

The Post Office Horizon IT Inquiry

First Interim Report: Compensation

This Interim Report is laid before Parliament pursuant to section 26 of the Inquiries Act 2005

Ordered by the House of Commons to be printed on 17 July 2023

HC 1749



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Contents

Foreword	4
Introduction	7
The Three Schemes	20
(i)The Group Litigation Order Scheme (“GLOS”)	20
(ii)The Historical Shortfall Scheme (“HSS”)	41
(iii)The Overturned Historic Conviction Scheme (“OHCS”)	63
Payments Under the Three Schemes	69
Conclusions and Recommendations	70
Appendices	81
Appendix 1: Letter from Victoria Atkins MP to the Inquiry Chair, dated 29 June 2023	82
Appendix 2: Terms of Reference for Horizon Compensation Advisory Board	84
Appendix 3: Horizon Compensation Advisory Board Report of fourth meeting: 29 March, 21 April 2023	85
Appendix 4: Horizon Compensation Advisory Board Report of fifth meeting: 14 June 2023	87
Appendix 5: Letter from DBT legal representative to Inquiry Chair, dated 19 June 2023	90

Foreword

- i. During Phase 1 of this Inquiry, I heard and read evidence from a significant number of sub-postmasters which demonstrated the scale of the suffering and financial loss which so many have endured as a consequence of the misplaced reliance upon data produced by the Horizon IT system. Such evidence left me in no doubt that there was a compelling need to provide compensation to all those who had suffered loss and damage which properly reflected their pecuniary and non-pecuniary losses. A very important part of my role in this Inquiry is to ensure that the various means which have been devised by HM Government and Post Office Limited (“the Post Office”) for providing compensation to sub-postmasters are capable of fulfilling that need.
- ii. That is why I have decided to publish an Interim Report. I am satisfied that the stage has now been reached in the process of making compensation payments to sub-postmasters which demonstrates the need for a limited number of recommendations which will, if accepted, significantly contribute to the fair and efficient administration of the compensation

schemes in existence and which are intended to deliver proper compensation.

- iii. I am very concerned to highlight two issues in particular. First, the timescale for making payments to sub-postmasters under the scheme for providing additional compensation to those Claimants who sued the Post Office in the Group Litigation known as *Bates and others v Post Office Limited* is extremely limited. Under the legislation now in force all payments of compensation to such persons must be made by 7 August 2024. My current view is that this will not be achieved. Second, the Minister and the Department for Business and Trade have recently announced that a body known as the Horizon Compensation Advisory Board will have a significant role in assisting HM Government and the Post Office in relation to the administration of all schemes whereby compensation is payable to sub-postmasters. The recommendations which I make in this report are designed (a) to remove the possibility of injustice to sub-postmasters brought about by an artificial time limit on making compensation payments to the Claimants in the Group Litigation and (b) to maximise the use made of the Horizon Compensation Advisory Board so as to ensure that the compensation schemes achieve their intended purpose.

- iv. This Interim Report will be laid before Parliament and published on 17 July 2023. The conclusions and recommendations which it contains are based on information available to me as of 10 July 2023.

Introduction

1. Over a period of very nearly three years, representatives of Post Office Ltd (“the Post Office”) and Ministers¹ on behalf of the United Kingdom Government have asserted on many occasions that sub-postmasters² who have wrongfully suffered pecuniary and non-pecuniary losses as a consequence of the use made by the Post Office of data produced by the Horizon IT System (“*Horizon*”) should receive compensation which is “*full and fair*”, and that such compensation should be delivered *promptly*.
2. Since the settlement of the litigation between *Bates and Others v Post Office Ltd.* (“*the Group*”

¹ The word “Minister” in the context of ministerial announcements is used to mean (a) the Secretary of State for Business, Enterprise and Industrial Strategy; (b) the Secretary of State for Business and Trade; and (c) other ministers within those departments or Treasury Ministers.

² Unless the context dictates otherwise, the term “sub-postmaster” is used to mean those persons who are entitled to claim compensation under the provisions of the three schemes identified in paragraph 2 of this Interim Report.

Litigation”), three different means have been devised with a view to achieving those stated aims. Such means have all been called schemes of one type or another and at the latest compensation hearing convened by me on 27 April 2023 the suggestion was made that the names given to two of the schemes should be changed so that the descriptions “*Historical or Historic*” should be removed from the scheme names. So far as I am aware, that has not been done formally with the consequence that in this Interim Report I shall refer to the three schemes by their current names or acronyms as follows:

- The Historical Shortfall Scheme (“HSS”);
 - the Overturned Historic Convictions Scheme (“OHCS”); and
 - the Group Litigation Order Scheme (“GLOS”).
3. HSS was launched on 1 May 2020. It is a voluntary remediation scheme, properly so called, which came into existence following the settlement of *the Group Litigation*. The Deed of Settlement which brought an end to the litigation laid the foundation

for the scheme.³ At the date of its publication, HSS specified that applications for compensation should be submitted to the Post Office by midnight on 14 August 2020. Subsequently (in the summer of 2020), the Post Office determined that the period for the submission of applications for compensation should be extended to midnight on 27 November 2020.

4. From its inception, the Post Office has been responsible for administering HSS. It frankly acknowledges that at the time it launched the scheme it substantially underestimated the number of likely applicants and the total amount of compensation which would be payable to those applicants and, in consequence, the length of time necessary to make payments of compensation to eligible applicants.
5. On 22 July 2021, the Minister announced that funds would be made available to the Post Office so as to enable the Post Office to make interim payments of compensation of up to £100,000 per person to those whose convictions for offences of dishonesty, which were reliant upon evidence generated by *Horizon*, had been quashed. This announcement was made following the quashing of a number of

³ See Clauses 9.4, 9.5 and Schedule 6 of the Settlement Deed.

such convictions by the Court of Appeal (Criminal Division) on appeal from the Crown Court and by the Crown Court sitting at Southwark on appeals from convictions at Magistrates' Courts in England and Wales. On 14 December 2021, the Minister made a statement in Parliament to the effect that the Post Office would also be responsible for making final payments of compensation to those whose convictions had been quashed provided those convictions were reliant upon evidence generated by *Horizon*. Payments of compensation (whether interim or final) were to be made through OHCS. From the outset such payments have been determined and administered by the Post Office. To date, at least, OHCS has never been a scheme in any relevant sense of that word. Rather, the Post Office and those whose convictions have been quashed (usually, if not invariably, with the aid of lawyers) negotiate appropriate payments of interim and/or final compensation.⁴ Nonetheless, it is convenient to refer to OHCS as a scheme throughout this Interim Report.

