

IN THE MATTER OF THE POST OFFICE HORIZON IT INQUIRY

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SUBMISSIONS ON BEHALF OF

POST OFFICE LIMITED

For hearing: 27 April 2023

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INTRODUCTION

1. Post Office has considered carefully the observations made by the Chair in his Statement on Issues Relating to Compensation of 9 January 2023 ("**January Statement**") and welcomes the Chair's continued monitoring of this issue, including by way of the one-day hearing scheduled for 27 April 2023. Post Office wishes again to reiterate its recognition of the importance of ensuring that postmasters receive timely, full and fair compensation for the failings associated with the Horizon IT System.
  
2. In accordance with the Chair's request on 23 March 2023 these submissions address the following issues as they relate to the Historical Shortfall Scheme ("**HSS**") and Overturned Historical Convictions ("**OHC**"):
  - (a) Bankruptcy (Section A).
  
  - (b) Taxation (Section B).
  
3. They also provide a factual progress update on the HSS (Section C) and the OHC (Section D). If there are further relevant developments prior to Post Office's oral

submissions on 27 April 2023, Post Office will of course provide a further update at that hearing.

4. In line with its approach at previous hearings in relation to compensation, Post Office does not intend to make any submissions in relation to the *ex gratia* Group Litigation Scheme announced by the Minister on 22 March 2022.
5. Unless otherwise stated, the information provided in these submissions is given as of 4 April 2023.

## **A. BANKRUPTCY**

### HSS

#### *Background statistics*

6. Of the applications accepted into the HSS before June 2022 there are:
  - (a) 63 cases in which it has been determined that the cause of action vests in the trustee in bankruptcy (in 59 cases that is the Official Receiver, in 4 cases a trustee in bankruptcy other than the Official Receiver).
  - (b) There are 2 cases in which it has been determined that the cause of action vests in the IVA Supervisor.
  - (c) Post Office's Note on Bankruptcy dated 16 January 2023 referred to 12 cases in which it was still being clarified where the cause of action vests. The current figure is 3 (however these figures can fluctuate slightly as new issues arise and are resolved).

7. In respect of the applications in relation to now-dissolved companies which were made before June 2022 but not deemed eligible for the HSS until Post Office's announcement on 10 January 2023, 12 of the companies had insolvent dissolution and 6 of the representative shareholders have a personal bankruptcy issue.
8. In respect of the 245 applications to the HSS which have been received since June 2022, there are 22 cases in which a potential issue due to a bankruptcy or IVA has been identified. Of those cases, there are 7 cases in which it has been determined that the cause of action vests in the trustee in bankruptcy. The remaining cases are yet to be determined.

*Causes of action*

9. Post Office welcomes Catherine Addy KC's opinion of 20 March 2023 ("the Opinion"). Post Office takes no issue with her advice on vesting of causes of action and entitlement to receive damages at paragraphs 34 to 36 of the Opinion, which broadly aligns with Post Office's view and approach to personal bankruptcy matters.
10. In practical terms, Post Office's approach has been to set out in an offer letter, sent to the Trustee and the individual applicant, all elements of the offer of compensation recommended by the Independent Advisory Panel. The Trustee then proposes its apportionment of the damages, by head of loss, between the Trustee and the individual such that the damages to which the individual is entitled shall flow to the individual. Insofar as any distinct causes of action arise which are personal to the individual, then the associated damages shall also flow to the individual. Individuals are encouraged to take legal advice which is paid for by Post Office and which allows them also to dispute the proposed apportionment, if they wish to do so. Issues in respect of apportionment of the damages can be raised in the dispute resolution process and are subject to agreement between the parties (although, as yet, Post Office is not aware that any such dispute has occurred). To date, there has been close

engagement and cooperation with the Official Receiver with regard to the apportionment of losses in order to ensure that payment is being received by the appropriate party who has the right to recover damages. Bankruptcy cases in which the Trustee has an interest are intended to be settled through a tripartite settlement agreement by which all parties agree the release of causes of action on the basis of the agreed apportionment of the damages between the Trustee and the individual. Any surplus from the bankruptcy estate is then returned to the individual. Post Office considers that the approach taken to compensation offers relating to bankruptcies ensures a fair outcome consistent with the legal rights of the parties.

