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Dear Paul

The Post Office and compensation arrangements

Thank you for your letters of 23 March and 1 April to Minister Hollinrake. I have discussed with him the issues raised in your letters and he has asked me to reply on his behalf. In doing so, I have taken account of HSF's open letter to you of 4 April, which covers many of the same issues.

Part I of your 23 March letter compares the treatment of GLO members who were convicted and those who were not. We agree that there are necessary differences between the two groups:

- There is a difference in the legal principles which apply because those who were convicted are claiming for malicious prosecution, whereas most GLO claimants are not.
- Because the non-convicted individuals accepted a "full and final" settlement, the GLO scheme is an *ex gratia* one, with no further recourse to the courts. By contrast, those who were convicted still have the right to take action in court if settlement is not reached (although we very much would not want to see them have to do that). Reaching settlements is therefore a matter for negotiation between the parties, centred on the details of the claim and their associated legal principles and precedents.
- DBT is running the GLO scheme whilst the Post Office is responsible for settling claims from those with overturned convictions ("OHC"). However, the latter is being funded by DBT, which has a shared interest in securing fairness in the outcomes. Both the Post Office's general approach and its settlement of cases are therefore being overseen by DBT. This engagement with Post Office allows DBT officials to check that there is consistency between the offers being made by the Post Office – and, in future, those made by DBT – whilst regard is had to the circumstances of each case.

You make four specific points relating to the differences which you perceive between the GLO scheme and the OHC arrangements.

Your point (1) describes the OHC process as “adversarial litigation”. As you will be aware, Post Office has now shared with claimants’ legal representatives in draft form the proposed principles and process for a new remediation approach. Under this new approach, it is proposed that, where a claimant does not agree with the initial offer put forward by the Post Office (which will be based on the principles shared with claimants’ legal representatives for comment), an independent assessor will act as an adjudicator and provide a recommendation to be considered by Post Office and the claimant to facilitate progress towards settlement. The overall process has been designed to ensure transparency, speed and, importantly, provide an independent dispute resolution mechanism to deal with any disputes that may arise during assessments of claims. The Post Office, as part of the process, is welcoming legal representatives’ input during the consultation phase, and we understand that Post Office will listen to feedback and consider any suggestions made. I hope that you and other OHC claimants’ legal advisors will provide Post Office with feedback on the proposed process and principles to ensure the revised approach is properly informed by claimants’ views.

You also say that the Post Office has “effectively unlimited” legal resources through the public purse. However, Government has to date provided financial support for the Post Office’s legal costs only in respect of some strictly limited activities. It does not provide financial support to the Post Office’s legal costs more generally. We do not therefore agree with your conclusion that the Post Office’s legal resources are effectively unlimited.

As you say in your points (2) and (3), it may be the case that GLO members who have their convictions overturned only have a “residual prosecution claim”. However, this does not preclude them from being fairly compensated for heads of loss including shortfalls, personal injury, loss of earnings etc. The objective of the OHC process is to provide full and final compensation addressing any and all damages arising from the malicious prosecution, as demonstrated by the principles which I understand the Post Office shared with you on 31 March. My colleagues and I are working hard to facilitate this and are mindful of ensuring fairness and consistency between schemes.

You have expressed concerns that aspects of some non-pecuniary claims made on behalf of your clients remain in dispute. We will support Post Office in their work to engage constructively with you to resolve these. We understand that Post Office have now indicated to you that they would be content to refer those matters back to Lord Dyson for a further Early Neutral Evaluation if that would assist in resolving matters. We hope this will mitigate your concerns.

Your point (4) expresses concerns about “netting off” from OHC settlements of the amounts that claimants received from the GLO settlement. We believe that the current approach is justified. The drafting of the GLO case Settlement Deed was such that payments could be made from POL’s settlement to the convicted and unconvicted claimants alike (via the group’s legal advisors). We understand that this is what indeed happened. Claimants to the GLO scheme will receive the full amount of compensation which is necessary to put them back in the position which would have pertained if it were not for the scandal, including financial and non-financial losses. The same is true for eligible OHC claimants, whether or not they were members of the GLO. The final compensation payment in all cases will be that figure less whatever compensation the claimant has previously received – whether from the High Court case or from interim compensation arrangements.

I hope that the above explanations will help to allay your concerns. As you know, Ministers are determined to see that postmasters receive fair and prompt compensation for the results of this scandal. The requirements of the law and the limited evidence available sometimes make that a complex task, but we are determined to see it delivered. We continue to engage with postmasters and their representatives to help us to get this right.

Part II of your 23 March letter suggests that the criteria set by the Court of Appeal – which guide the CCRC’s work and the Post Office’s positions on individual convictions – are inadequate, and that the Court should have gone further in exercise of its supervisory function. As we have discussed, I fully

appreciate the practical effect of the judgment. However, as the criteria are for the court to determine, and as Government must not instruct or influence the Courts in their work (or even be perceived to do so), you will appreciate that I cannot reply substantively to this part of your letter. I note that you have already copied it to Sir Wyn Williams.

The Post Office and other parties, including the CCRC, have gone to significant effort to reach out to convicted postmasters to let them know of their right to appeal. This includes numerous communications and a contract with Citizens' Advice to provide support to postmasters in their early steps when considering whether to make an appeal.

Colleagues and I would be happy to meet you to discuss any of the issues raised in your letters. I am copying this reply to Sir Wyn Williams, Professor Moorhead and Lord Arbuthnot (as direct recipients of your letter) and to Kevan Jones MP and Professor Hodges (to whom Lord Arbuthnot has forwarded it).

Regards

[GRO]

Rob Brightwell
Deputy Director, Business Resilience