⁴ Upon announcement of this Scheme the Minister specified that interim payments of up to £100,000 would be payable to eligible applicants to the scheme. Subsequently, the Minister increased the maximum interim payment available to applicants to £163,000.

6. In February, March and May 2022, I heard oral evidence from sub-postmasters (and to an extent, from family members of sub-postmasters) who had been affected, adversely, by decisions taken by the Post Office in reliance upon data produced by *Horizon*. During the hearings, I became concerned that some of the features of HSS and OHCS might be at odds with the twin goals of delivering full and fair compensation payments, promptly, to all those entitled to such payments. Additionally, on 22 March 2022, the Minister announced that:

“The Chancellor will make additional funding available to give those in the GLO group compensation similar to that which is available to their non-GLO peers.”

7. This announcement came about, no doubt, because there had been a mounting storm of protest from the Claimants in *the Group Litigation* to the effect that they had not been compensated appropriately and fairly under the terms of the settlement which brought an end to that litigation.
8. Given the concerns which I harboured about the operation of HSS and OHCS, and in the light of the possibility of additional compensation being made available to the Claimants in *the Group Litigation*, I decided that I should (a) provide some preliminary thoughts in writing about certain issues relating to compensation; (b) invite written submissions on

behalf of Core Participants on those and other compensation issues; and (c) thereafter, hold hearings at which oral submissions could be made to me about such issues.⁵ I published my preliminary thoughts on a number of compensation issues on 9 May 2022⁶ and invited written submissions upon them. I received a number of such submissions and many of those making written submissions indicated a wish to supplement those submissions orally.

9. Consequently, I convened hearings at which oral submissions were made. They took place on 6 July and 13 July 2022. On 15 August 2022, I published a document entitled “*Chair’s Progress Update on Issues Relating to Compensation*” (“*the Progress Update*”) in which I set out a number of conclusions.
10. Prior to publication of that document, I gave consideration to whether or not I should publish an interim report pursuant to Section 24(3) of the Inquiries Act 2005. I decided against that course, opting instead to publish *the Progress Update* and

⁵ The Announcement was published on the Inquiry website on 21 March 2022.

⁶ The document was entitled “*Provisional View of the Chair on Compensation Issues relating to Prosecuted Sub-postmasters*”.

to give a commitment to hold further hearings, if necessary, in relation to compensation issues.

11. On 22 September 2022, I gave notice to Core Participants of my intention to hold a further hearing in relation to compensation issues, either in late 2022 or early 2023. In advance of the hearing, I received written submissions from Core Participants. The hearing took place on 8 December 2022 and I published a document entitled “*Statement on Issues Relating to Compensation*” (“*the January Statement*”) on 9 January 2023.
12. At the hearing on 8 December 2022, I was invited by some Core Participants to submit an interim report pursuant to the 2005 Act. I did not accede to that suggestion for reasons which I explained in *the January Statement*; rather, I indicated that I intended to obtain my own legal advice upon issues relating to the bankruptcies of some sub-postmasters and that I would hold a further hearing to receive oral submissions about that issue (and others) in April 2023.
13. On or about 20 March 2023, I received legal advice from Ms Catherine Addy KC relating to a number of bankruptcy issues. That advice has been made available to all Core Participants and has been published on the Inquiry website.

14. On 27 April 2023, I held a further hearing. By notice dated 23 March 2023, I invited written submissions on issues relating to bankruptcy and the exemption from taxation of compensation payments. Additionally, I invited progress updates in respect of payments of compensation under HSS, OHCS and GLOS.
15. In advance of the hearing on 27 April 2023, I received written submissions on behalf of the Department for Business and Trade (“DBT”)⁷, the Post Office, the Core Participants represented by Howe+Co, the Core Participants represented by Hodge Jones & Allen, and the Core Participants represented by Hudgell Solicitors (“Hudgells”). Counsel instructed on behalf of all those Core Participants made oral submissions.
16. I should also record that prior to the hearing I received and I have taken account of written submissions made by Mr Paul Marshall, a Barrister who, at the time he made the submissions, acted for 7 of the Core Participants represented by Hodge

⁷ The Department for Business and Trade was created on 7 February 2023 to bring together aspects of the work of BEIS with that of the Department for International Trade. Amongst other areas of Government work, DBT has taken on those functions relating to the Post Office which were previously carried out by BEIS.

Jones & Allen in their respective claims for compensation; a letter from Freeths LLP (“Freeths”), solicitors who act for a majority of those persons making claims for compensation in the GLOS; and other correspondence and documentation which has been generated since *the January Statement* – all of which has been provided to Core Participants and published on the Inquiry website.

17. Following the hearing, I continued to receive written submissions and correspondence. Further, relevant ministerial announcements have been made, no doubt in response to submissions made at and before the hearing on 27 April 2023. The extent, if at all, to which I have taken account of this additional material will become clear from what appears below.

18. The Post Office Horizon Compensation and Infected Blood Interim Compensation Payment Schemes (Tax Exemptions and Relief) Regulations 2023 (“the 2023 Regulations” or the “Regulations”), came into force on 16 March 2023. Paragraph 3 of the Regulations reads as follows:-

“3. *The following compensation payments are qualifying payments for the purpose of paragraph 3 of Schedule 15 to the Finance Act 2020 –*

- (a) *Overtaken Historical Conviction compensation payments,*
- (b) *Group Litigation Order compensation payments, and*
- (c) *...*

The effect of that provision is said to be that payments made to applicants under OHCS and GLOS are exempt from income tax.

19.Paragraph 4 of the Regulations provides:-

“4. The following compensation payments are qualifying payments for the purposes of paragraph 4 of Schedule 15 to the Finance Act 2020 –

- (a) *Overtaken Historical Conviction compensation payments,*
- (b) *Group Litigation Order compensation payments, and*
- (c) *...*

The effect of that provision is said to be that compensation payments under those schemes are exempt from Capital Gains Tax.

20.Paragraph 5 of the Regulations provides:-

“5. The following compensation payments are qualifying payments for the purposes of paragraph 5 of Schedule 15 to the Finance Act 2020 -

(a) Overturned Historical Conviction compensation payments, and

(b) ...”