*Bankruptcies caused by Horizon Shortfalls*

11. The Independent Advisory Panel has now considered and reached a view on the approach to be taken to determining offers of full and fair compensation where it has been identified that an applicant's bankruptcy has been caused by Horizon Shortfalls. As with all claims, the Panel considers each case on its merits, having regard to the complex legal principles and the overriding objective of ensuring offers are full and fair in each particular case.
12. Where the Independent Advisory Panel has found that a bankruptcy was caused by Horizon-related breaches by Post Office, the Panel has assessed the heads of loss, based on broadly similar principles as set out at paragraphs 49 to 51 of the Opinion, in respect of:
  - (a) The award of general damages for harm to the postmaster's credit and reputation and injury to feelings.
  - (b) The award of damages for consequential financial losses.
  - (c) The award of damages for diminution in value to the bankruptcy estate.

- (d) The award of other costs, fees and expenses incurred due to the bankruptcy (including statutory interest).
- (e) Consideration in each case of the question of the postmaster applying to annul the bankruptcy order and Post Office offering to pay the legal costs of such an application.
13. Post Office is paying for legal advice for applicants on the offer and its allocation between the Trustee and the individual.
14. Further, the Panel has sought to compensate individuals for the malicious institution of bankruptcy proceedings and/or abuse of process, where it is applicable in an individual case. Lord Dyson's findings in the Early Neutral Evaluation ("ENE") and the damages awarded in cases in the HSS involving criminal prosecution (where there was no conviction) have been used to inform the level of damages for elements of loss awarded for the alleged malicious institution of bankruptcy proceedings by Post Office.<sup>1</sup>
15. Similar principles are applied to IVAs whereby the Panel seeks to have regard to each case on its merits, the complex legal principles and the overriding objective of ensuring offers are full and fair. Compensation includes the costs and expenses of the IVA, general damages for harm to reputation and credit rating and injury to feeling, other consequential pecuniary losses, and diminution in value to the postmaster's assets by reason of the IVA.
16. As to the assessment of damages where there is a causal link between Post Office's conduct and the bankruptcy, it is Post Office's view that each case within the HSS has

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<sup>1</sup> In the case of the ENE, permission to do this was sought and received.

been fairly assessed, based on the individual circumstances of each case, with regard to the fundamental principles of compensation set out at paragraphs 12 and 13 above, and a full and fair award has been determined in each. As is recognised in the Opinion, there is an absence of judicial guidance in relation to these matters. Where Post Office differs on the practical approach to the assessment of damages is in relation to the relevance of the reference in the Opinion at paragraph 49(ii) to the monetary sum awarded in the case of *Wilson v United Counties Bank*, which after applying the Bank of England's inflation calculator leads to a figure of £306,493.06 in today's money corresponding to the jury award of £7,500 to Major Wilson for loss to his credit and reputation. Post Office has taken the principles derived from this case into account in assessing cases with a causal link to the bankruptcy. However, the fact pattern in the case of *Wilson* differs substantially from the individual facts in the postmasters' cases and, as recognised in the Opinion, each case turns on its own merits and therefore Post Office considers that the case is of limited practical utility to assessing the full and fair awards which have been determined.

17. In respect of the practical approach to applications for annulment or rescission of their bankruptcy, Post Office seeks to engage with the applicant in question in good faith regarding the potential to make an application for annulment or rescission of their bankruptcy, should they wish to do so. To the extent the applicant wishes to apply for such annulment or rescission, Post Office will cover the reasonable costs associated with it incurred by the applicant and the insolvency practitioner.
18. Of the applications accepted into the HSS prior to June 2022, 27 applications in which a causal link of the type described at paragraph 11 above have been identified. Post Office has made offers in all but 1 of these 27 cases. It is intended that offers will have been made on all claims with bankruptcy elements in this first cohort by the end of July 2023.

19. Of those applications accepted from June 2022, Post Office is yet to determine the total number of applications in which a bankruptcy/insolvency has been caused by Horizon Shortfalls. Post Office has not yet made any offers in respect of such applications.
20. It is important to reiterate that these figures are not static. Work continues on those that remain to be resolved and circumstances continue to develop for particular applicants.
21. In respect of personal causes of action that clearly vest in individuals or where they otherwise have a right to recover those damages, Post Office is currently looking to make interim payments to those postmasters who went through bankruptcy by reference to any personal injury and/or distress and inconvenience that they have suffered and which are being compensated.

