratings?

v. What should be the position concerning the costs and fees associated with the bankruptcies? Should these charges be deducted from compensation, or should they be ring fenced? Our view is that POL placed our clients in bankruptcy and so should bear the costs of that action, even if such costs are more than POL/ BEIS might wish to pay.

vi. What measures are open to BEIS to provide an equitable resolution of the compensation issues relating to bankrupt or IVA clients through the passing of secondary legislation? We note that on 7 December 2023 the Secretary of State for BEIS made a statement to the effect that the government would introduce a benefits disregard for all Post Office and Horizon related compensation through secondary legislation¹. We submit that secondary legislation might usefully remove any legal impediments in bankruptcy/ IVA cases. Such action could be taken to further mitigate the effects of POL's conduct on our clients.

23. Please do not hesitate to contact us if we can clarify any of the above, or should any further questions arise upon which we may be able to assist.

HOWE & CO
6 January 2023

¹ <https://questions-statements.parliament.uk/written-statements/detail/2022-12-07/hcws420>