21. The effect of paragraph 5 of the Regulations is said to be that compensation payments made under OHCS are exempt from Inheritance Tax.

22. By letter dated 28 February 2023, I had made enquiries of BEIS as to why tax exemptions for compensation payments paid to applicants under HSS and GLOS were, apparently, different from tax exemptions available for payments made under the OHCS. I received a response to my query by letter dated 10 March 2023 from the recognised legal representative of DBT. It suffices that I say that I did not, and still do not, consider that the letter of 10 March 2023 provided a satisfactory basis for excluding payments made under HSS from the income tax, capital gains tax and inheritance tax exemptions created by the 2023 Regulations for OHCS; nor do I consider it a satisfactory basis for excluding payments from the GLOS from the inheritance tax exemption.

23. Before leaving this introduction, it is as well to remind the reader of my powers in relation to compensation issues. Section 2 of the Inquiries Act 2005 is in the following terms:-

“(1) An inquiry panel is not to rule on, and has no power to determine, any person’s civil or criminal liability.

(2) But an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes.”

24. I have interpreted those provisions as preventing me from determining the amount of compensation payable in any individual case under any of the schemes identified at paragraph 2 above. However, I am not inhibited by the statutory provisions from investigating the operation, administration and overall fairness of those compensation schemes. That view is reinforced by a specific provision within my Terms of Reference which provides:

“D: Assess whether the commitments made by Post Office Ltd within the mediation settlement – including the Historical Shortfall Scheme – have been properly delivered.”

25. I appreciate that neither this quotation from my Terms of Reference nor any other part of the Terms make any reference to OHCS or GLOS. That is not surprising, since those schemes did not exist when the Terms of Reference for the Statutory Inquiry were published. In the List of Issues which was published in November 2021 I made it clear that I would be investigating OHCS (see issue 183). By then, relevant Ministerial announcements had been made about it. In the hearings in July 2022, I made it clear that I intended to investigate GLOS as well as HSS and OHCS and both *the Progress Update* and *the January Statement* considered aspects of all three schemes. Neither the Inquiry's sponsoring Minister, nor any Core Participant has sought to suggest that the Terms of Reference should confine me to investigations relating to HSS and should preclude me from investigating OHCS and GLOS. There appears to be unanimity of view amongst Core Participants that the Terms of Reference should be interpreted as permitting me to investigate OHCS and GLOS as well as HSS and, as is obvious from my conduct of the Inquiry, I am satisfied that view is correct.

The Three Schemes

26. I have identified the chronological order in which the three schemes came into being above. In the *Progress Update* and the *January Statement*, HSS and OHCS are considered in some detail whereas at the time those documents were published the detail of GLOS was still emerging. Accordingly, I consider it appropriate to begin this section by focussing upon GLOS.

(i) The Group Litigation Order Scheme (“GLOS”)

27. As of at the date of the *Progress Update* (15 August 2022) this scheme was in its infancy. In oral submissions on behalf of BEIS made on 8 December 2022, Mr Chapman provided the bare bones of the scheme. It was intended that it would be overseen by a distinguished advisory board. Applications for compensation made under the scheme would be administered by BEIS but determined by an independent panel. Mr Chapman’s oral submissions were predicated upon a Ministerial Statement made in Parliament on 7 December 2022, and a document published the same day entitled “*Additional Compensation for GLO Members: Scheme Process*” (which henceforth in this section I refer to as the “*the Scheme Process*”). Not surprisingly, very little attention was paid to *the Scheme Process* at the hearing on 8

December 2022 given that it had been published only 1 day before the hearing. The *Scheme Process* was subsequently replaced by the “*GLO Compensation Scheme Guidance and Principles*” published 23 March 2023 (hereafter referred to as “*GLOS Guidance and Principles*”).

28. In *the January Statement*, I thought it appropriate to stress three points.

29. First, I stressed that the Minister and BEIS had made it crystal clear that all applications for further compensation under GLOS had to be resolved by 7 August 2024. I wrote that the funding for payments under the scheme had been obtained by the Government in reliance upon statutory provisions which dictated that the funds must be used for their allocated purpose by that date. That appeared to have the consequence that approximately 550 claims would have to be considered in the course of a period of 20 months or thereabouts between January 2023 and August 2024.⁸ I expressed the view that the experiences gained in administering HSS and OHCS would likely demonstrate how challenging this would be.

⁸ The figure of 550 applications was an assumption since there had been approximately 550 Claimants in *the Group Litigation*.

30. The next issue I highlighted related to the provision of the reasonable costs of legal representation. I need not repeat what I wrote at paragraphs 40 to 42 of *the January Statement*.
31. My third point, in reality, was an elaboration of my first point relating to the time available for determining all the applications under the scheme. I wrote that there would be available approximately 12 to 15 months to resolve many hundreds of claims submitted under the scheme. I stressed that BEIS should administer the scheme in such a way that no applicant felt pressurised into accepting an offer to avoid the possibility that the end date for payment would arrive yet no payment would have been received.
32. These three issues are, on any view, still live and acknowledged by everyone to be of considerable importance.
33. Following reorganisation of departmental responsibilities, GLOS is now being administered by DBT. As of 6 April 2023, the Department was aware of 377 applications to the scheme.⁹ In a letter dated 20 April 2023 from Freeths, I was informed that they acted for 388 individuals who were making claims in GLOS. On 27 April 2023 Mr Jacobs, instructed on behalf of the

⁹ See paragraph 43 of the written submissions on behalf of DBT.

Core Participants represented by Howe+Co, told me that his instructing solicitors represented 60 applicants to the GLOS. I am also aware that Hudgells and Hodge Jones & Allen act for a small number of individuals who are making claims under the scheme so that my best estimate, at the moment, is that approximately 460 applications will have to be processed and determined by 7 August 2024.¹⁰

34. It is against this background that I turn to consider the aspects of GLOS which have been the subject of most debate to date.

35. I deal first with the suggested impact of bankruptcy upon awards of compensation under GLOS. I understand that all save one of the insolvency practitioners who have to grapple with this issue, including the Official Receiver, accept that no part of any compensation awarded to an applicant under GLOS who has been made bankrupt would vest in his/her estate for the benefit of creditors. That view is

¹⁰ At this stage I assume that many, if not all, of those persons whose convictions have been quashed were Claimants in the GLO and that they have not pursued applications for compensation in GLOS but rather seek to obtain “*full and fair compensation*” in OHCS. If that assumption is correct, it means that all of the Claimants in the GLO have or should have an appropriate vehicle to “*full and fair*” compensation.

not necessarily shared by one Insolvency Practitioner (Moore UK) who apparently considers that such payments made to applicants, previously made bankrupt, might fall within such a bankrupt's estate.