#### OHC

22. As Post Office indicated in its January Note, working with Hudgell Solicitors and the relevant bankruptcy practitioner, Post Office has resolved the key issue affecting compensation payments (both interim and final) for those applicants under a bankruptcy order in the OHC. This was resolved on the basis that compensation sums do not vest in the bankruptcy estate, consistently with the Opinion, enabling compensation payments to be made to those OHC claimants.
23. Of the 16 claimants identified by Post Office as having potential bankruptcy issues, 14 have brought non-pecuniary claims, all of which have been settled and paid. Any additional financial losses suffered by those claimants caused by their bankruptcy will be dealt with as part of their pecuniary claims, once received.

24. The remaining 2 claimants have not yet brought their non-pecuniary claims but each has been paid interim payments with appropriate waivers having been given in each case. There is no suggestion that similar waivers will not be forthcoming in respect of the non-pecuniary settlements, once reached.
25. Any additional financial losses suffered by those claimants which were caused by their bankruptcy will be dealt with as part of their pecuniary claims, once received.
26. No claimants with bankruptcy issues have yet settled their pecuniary claims.
27. Post Office accepts the Chair's observation that any issues relating to insolvency require urgent resolution.<sup>2</sup> There are no insolvency issues on OHC which are holding up payment of compensation to affected individuals. To the extent that any such issues do arise in the future, relating to either insolvency or bankruptcy, Post Office will inform the Chair and seek to resolve them as soon as possible.

## **B. TAX**

### HSS

28. Post Office is live to the concerns that have been raised about the tax treatment of some recipients of payments under the HSS.
29. Compensation paid under the HSS since 2020 has been awarded on a *gross* basis in the expectation that tax will be paid by the postmaster on the compensation where applicable (rather than benefitting from a statutory exemption from tax, as was enacted in 2023 for OHC compensation and the GLO Scheme). To clarify, Post Office has followed the relevant tax legislation and applied this consistently across the HSS.  
To explain further:

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<sup>2</sup> Paragraph 46, Chair's January Statement.



- (a) Where the compensation relates to earnings from a postmaster's officeholding (or the termination of that officeholding), Post Office is required to operate PAYE (and thereby account to HMRC for income tax and NICs) when paying the compensation.<sup>3</sup>
- (b) Similarly, where compensatory interest is paid to an individual postmaster, Post Office is required to withhold tax at the basic rate of income tax (20%). Accordingly, where the postmaster receives compensation (including interest) which does not take them into the higher rate band (the threshold for which is, practically, £50,270) this withholding will satisfy their liability for income tax on the interest.
- (c) There are some elements of compensation where postmasters will not be subject to tax (for example: compensation for personal injury; distress and inconvenience relating to a shortfall issue; and (in many cases) the first £30,000 of compensation relating to the termination of the postmaster's officeholding, etc), in respect of which Post Office is not required to withhold tax and account to HMRC.
- (d) In this way, as observed by DBT<sup>4</sup> in its letter to the Chair dated 10 March 2023, it is expected that in most cases involving payments to such postmasters, the Scheme will have addressed the relevant postmaster's liability for tax on the gross compensation received by them.
- (e) In some cases, postmasters will receive compensation which contains elements which may be subject to tax, where Post Office will *not* have operated

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<sup>3</sup> Because statute directs Post Office to use an "emergency" tax code when operating PAYE in respect of former postmasters, in many cases Post Office is required to deduct and account to HMRC for more tax than the postmaster is actually liable to pay on the compensation. In such cases, the postmaster would need to recover that excess from HMRC directly.

<sup>4</sup> The Department for Business and Trade (formerly BEIS).

withholding (because the tax rules do not provide for such withholding). An example would be loss of profits from an associated retail business. In those cases, postmasters may have to pay such tax themselves through the self-assessment system.

