

THE POST OFFICE HORIZON IT INQUIRY

PRELIMINARY QUESTIONS TO CATHERINE ADDY KC

Please note that questions have been formulated to be specific to each of the compensation schemes, which differ in their terms.

1. Historic Shortfall Scheme (HSS)

In the Progress Update on Issues relating to Compensation dated 15 August 2022, I described the scheme as a voluntary remediation scheme (adopting the description given to it by Post Office Limited) – see paragraph 13. In the same paragraph I described how the scheme came into existence following and as a consequence of the Settlement Deed which brought an end to the group litigation – see clauses 9.4, 9.5 and schedule 6 of the Deed.

In the written submissions provided by Post Office Limited dated 16 January 2023 it sets out its understanding of the legal position in relation to those persons who were made bankrupt or entered into an IVA and who have made a claim under HSS between paragraphs 3 and 8 of the submissions. The analysis has at its root an acceptance that applicants who make claims under the scheme are relying upon a cause of action for breach of contract which was capable of having vested in their Trustee in Bankruptcy – see in particular paragraph 5.

Questions:

1. Does Leading Counsel agree with the analysis set out in paragraphs 3 to 8 of the written submissions of Post Office Limited?
2. If the answer is not unequivocally Yes, please explain why?
- 3(a). What is the significance of a bankruptcy having been annulled prior to the making of a claim under HSS?
- 3(b). What is the significance of a bankruptcy having been annulled following receipt of an award under HSS?
4. What is the position of an applicant who has been or still is the subject of an IVA?

At paragraphs 13 and 14 Post Office Limited makes reference to there being a proper distinction to be drawn when assessing compensation to those applicants who can prove a causal link between Horizon Shortfalls and their bankruptcy and those who cannot.

Questions:

5 (a). Can Leading Counsel explain the principles upon which compensation would ordinarily be assessed when there is a causal link between the alleged breach of contract (or tortious conduct) and bankruptcy?

5 (b). Does Leading Counsel have any practical advice about the assessment of compensation where there is a proven link between bankruptcy and the alleged wrongful conduct?

6. Are any issues raised in the submissions of Hudgells Solicitors ,Howe+Co, and Paul Marshall upon which Leading Counsel wishes to comment?

2. Overturned Historic Convictions Scheme (OHCS)

The OHCS is not a remediation scheme. Rather Post Office Limited determine whether to make interim payments and or final payments of compensation to sub-postmasters who were convicted of offences of dishonesty in cases in which the data produced by the Horizon IT System was central to their convictions. From time to time the Minister has made announcements about these payment (all of which are with Leading Counsel).

Although the payments were originally intended for persons whose convictions had been quashed the Minister subsequently clarified that they were also available to persons who had been prosecuted but acquitted (except for acquitted persons who were also Claimants in the group litigation).

In the main payments under OHCS have been made to persons who have had their convictions quashed who were Claimants in the group litigation. Such persons had or may have sued Post Office Limited in the group litigation for malicious prosecution and other related torts. They were the subject of particular provisions in the settlement deed which brought the group litigation to an end – see paragraphs 4.2 and 7 in particular. In effect, the right of convicted claimants to bring proceedings for malicious prosecution in the event of their convictions being quashed was preserved.

Questions

7. When did the cause of action for malicious prosecution in relation to convicted persons crystallise?

8. If the cause of action arose when the prosecution was commenced in what circumstances would the cause of action vest in a trustee in bankruptcy or supervisor under an IVA?

9. How, if at all, are the answers to Questions 1 to 5 above different in respect of the applicants to OHCS?

10. Are there any issues raised in the submissions made by Post Office Limited, the Department (BEIS), Hudgell Solicitors, Howe+Co and Paul Marshall upon which Leading Counsel wishes to comment?

3. Group Litigation Scheme (GLS)

This scheme is yet to be published in its final form. However, BEIS intend that it will be a means by which ex gratia payments are made by BEIS to the Claimants in the group litigation since BEIS has acknowledged that those claimants did not receive proper compensation under the terms of settlement which brought an end to the group litigation.

BEIS has expressed its view of the legal position relating to claimants in the GLS who are to be paid an ex gratia payment but who have previously been made bankrupt in its letter to the Inquiry dated 13 January 2023. It has also described in that letter the practical steps which it is taking to deal with the fact that one Insolvency Practitioner does not agree with the view of the law advanced by BEIS.

Questions

11. Does Leading Counsel agree with the view of the law expressed by BEIS in the first page of its letter of 13 January 2023?

12. If the answer to Question 11 is not unequivocally Yes, please explain why?

13. Does Leading Counsel have any advice as to how the dispute between BEIS and the Insolvency Practitioner can be resolved (other than by court proceedings or negotiation)?

14. How, if at all, would questions 3 to 5 above be answered differently in relation to applicants to the GLS compared with applicants to HSS or OHCS?

15. Are there any issues raised in the written submissions of Hudgell Solicitors, Howe+Co and Paul Marshall upon which Leading Counsel wishes to comment in relation to the applicants to the GLS?

4. Clause 11 of the Settlement Deed

Clause 11 of the Settlement Deed contains specific provisions in relation to the bankruptcy of Claimants. I understand the word Claimants to be a reference only to the Claimants in the group litigation.

Question

16. Would Leading Counsel please explain the significance of this clause in relation to applications under GLS and/or generally?

Sir Wyn Williams

Post Office Horizon IT Inquiry Chair

27 January 2023