36. I asked Ms Addy KC to address this issue. Ms Addy's view is encapsulated in paragraph 62 of her Opinion, in which she writes:

“Whilst I have not seen the asserted basis of the individual insolvency practitioner's stance, in my opinion, an ex gratia payment which may be made by the Department under which the SPM had no legal right or entitlement pursuant to a scheme which will have come into operation only after the bankruptcy order was made (that necessarily being the case in the context of this question, as the scheme has not yet been established), would not constitute property which would automatically form part of the estate in bankruptcy.”

37. Ms Addy's opinion is subject to what she describes as two caveats – also set out in paragraph 62 of her Opinion. I need not repeat those caveats in this report. I say that since the view expressed by Ms Addy KC is the prevailing view, save for that held by the one Insolvency Practitioner to which I have referred above.

38. In any event, at paragraph 64 of her Opinion, Ms Addy provides a practical suggestion as to how this issue

may be resolved i.e. by DBT making an application for directions to the appropriate court pursuant to section 303 of the Insolvency Act 1986. As of 27 April 2023 DBT, through Mr. Chapman, appeared willing to give serious consideration to implementing Ms Addy's practical suggestion in the event that Moore UK maintains its current stance. However, to date, no unequivocal public announcement has been made by the Minister or DBT upon this issue.

39. By virtue of the 2023 Regulations, payments of compensation under GLOS are said to be exempt from income tax and capital gains tax. Such payments are not exempt from inheritance tax.
40. Until 29 June 2023, I was very concerned that, by virtue of the Regulations, payments of compensation under OHCS were said to be exempt from inheritance tax yet, to my mind, no sustainable justification had been put forward by DBT or on behalf of the Minister for the absence of such an exemption for payments of compensation made under GLOS or HSS.
41. However, I am pleased to report that on 29 June 2023 I received a letter from the Minister informing me that the Government had that day published a Written Ministerial Statement "*outlining its intention to take action to exempt compensation for postmasters from inheritance tax (IHT)*". The importance of this letter is obvious and I have reproduced it as **Appendix 1** to this

Interim Report so that there can be no doubt about its terms.

42. Although the Regulations apparently exempt payments of compensation under GLOS from income tax, the terms of paragraph 4.2. of *the GLOS Guidance and Principles* should be noted. Paragraph 4.2.1 states baldly that payments “*under this Scheme*” are exempt from Income Tax, Capital Gains Tax and National Insurance Contributions. However, this is followed by paragraph 4.2.2 which commences by informing an applicant that his/her “*claimed losses should be quantified net, i.e. after deduction of the tax which would have been due at the time...*”. The two statements are not easily reconcilable.
43. At this point in time I am far from satisfied that those administering GLOS and/or making assessments of compensation thereunder are fully aware of the difficulties that may still exist in relation to the apparent exemption of compensation under GLOS from income tax, in particular. In my view it will be necessary to scrutinise with care how this exemption has been applied in practice during the course of Phase 5 hearings.
44. There can be little doubt that the *GLOS Guidance and Principles* draws significantly upon the documentation which has been issued by the Post Office in respect of the guiding principles to be applied in determining

compensation under HSS. Para. 1.1.2 of *the GLOS Guidance and Principles* reads:

“In awarding compensation to postmasters, the Scheme will be guided by considerations of fairness, in addition to applying established legal principles and the findings from the Common Issues Judgment and the Horizon Issues Judgement. The Scheme aims to restore postmasters back into the position they would have been in had it not been for the breach of Post Office’s contractual obligations. The Scheme will take into account all relevant facts and matters presented in the claim in order to produce a fair result for the postmaster. Claims can be made for Horizon Shortfalls and for Consequential Losses resulting from them (the definitions for which can be seen in 1.3).”

This general approach is very similar to that which is articulated in HSS.

45. *The GLOS Guidance and Principles* adopts a similar approach to that contained within HSS to the evidence which an applicant is asked to provide in support of an application. Paragraph 1.2. reads:

“1.2.1 Although it is in your interest that your claim is well evidenced and quantified in respect of each head of loss, the Scheme recognises that this may not always be

possible given the circumstances and the length of time which has passed, and that there will be an absence of evidence. As such, DBT will take a proportionate and considerate approach to the availability of evidence albeit there will be some claims in which expert evidence may be required and we have made this clear in the guidance below.

1.2.2 The evidence base for your claim should include the Schedule of Claimant Information (“SOCI”) submitted for the High Court case, although the Scheme accepts that aspects of these statements will need to be updated and expanded upon to reflect subsequent events or newly available information. Other statements and supporting documentation from that case can also form part of your evidence base.

1.2.3 The Post Office is undertaking a comprehensive programme of disclosure on terms discussed with your legal advisors. Any evidence obtained by the Scheme from The Post Office will be shared with you at the earliest opportunity.

1.2.4 You should use any remuneration information provided by The Post Office as

evidence. If you need additional information relating to your tax records to support your claim, you may also wish to seek evidence from HMRC. You can ask your legal advisor to do this on your behalf with your signed consent (a digital signature is acceptable).

1.2.5 If you feel that you are unable to engage with this process, you can simply submit your documentation from the High Court, including your SOCI to the Scheme. This may not produce the optimal outcome but will still allow your claim to be considered.”

To repeat, these provisions are similar to principles which have been formulated and applied in HSS.

46. Section 2 of the *GLOS Guidance and Principles* deals with eligibility for making claims. It is sufficient to point out that eligibility depends upon an applicant being a Claimant in *the Group Litigation* and also being a party to the Settlement Agreement which brought that litigation to an end. It is clear from Section 2.1.3 that those whose convictions have been quashed are expected to pursue applications for compensation through OHCS.

47. Section 3 of the *GLOS Guidance and Principles* provides that “an Independent Advisory Board has been established to advise ministers on how best to manage delivery of the Scheme” (“the Independent

Advisory Board”). This feature was foreshadowed in the *Scheme Process* and was, initially, intended to be unique to GLOS. No independent advisory board with an identical or similar function existed in HSS and OHCS at the time such a board was constituted in GLOS.