30. Operating the Scheme on the basis of gross awards (in circumstances where Post Office has ready access to historical data regarding gross remuneration for individual postmasters) enabled HSS payments to be made more swiftly. Computing net awards to be grossed-up on an individualised basis (taking account of the historical and current tax position of individual postmasters), or to be subject to a newly enacted exemption, would have involved significant complexity and attendant delay.
31. As to the concerns that have been raised, Post Office in particular recognises the issue which may arise for some postmasters (receiving the largest compensation awards) where they may be pushed beyond the lower rate threshold, and into a higher tax bracket, by virtue of receiving lump sum awards in a single tax year rather than, as would have been the case at the time, receiving it over a number of tax years.
32. Whether in fact this has occurred depends upon the tax status of each individual applicant. It has always been the case that where a postmaster perceives unfairness in their particular case as a result of the incidence of tax, they could take legal advice (funded by Post Office) and raise the issue by way of the Dispute Resolution Procedure. However, to assist the Inquiry in understanding the potential scale of the issue, Post Office's understanding is that (as at the end of March 2023) out of a population of approximately 2417 eligible claims, just under 300 postmasters were offered compensation (including loss of earnings and compensatory interest, but excluding clearly non-taxable elements) of more than £50,270, such that the receipt of the HSS compensation alone (including taxable interest) may have pushed them into the higher or additional rate tax brackets. Other postmasters may also have been pushed into higher or additional rate tax brackets when (in the tax year of receipt) their HSS compensation is taken together with other taxable income and gains.

33. Whilst recognising that the HSS operates compliantly within the system of tax legislation, Post Office appreciates that there are differences when comparing the tax position of postmasters in the OHC and recently announced GLO Scheme. As a result, Post Office welcomes DBT's consideration of this issue in conjunction with HMRC regarding how this aspect of HSS can be reviewed to deliver outcomes taking into account these differences between schemes. Post Office is working closely with DBT to consider possible options to resolve this issue for the postmasters impacted and awaits formal guidance from Government.

### OHC

34. On 23 September 2022 the Economic Secretary to the Treasury announced that postmasters will not pay Income Tax, Capital Gains Tax, National Insurance contributions, Inheritance Tax or VAT on compensation payments for Overturned Historical Convictions, including on payments already made, and that the Government would legislate to exempt these payments in due course where necessary.
35. The Government has subsequently legislated by way of Statutory Instrument as follows.
36. Payments of compensation made by Post Office to a person with an overturned historical conviction that was quashed because it involved evidence from the Horizon IT System are the subject of the Post Office Horizon Compensation and Infected Blood Interim Compensation Payment Schemes (Tax Exemptions and Relief) Regulations 2023,<sup>5</sup> which came into force on 16 March 2023. Those Regulations provide that such payments are qualifying payments for the purposes of paragraphs 3, 4 and 5 of Schedule 15 to the Finance Act 2020, but they are exempt from Income Tax, Capital

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<sup>5</sup> SI 2023/184.

Gains Tax and Inheritance Tax. The exemptions and relief apply with retrospective effect from 22 July 2021.

37. Such payments are also to be disregarded in the calculation of earnings for the purposes of earnings-related contributions by virtue of the Social Security (Contributions) (Amendment) Regulations 2023.<sup>6</sup>
38. Post Office reached agreement with HMRC separately that the nature of the compensation payment was such that it was outside the scope of VAT, and it was therefore unnecessary to legislate in that respect (agreement has similarly been reached with HMRC in respect of HSS payments).
39. Unlike the position in relation to the HSS, settlement payments made to individuals in respect of Overturned Historical Convictions are computed on a net (rather than gross) basis (reflecting the fact that they will not be subject to tax by virtue of the statutory exemption referred to above).

## **C. PROGRESS UPDATE ON HSS**

### Current statistics and trajectory

#### *Offers and payments*

40. Post Office last updated the Inquiry on the progress of the HSS in December 2022, in both its written and oral submissions. As at 8 December 2022, it had made offers in respect of 95% of eligible applications – ahead of its target of doing so by the end of 2022. Post Office has since continued to make good progress in proceeding to make offers in respect of the remaining cases, which typically feature a case-specific

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<sup>6</sup> SI 2023/186.

complexity.<sup>7</sup> Post Office has now made offers in respect of 99% of eligible applications, amounting to 2393 offers in total. Post Office nevertheless continues to have regard to the Chair's observation that there is a balance to be struck between speed of decision-making and ensuring that offers made are full and fair.

41. The offers Post Office has made represent a combined total value of approximately £97.5 million including interest and the deduction of withheld tax.
42. Out of the 2393 cases in which offers have been made, 1947 applicants (81%) have accepted offers in settlement. Payments have been made in 1924 cases (80%), amounting to a total payment value (including interim payments) of approximately £62 million including interest and the deduction of withheld tax. It is important to note that these figures are not static and indeed they increase on a daily basis.