48. The *GLOS Guidance and Principles* contemplated that *the Independent Advisory Board* would consist of four members – two academics and two parliamentarians. The academics chosen were Professor Christopher Hodges and Professor Richard Moorehead; the parliamentarians were the Right Honourable Lord Arbuthnot and the Right Honourable Kevan Jones MP. There can be little doubt about the fact that each of those persons has the requisite skill, knowledge and interest in the subject matter to perform their intended function of advising Ministers on how best to manage delivery of the scheme.
49. It is clear from available documentation that *the Independent Advisory Board* met on a number of occasions prior to 27 April 2023. By 29 March 2023 *the Independent Advisory Board* had become *the Horizon Compensation Advisory Board* (where appropriate hereafter referred to either with its full title or as “*the Board*”) and on that date and on a further occasion on 21 April 2023 the thorny issue of “compensation bands” was the subject of discussion and recommendation to the Minister – as to which see

paragraph 59 below. The members of the Board were supported at their meetings by senior officials in DBT.

50. In their written submissions of 6 April 2023 Messrs Chapman and Henderson informed the Inquiry that *“the remit of the GLO Compensation Advisory Board [had] been extended to include the Department’s oversight of HSS and OHC”* and justified the change. The rationale for the change was said to be to *“ensure a holistic view of all compensation schemes and [to] aid in the consistent treatment of postmasters regardless of what scheme or programme they [were] in.”* In his oral submissions on 27 April 2023 Mr Chapman developed this theme by submitting:-

“The Department already had extensive measures in place to ensure that postmasters in similar situations were given similar treatment, regardless of the particular scheme under which they fell. It has now created an internal programme board to provide additional assurance and it has extended the remit of the GLO advisory board to include the Department’s supervision of the scheme delivered by the Post Office.”

51. I now have access to an undated document entitled *“Terms of Reference for Horizon Compensation Advisory Board”*. I have attached the same to this Interim Report as **Appendix 2**. The document should

be read as a whole in order to understand, fully, the Terms of Reference of *the Board*.

52. It is worth stressing now that *the Horizon Compensation Advisory Board's* aim “is to help DBT to ensure fair and prompt compensation to postmasters affected by the Horizon scandal and related issues.” However, the Terms of Reference make it clear that it is not intended that *the Board* will consider individual cases for compensation.

53. Section 3 of the *GLOS Guidance and Principles* also identifies that DBT has appointed the legal firm, Addleshaw Goddard “as **external legal advisors**” to advise DBT on individual cases. It has also appointed Dentons “as *Alternative Dispute Resolution experts who will be independent claims facilitators supporting the progress of claims and will provide arrangements for making relevant papers transparent to all parties*”. Dentons are charged with the task of procuring “an independent panel comprising legal, accounting, medical and retail experts and a senior lawyer (probably a KC or retired High Court Judge) who will, when required, undertake ‘exceptional review of cases’”. This person is given the title ‘**The Reviewer**’ in Section 3.

54. Paragraph 3.3.3 provides that once an application or claim is submitted, it will enter “*the claims facilitation process conducted by Dentons and a named claims*

facilitator will be appointed to the case". Paragraph 3.4 is headed "*Assessment of Claim*". Paragraph 3.4.1 makes clear that consequential loss claims will be assessed against established legal principles (which are set out in paragraph 4.3 of the document) as well as being informed by considerations of fairness in all the circumstances. It is to be noted, however, that the assessment at this stage will be undertaken by DBT with advice from Addleshaw Goddard – see paragraph 3.4.2. It is also clear from paragraph 3.4 as a whole that it is for DBT to formulate an offer in settlement in respect of the claim and that the offer will be communicated to an applicant on behalf of DBT by Addleshaw Goddard.

55. Paragraph 3.5 describes the process which will occur in the event that an offer made on behalf of DBT is not an offer to pay the full claim made by an applicant. Essentially, the first step in the process is for Dentons to seek to promote "*common understanding and agreement between the parties*" – see paragraph 3.5.1. In the initial stages, they may do that by:

- i. requesting further information from an applicant's legal advisor;
- ii. recommending that expert evidence is sought;
- iii. encouraging the applicant or DBT to revise their positions; and / or

- iv. referring a case to the independent panel for a first or final assessment.

56. Paragraph 3.5.5 provides that if the Claims Facilitator judges that it would assist the parties' progress towards agreement, they can decide to put the case to the Independent Panel for a first assessment; by paragraph 3.5.8, if the Claims Facilitator judges that agreement between the parties is unlikely to emerge, despite the recommendations of a first Panel assessment, they can decide to put a case to the Panel for a final assessment.

57. What happens if an applicant is unhappy with the final assessment of the Independent Panel? That is governed by paragraph 3.6 and it is necessary to set out the provisions within that paragraph in full:-

“3.6.1 If you believe that there has been a manifest error or irregularity in the Panel’s final assessment of the claim, you can refer it for exceptional review. DBT will have the same rights to seek exceptional review of the case on the grounds of manifest error or irregularity. This power would allow DBT to challenge if it believed that the Panel had departed from the established framework for assessing claims which is intended to achieve consistency and fairness when making offers to Sub-Postmasters.

3.6.2 Any such application must be made within 15 working days of the communication of the Panel’s final assessment. Any case submitted for review should:

- (i) identify the alleged manifest error or irregularity,*
- (ii) set out what the final assessment should have concluded in the absence of such an error or irregularity; and*
- (iii) provide reasons for this view.*

3.6.3 The Reviewer will consider the case, alongside any comments on it which s/he will invite from the Panel or the other party. S/he may uphold the Panel’s decision or in the event of finding that there has been a manifest error or irregularity make a revised award of compensation. The Reviewer’s decision will be sent to you and your legal advisor and to DBT and Addleshaw Goddard, together with a written explanation. The Reviewer’s finding will be the final stage to reach agreement between you and DBT on your claim. DBT will not consider any further offers or changes to the offer after this.”

58. Many parts of sections 4 and 5 of *GLOS Guidance and Principles* are very similar in concept to provisions found within HSS. Section 4 consists of a number of

what are described as key principles, e.g. provisions relating to such matters as the burden of proof and Section 5 is a guide to the nature and type of claims which can be made within GLOS. Additionally, however, it contains indications, in the form of bands, as to the likely awards of compensation for non-pecuniary losses occasioned by an applicant being held liable wrongly for Horizon shortfalls. In Section 5.9.5, bands are set out as to likely awards of compensation for stigma/damage to reputation; at paragraph 5.10.6, there are bands relating to personal injuries; at paragraph 5.11 there are bands relating to harassment and at paragraph 6.12.2 there are bands for distress and inconvenience.