#### *Dispute Resolution Procedure*

43. In relation to the remainder of applicants who did not initially accept their offer (of which there were 398), 119 applicants have subsequently accepted it. Of those applicants, 80 accepted it before any Good Faith Meeting ("GFM") and 34 after a GFM but before any Escalation Meeting. Of the 13 cases that have proceeded to an Escalation Meeting, 4 applicants accepted the offer thereafter and 3 applicants have asked to proceed to mediation, with 1 applicant accepting the offer thereafter. A total of 279 cases are being actively supported through the HSS Dispute Resolution Procedure ("DRP") by the dedicated Dispute Resolution Team.
44. The Dispute Resolution Team continues to work to schedule GFMs as quickly as possible. Of the cases that remain in DRP that are at a pre-GFM stage (which total 143 cases) approximately 65% are over 100 days since the day of dispute but members

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<sup>7</sup> As addressed at paragraph 10 of Post Office's written submissions on compensation of 1 December 2022 ("**December Submissions**").

of the Dispute Resolution Team have been in contact with all such applicants on a regular basis. In some cases, a GFM has not yet occurred. This can be for a number of reasons. 25% of applicants have declined or cancelled GFMs or not responded to invitations,<sup>8</sup> whilst approximately 30% have had their case reassessed by the Independent Advisory Panel (called the "Panel reflow process") as further information has been supplied which may result in a revised offer. The remaining cases have been delayed where an applicant wishes to source further evidence to provide support for their claims or for the claims of other applicants or where a response is awaited from the applicant's solicitors. The Dispute Resolution Team has not declined any GFM request to date. Sometimes, a GFM is not necessary as any dispute is resolved before that stage.

#### *Dissolved companies*

45. Of the 34 eligible dissolved companies that had HSS applications made on their behalf,<sup>9</sup> Post Office has now confirmed to the representatives of all applicants that their claims are eligible and those claims are in the process of being assessed under the HSS. 31 applications have received an offer. The current status of the remaining 3 applications is complex and Post Office is continuing to work to resolve them.

#### *Interim payments*

46. In line with Post Office's announcement on the HSS website of 30 November 2022 and its December Submissions, the ability to request an interim payment has been specifically drawn to the attention of any applicants who enter the Scheme's DRP. 232 Interim Payments have been requested (including those previously called "Hardship

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<sup>8</sup> In such cases Post Office attempts to reschedule the meeting (with the exception of applicants who have exercised their right not to attend a GFM).

<sup>9</sup> There were 38 in total of which 4 were found to be ineligible.

Payments"). 177 such payments have been paid, representing a total value of approximately £7m.

#### *Legal assistance*

47. Since 10 October 2022, Post Office has received 281 requests for legal fees. Post Office has sought to work through these requests as quickly as it can, in order to avoid delay in progressing applications. It has made payments to applicants in 216 cases and a further 65 offers are awaiting approval of payment.
48. Post Office listened to the feedback from a claimant firm that there were different governance paths to follow between the HSS and GLO Schemes for approving legal costs, which was inefficient and time consuming. Post Office recognised the need for a fair and consistent approach to assessing legal and professional costs and as such has now modified the HSS costs assessment process. The HSS cost allowances now broadly align with those published for the GLO Scheme. The result is a more streamlined process, enabling cases to progress through the DRP without undue delay, providing an improved applicant journey.

#### Late applicants

49. Post Office has received 245 late applications in total. 213 have been assessed for eligibility for the Scheme. 189 were found to be eligible. 23 were found to be ineligible. There is an outstanding query in relation to 1. 32 are yet to be assessed. 15 offers have been made, totalling approximately £101,000. 10 payments have been made, totalling approximately £77,000. No application has been rejected because it was late.
50. Post Office has carefully considered the comments made by the Chair in his January Statement, particularly the Chair's request for an "*unequivocal statement to the effect that*

*all applications received by Post Office but made after 27 November 2020 will be accepted into the HSS provided all the eligibility criteria in the HSS are met.”*