59. The bands described briefly above did not meet with approval from those representing sub-postmasters. In summary, the recognised legal representatives of sub-postmasters considered the bands to be unrealistically low. In consequence, the bands were the subject of detailed discussion within *the Horizon Compensation Advisory Board*, as I indicated at paragraph 49 above. A written report of that detailed discussion is attached¹¹ as **Appendix 3**. Following its detailed discussion, *the Board* agreed to recommend to the Minister that the

¹¹ Horizon Compensation Advisory Board Report of fourth meeting held on 29 March 2023 and 21 April 2023.

GLOS Guidance and Principles should be revised as follows:

- *“the bands were not limits but indicative guidance to claimants, their lawyers and the Independent Panel.*
- *each case would be decided on its merits.*
- *the figures for each band were derived from decisions made by the HSS Independent Panel on HSS cases where there was good reason to expect cases were generally less serious. The more serious cases were likely to still be going through dispute resolution. The GLO Compensation Scheme expects to find some cases where the facts of the case would demand awards significantly higher than the upper figure for the top band.*
- *if a claimant’s compensation cannot be agreed through the Alternative Dispute Resolution process, they have the right to have it considered by the Independent Panel including a KC and other experts.*
- *as for other aspects of compensation, where the Principles and Guidance set out bands, decisions would be taken by the Independent Panel based on the facts of each case looked*

at ‘in the round’ and guided by considerations of fairness”.

60. I am pleased to report that on 26 April 2023, the Minister made a statement in Parliament accepting the recommendations made by *the Horizon Compensation Advisory Board* as to how the bands should be interpreted and indicated that DBT would publish a revised version of the *GLOS Guidance and Principles* in due course.

61. I am also pleased to report that the fifth meeting of the *Horizon Compensation Advisory Board* took place on 14 June 2023. Minutes of the meeting are attached at **Appendix 4** to this Report. Self-evidently, at its meeting, the *Board* grappled with a number of issues which have exercised those representing sub-postmasters in the quest for compensation which is *full and fair*.

62. As I have said, the vast majority of applicants to GLOS are represented by Freeths. In their letter of 20 April 2023, Freeths raise a number of issues relating to the operation scope and administration of GLOS.

63. First, they assert:-

“The August 2024 deadline for the resolution of payment of all claims in the GLO Scheme remains a serious project risk. We shall continue to progress matters as rapidly as possible.

However, we reiterate our view that there needs to be very close monitoring of the need for Government to initiate whatever process is necessary to extend the final deadline, should that become necessary.”

64. Second, they complain that the Post Office is failing to disclose documentation relevant to the individual applications for further compensation in a timely fashion. They make the fair point that the historical documents held by the Post Office are essential to reviewing and evaluating cases. The Post Office has been working to a period of 32 weeks to produce documents in any given individual case. Freeths argue, with considerable force, that such a timescale would make it virtually impossible for all applications to the scheme to be fully and properly assessed by 7 August 2024.

65. Third, Freeths suggest and assert that:

“The way in which claims will be assessed in the GLO Scheme when documents are missing will be of fundamental importance to the fair operation of the Scheme. In our view, the approach taken by DBT and its lawyers should be monitored very closely to ensure that postmasters will not be prejudiced by the absence of documents. In many cases, Post Office removed all documents/ records from Post Office branches at the time that

the postmaster was terminated/suspended. It would be inherently unjust and abhorrent if post masters were now to be penalised financially by reason of Post Office's conduct either in removing documents historically or failing to produce documents now for the purpose of the Scheme. The evidential 'benefit of the doubt' should be with postmasters in the GLO Scheme where there are documentary gaps by reason of Post Office not being able to locate/ produce documents in time for DBT to fully and fairly assess claims."

66. Freeths also "*record their concern over the GLOS Scheme document*".¹² First, they complain of a lack of consultation as to the bands of likely awards of compensation for non-pecuniary loss. Second, they complain that, in some instances, unduly narrow definitions have been adopted: in particular, attention is drawn to the fact that all consequential losses must flow from a "*Horizon shortfall*", whereas Freeths had suggested the broader proposition that such loss should flow from a "*Horizon issue*". Freeths suggest that monitoring occurs to ensure that definitional issues do not impede the aim of providing full and fair compensation to the applicants. Third, Freeths highlight the fact that many cases which they are

¹² I understand that to be a reference to *GLOS Guidance and Principles*.

handling will require expert evidence and they are at pains to point out that there is scope for considerable disagreement between DBT and themselves as to the need for such evidence and to the cost thereof.

67. In his oral submissions on 27 April 2023 on behalf of the clients of Howe+Co, Mr Jacobs associated himself with those who envisaged difficulty in making all payments under the Scheme by 7 August 2024. Additionally, he advanced detailed arguments demonstrating that disclosure of documents by the Post Office at the rate proposed by the Post Office would make completion of the scheme by the proposed date extremely problematical. In these circumstances, Mr Jacobs submitted that there should be a second tranche of interim payments made to all applicants under the scheme as a means of alleviating the hardship and/or distress caused by continuing delays in providing final compensation.

68. Mr Henry KC aligned himself with Mr Jacobs' suggestion that there should be a second tranche of interim payments to all those entitled to a further payment under GLOS.

(ii) The Historical Shortfall Scheme ("HSS")

69. HSS is a voluntary remediation scheme which came into existence following the conclusion (and in consequence of) *the Group Litigation*. I described its

main features in detail in *the Progress Update* – see paragraphs 13 to 63. For the sake of convenience, I repeat a number of its features in the following three paragraphs.