51. On 2 March 2023, Post Office and DBT agreed that late applicants will not be required to provide a reason for their late submission. The decision was put into effect immediately: the HSS website was updated on 2 March 2023 to remove the requirement to provide a reason, as was the Q&A document for new applicants. Post Office has ceased asking late applicants to provide reasons and evidence for their late submission. Accordingly, Post Office wishes to make clear that no application to the HSS received after 27 November 2020 has been or will be determined to be ineligible only on the basis that the applicant did not provide an adequate reason for the lateness of the application.
52. The basis initially for including a requirement to provide such a reason for applications received after 27 November 2020 was both that 'late applications' were treated for funding purposes as a new scheme rather than a re-opening of the existing Scheme, and to mitigate against the risk of the Scheme appearing to remain open indefinitely. Allowing the Scheme to remain open indefinitely would give rise to issues in relation to the basis on which funding is provided by DBT and the expenses of managing the Scheme without any end point.
53. The exact date for closure of the Scheme is under discussion between Post Office and DBT but Post Office can confirm that it will be no earlier than 31 March 2024 and that the date will be published on the Historical Matters page of the Post Office's website as soon as it is determined. Post Office reiterates that it encourages all applicants eligible under the Scheme to come forward and submit applications as soon as possible.

#### Prosecuted but not convicted



54. One further category of applications exhibiting case-specific complexities, in respect of whom it has taken longer to proceed to issuing offers, are those which involved potential instances of prosecution but not conviction in relation to Horizon Shortfalls, or the issue of a caution by Post Office (or the police in some instances) in lieu of prosecution. Post Office addressed the status of these applicants in its submissions to the Chair in December 2022<sup>10</sup> and acknowledges that the progress of these applications to an offer has not proceeded as quickly as it had hoped.
55. In the majority of these cases, Post Office has had to undertake additional investigations in order to determine firstly, whether or not a prosecution had in fact been commenced, or a caution issued in lieu of prosecution, and secondly, what matters the prosecution or caution related to (that is, whether or not the prosecution or caution related to Horizon Shortfalls and/or other matters). In some cases, this involved Post Office sending requests for further information in relation to the potential prosecution or caution to potentially affected postmasters. Based in part on the findings in the ENE regarding the non-pecuniary losses of postmasters who were prosecuted and convicted in the context of the OHC in late July 2022,<sup>11</sup> and following the completion of the additional investigations described above, the Independent Advisory Panel determined a fair approach to compensating HSS applicants who were prosecuted but not convicted/cautioned in relation to what the Panel have determined to be Horizon Shortfalls. Post Office has duly proceeded to make offers to 17 of such applicants.

#### **D. PROGRESS UPDATE ON OHC**

##### Current statistics and trajectory

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<sup>10</sup> Paragraph 10(b), Post Office's December Submissions, and internal pages 9 to 10, 8 December 2022 hearing transcript.

<sup>11</sup> Post Office sought and received consent to use the ENE for these purposes.

56. Post Office has worked to deliver interim and final payments in respect of the claims it has received to date from postmasters with overturned Horizon-related convictions. Post Office wishes again to reiterate the importance of all potential claimants coming forward to bring claims and submit schedules of loss – and would encourage them to do so.

#### *Interim payments*

57. Of the 84 convictions that have been overturned on appeal, applications for initial interim payments have been made in 83 cases (the one remaining claimant, a deceased estate, has confirmed that they do not intend to apply for an interim payment and would prefer to await final compensation). Interim payments have been offered in 80 cases and accepted in 79 (with 1 interim payment application being processed currently). No further applications (over and above the initial 3 'public interest' cases addressed in further detail at paragraph 61 below) have been declined.
58. Post Office indicated to the Chair at the 8 December 2022 hearing, following the increase in value of interim payments up to £163,000 in the light of the ENE, that all claimants who were not going to be able to lodge non-pecuniary claims by December 2022 would be paid a top up interim payment of up to £63,000. Post Office made offers to 31 such claimants and to date 29 claimants have accepted those offers.<sup>12</sup>

#### *Settlements*

59. By way of summarising the progress made by Post Office, together with claimants and their representatives, in the settling of claims it has received in the context of the OHC, it has:

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<sup>12</sup> The remaining 2 claimants have not yet accepted offers made to them in December 2022.

- (a) Received non-pecuniary claims from a total of 67<sup>13</sup> claimants with overturned Horizon-related convictions. Post Office has made offers in respect of 66 of these claims,<sup>14</sup> 53 of which have been accepted.<sup>15</sup>
- (b) Received pecuniary claims from a total of 14 claimants with overturned Horizon-related convictions,<sup>16</sup> 11 of which have been fully particularised.<sup>17</sup> Post Office has made offers in respect of 6 of the 8 claims received by mid-2022, together with offers of a further interim payments where appropriate. In relation to the 3 claims received in March 2023, Post Office is in the process of reviewing the claims and will endeavour to make offers as soon as possible.
- (c) Reached full and final settlement in respect of 4 claimants.
- (d) In total Post Office has paid £18.04m in compensation to OHC claimants since August 2021.