70. From its inception, HSS had specific eligibility criteria. It was open only to applicants who were or had been in direct contractual relations with the Post Office. The applications made by such persons had to relate to *shortfalls* which had arisen in respect of “*Previous versions of Horizon (sometimes referred to as Legacy Horizon, Horizon Online or HNG-X)*”. Only certain categories of persons were entitled to bring a claim on behalf of others, e.g. it was necessary for a personal representative to make an application on behalf of a deceased person. The applicant had to agree to be bound by the Terms of Reference of the scheme.
71. The eligibility criteria also contained specific exclusions. Claimants in *the Group Litigation* were excluded from being eligible to seek compensation under HSS, as were all persons (whether or not they had been Claimants in *the Group Litigation*) who had been convicted of criminal offences relating to their time at the Post Office. As at the opening date of the scheme, persons were not eligible for compensation if they had entered into any settlement agreement with the Post Office other than as part of the “*Initial Complaint Review and Mediation Scheme*” which had commenced in 2013, or as a result of “*Network*

Transformation or other Scheme". However, after the scheme had been open for some time, the provision which excluded persons who had entered settlement agreements with the Post Office was changed so that the only operative exclusion related to persons who had entered into settlement agreements after 16 December 2019 (the date of the *Horizon* Issues Judgement handed down by Fraser J).

72. In its original form the scheme was open only to those who made an application for compensation by Friday 14 August 2020. However, that was not a cut-off date set in stone. Applicants who did not submit an application by 14 August 2020 would not be eligible to join the Scheme "*unless Post Office agree[d] otherwise*". As I have said the Post Office amended the scheme in the summer of 2020 so as to provide a closing date of midnight on 27 November 2020 and the provision which apparently conferred upon the Post Office a discretion to accept an application after the closing date remained in place.

73. Under HSS the Post Office makes offers in settlement to applicants. However, in all substantial cases, at the very least, such offers are put forward following an independent appraisal of the value of each individual claim by an Independent Advisory Panel. The Post Office is not bound to accept that valuation; however, there has, as yet, been no suggestion that offers have been made to applicants which are lower than the

valuation placed upon any individual claim by the Panel.

74. I am informed by the Post Office that as of midnight on 27 November 2020, the Post Office had received 2,417 eligible applications for compensation. As of 27 April 2023, offers in settlement had been made to all but 21 of those applicants i.e. offers had been made to 2,396 applicants. As at the same date, offers had been accepted by 1,979 applicants and compensation actually paid in 1,940 cases.

75. If my arithmetic is correct there were 438 applications for compensation still to be resolved as of 27 April 2023. The Post Office accept that these 438 cases are difficult to resolve and that many of them have now entered the dispute resolution processes contained within HSS. The resolution process will, no doubt, be assisted by the fact that many of the applicants whose cases remain to be resolved are now legally represented and that there is said to be a more streamlined process for determining appropriate legal fees thereby facilitating the obtaining of advice and assistance. That said, it is of concern to me that, apparently, a significant number of complex cases remain to be resolved between 30 months and three years after they were first submitted to the Post Office. I do not resile from the view I expressed in *the Progress Update* that there is a balance to be struck between speed of decision-making and ensuring that

offers made are full and fair. Nonetheless, I am left with the distinct impression that the most complex cases have not been addressed as speedily as might have been the case. No doubt, a definitive view will emerge when I receive written and oral evidence during Phase 5 of the Inquiry.

76. Notwithstanding the closure of HSS at midnight on 27 November 2020, the Post Office continued to receive applications for compensation – referred to in the written and oral submissions as “*late applications*”. As at the hearing which took place on 13 July 2022, the Post Office had received 186 such applications. Yet, notwithstanding the passage of approximately 20 months, the Post Office had not determined, definitively, whether to accept into HSS some or all of those *late applications*. I have never been satisfied with this state of affairs. At paragraph 7.3 of the Executive Summary of the *Progress Update* I wrote:

“I know of no proper explanation for the delays in determining whether those applications which were made after 27 November 2020 should be rejected or accepted in the Scheme. The delay in determining many if not all of these applications is wholly unacceptable, and, in my view, it remains largely unexplained.”

77. In October 2022, both the Post Office and BEIS made public statements which suggested that *late*

applications would be accepted into the scheme. However, in my view, there was insufficient clarity as to whether it was necessary for “*late*” applicants to explain the reasons for their delay in making an application for compensation. That lack of clarity subsisted as of 8 December 2022 when a further hearing relating to compensation issues took place and, as of that date, the number of late applications had grown to more than 200.

78. In the *January Statement*, I dealt with the issue of late applications at paragraphs 13 to 17. In paragraph 17, I expressed the view that:-

“... fairness now demands that an unequivocal statement to the effect that all applications received by POL but made after 27 November 2020 will be accepted into the HSS provided all the eligibility criteria set out in the HSS are met: i.e. no application already received by POL will be refused on the basis that it was made after 27 November 2020.”

79. On 2 March 2023, the Post Office and DBT agreed that late applicants would not be required to provide a reason for their late submission. That decision was put into effect immediately in that the HSS website was updated on 2 March 2023 to remove the requirement to provide a reason for a *late application*, as was the Q&A document for new applicants. At paragraph 51 of

its written submissions dated 6 April 2023, the Post Office wrote:-

“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.”

80. As of 6 April 2023, the Post Office had received a total of 245 *late applications*. Of those, 213 had been assessed for eligibility and 189 applications had been determined as eligible within the Scheme. 32 applications had not been assessed by 6 April. Each of the 24 applications which had been assessed as ineligible had failed to satisfy all the necessary eligibility criteria; no application had been rejected because it had been made after midnight on 27 November 2020.

81. By 27 April 2023, the number of *late applications* had risen to 263. 242 of those applications had been assessed for eligibility; 214 had been found to satisfy the eligibility criteria of the Scheme and 28 had been determined as ineligible. 21 applications remained to be assessed.

82. Offers of compensation had been made to 27 “*late*” applicants as of 27 April 2023. At least 13 such offers had been accepted since Leading Counsel informed

me that payments of compensation had been made to 13 “*late*” applicants.

83. It follows from the above that as of 27 April 2023 there were something like 230-250 *late applications* to be determined and that there may yet be significantly more. I say that because Leading Counsel for the Post Office also informed me that discussions were taking place between DBT and the Post Office about a closing date for HSS. She confirmed to me that the scheme would not close prior to 31 March 2024. During the course of exchanges with Leading Counsel, I indicated my approval to her of that course of action.

84. Following the hearing on 8 December 2022 and when I published *the January Statement* I was concerned about how (a) compensation was being assessed within HSS in respect of those applicants to the scheme who had been made bankrupt or were subject to the terms of an Individual Voluntary Arrangement (IVA) and (b) how that compensation was being apportioned between applicants to the scheme and their trustees in bankruptcy.¹³ For that reason and encouraged to do so by many of the Core Participants (including the Post Office and BEIS) I obtained my own legal advice from Ms Addy KC.