*Public interest claimants*

60. Following a process of independent mediation, full and final settlements have been reached with 2 of the 3 'public interest claimants', both represented by Hudgell Solicitors (for the avoidance of doubt, these settlements are included within the figure given in paragraphs 59(a) and (b) above). The third public interest claimant has received an offer (although Post Office understands that the claimant has recently changed their legal representation).

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<sup>13</sup> This figure includes the 3 public interest cases and the 10 ENE participants.

<sup>14</sup> This figure includes the 3 public interest cases and the 10 ENE participants.

<sup>15</sup> This includes 4 claimants who have advised Post Office via their solicitors of acceptance but not yet formally signed a settlement deed.

<sup>16</sup> This figure includes the 3 public interest cases.

<sup>17</sup> "Fully particularised" in this context means that there is sufficient information to make at least a partial offer.

Pecuniary claims and contingency planning

61. Post Office has considered carefully the observations made by the Chair in relation to the need for contingency planning as to how disputes about final compensation payments are to be resolved in the event negotiated settlements are not possible.<sup>18</sup> In accordance with these observations, and the need to address the issues of complexity that arise in relation to the assessment of pecuniary claims, Post Office has been in active discussions with claimant representatives as to the best way to approach the compensation of these losses.
62. Specifically, on 31 March 2023, Post Office shared (on a without prejudice basis) proposals with claimant representatives relating to a new process for managing claims by those with overturned convictions. These proposals concerned both: (a) suggested principles to help determine the value of such pecuniary losses; and (b) a suggested new process for handling such claims, which includes an option for an Independent Assessor to make a recommendation in respect of any aspect of the claim which cannot be resolved consensually. Post Office is consulting with claimant representatives in relation to these proposals and hopes that the proposals it has made will make it simpler for claimants to present their claims and allow Post Office to make fair offers of compensation more quickly.
63. Post Office has reaffirmed to the claimant representatives its commitment to paying claimants' reasonable costs of participating in the new process, including considering and commenting upon the principles and the process, to be assessed on the standard basis if not agreed.
64. Post Office acknowledges that the work done to design and consult on this process has taken time. However, its hope and expectation is that this initial investment of

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<sup>18</sup> Paragraph 8.5, Chair's Progress Update on Compensation of 15 August 2022, and paragraph 34, Chair's January Statement.

time will: (a) increase the rate at which claims come forward and offers are made in respect of pecuniary claims going forward; (b) provide claimants with a greater degree of transparency as to how Post Office intends to approach issues relating to compensation and help achieve consistency in the levels of compensation offered; and (c) establish useful, agreed arrangements for the independent third-party resolution of disputes arising in the course of such assessments.

65. In order to ensure that the introduction of this process does not cause delay, Post Office will continue to make offers on the pecuniary claims that have already been received and any that are received during the relevant consultation period; it does not wish the introduction of this process to delay potential claimants coming forward and submitting their claims now.

#### Confiscation order payments

66. Post Office understands that up to 67 of the OHC claimants were subject to financial recovery measures by either Post Office or HMCTS<sup>19</sup> in the course of criminal proceedings against them (either because claimants repaid sums said to be owing in the hope of avoiding prosecution or receiving lesser sentences, or because formal Confiscation or Compensation Orders were made in the context of the criminal trials). Post Office had originally intended to repay these sums at the same time as it processed and settled pecuniary claims. However, given that to date only 14 pecuniary claims have been received by Post Office, a more proactive approach has now been commenced. Post Office, through its solicitors, has analysed the historical Post Office and third-party records to identify and quantify the amounts actually recovered so as to enable Post Office, where possible, to commence proactive repayments of these amounts (together with compound interest at 3.45%) in advance of receiving particularised pecuniary claims. That is subject to one caveat:

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<sup>19</sup> His Majesty's Courts and Tribunals Service.

Confiscation Orders paid through HMCTS (rather than directly to Post Office) are required to be recovered through HMCTS, but Post Office will proactively assist affected claimants with that process.

**6 April 2023**