¹³ I was equally concerned about those issues in respect of OHCS and GLOS.

85. In her Opinion, Ms Addy KC addresses in detail a number of questions which were posed to her in her instructions. I do not propose to reproduce or summarise those questions and Ms Addy's views upon them. The questions which she was asked to consider were formulated after taking into account written submissions from Core Participants. Ms Addy's instructions, those written submissions and her Opinion have been published on the Inquiry's website.
86. Between paragraphs 31 and 50 of her Opinion, Ms Addy KC provides an analysis of a number of issues which may arise in respect of applicants to HSS who were made bankrupt. As it happens, save in one respect which I will identify below, the views which she expresses in relation to those issues are similar to those set out in the written submissions of the Post Office dated 6 April 2023 – see paragraphs 9 to 16 thereof. Further, her views are in accord with the information provided to me in a letter dated 21 April 2023 on behalf of the Insolvency Service. I proceed on the basis that save in respect of the discrete issue identified below at paragraph 89 the main principles relating to the assessment of compensation under HSS in respect of those who are and/or have been made bankrupt and/or are subject to an IVA are not in dispute.
87. That view is reinforced by the fact that the written submissions filed on behalf of Core Participants, who

are also applicants to HSS, did not contain any substantial differences of view to those expressed by Ms Addy KC in paragraphs 31 to 50 of her Opinion. Not surprisingly, in those circumstances, none of the oral submissions made on behalf of the Core Participants who are or were sub-postmasters took issue with Ms Addy's views.

88. While, therefore, the assessment of compensation in individual cases, in respect of applicants to HSS who have been and/or are still bankrupt, may require recourse to the dispute resolution procedures within HSS, the legal principles upon which the assessment of compensation should be made are essentially agreed save for the discrete issue to which I now turn.

89. This discrete issue relates to the assessment of awards of general damages for the injury to credit and to the reputation of applicants who demonstrate that there is a causal link between the conduct of the Post Office and their bankruptcy. Ms Addy's views as to an appropriate award in those circumstances are developed, in particular, in paragraphs 48 and 49 of her Opinion, and on one view of her analysis she contemplates that awards might reach figures of the order of £300,000.

90. In the written submissions on behalf of the Post Office, it is asserted that such a sum would be too high. In her

oral submissions, Ms Gallafent KC expressed the same view.

91. As I have been at pains to point out in the *Progress Update* and the Introduction to this Interim Report, it is not for me to determine individual heads of claim in respect of applications to HSS (or, for that matter, either of the other two schemes). In HSS, there are clearly defined dispute resolution procedures which will enable the issue of an appropriate award for loss of credit and reputation to be determined in accordance with the commitment by the Post Office and BEIS / DBT to provide compensation which is “*full and fair*”.

92. In summary, I am satisfied, on the basis of the written material provided to me and the oral submissions made on 27 April 2023 that the principles upon which compensation should be assessed in respect of applicants who have been and/or are still bankrupt are now (or at least should be) well understood. Of course, there may yet be differences of view as to an appropriate assessment of compensation in individual cases which may require resort to the dispute resolution processes within HSS.

93. I am also satisfied that there is now a clear understanding as to the circumstances in which some part of the assessed compensation under HSS (or interim payment, as the case may be) should be

payable to a Trustee in Bankruptcy as opposed to an applicant.

94. I should not leave the issues of bankruptcy/IVA as they arise in the HSS without providing some statistical information. In the written submissions provided by the Post Office, I was told that there were 63 applications submitted prior to midnight on 27 November 2020 in which a Trustee in Bankruptcy had an interest in the compensation payable to an applicant. There were three cases in which there had been no determination as to whether the Trustee had such an interest. Additionally, there were two cases in which it had been determined that an IVA Supervisor had an interest in the compensation payable. When Ms Gallafent KC addressed me orally on 27 April 2023, one of the three unresolved cases had been determined.

95. In 59 of the 63 cases in which bankruptcy is a factor, the Trustee in Bankruptcy is, in fact, the Official Receiver. In the letter of 21 April 2023, on behalf of the Insolvency Service (mentioned at paragraph 86 above), there is no suggestion that the information provided by the Post Office and summarised by me in the preceding paragraphs is in any way inaccurate.

96. Bankruptcy arises as a potential issue in some of the “*late applications*” received after midnight on 27 November 2020. In its written submissions, the Post Office informed me that amongst the late applications

there were 22 in which a potential issue arose relating either to bankruptcy or IVA. As of 6 April 2023, it had been determined that in some of those cases the Trustee in Bankruptcy had an interest in either part or the whole of the compensation payable. As of 27 April 2023, no significant progress had been made in resolving the undetermined cases. There was no suggestion by Ms Gallafent KC, however, that there was a significant prospect of a dispute arising in relation to these unresolved cases.

97. Finally, in respect of insolvency issues, I should add for completeness that Ms Addy's opinion and the submissions made by Core Participants also raised such issues as annulment of bankruptcy and rescission of bankruptcy in individual cases. I understand that if any applicant for compensation under HSS wishes to pursue an application to the Court for annulment or rescission of bankruptcy, appropriate funds will be made available by the Post Office to pursue such an application, provided only, of course, that the sums paid for legal expenses are reasonable.

98. I turn next to the issue of taxation of compensation payments made (or to be made) under HSS. As I have said the 2023 Regulations came into force on 16 March 2023 and the relevant parts are reproduced at paragraphs 18 to 20 above.

99. In written submissions on behalf of DBT dated 6 April 2023, Counsel for the Department (Messrs Chapman and Henderson) sought to justify the exclusion of payments made under HSS from the Regulations exempting such payments from Income Tax, Capital Gains Tax and Inheritance Tax. As with the letter of 10 March 2023 (see paragraph 22 above) I am unpersuaded by arguments deployed on behalf of DBT.
100. However, no useful purpose would be served by an analysis of the written submissions presented on behalf of DBT since, in his oral submissions, Mr Chapman no longer sought to justify a difference of approach in relation to taxation as between applicants to HSS, on the one hand, and applicants to OHCS and GLOS on the other. For the avoidance of any doubt as to what was said, I quote verbatim from the relevant part of the transcript (pages 10 – 14) of the hearing on 27 April 2023 as to the exchanges between Mr Chapman and myself:-

“MR CHAPMAN: *I want to ensure that the Inquiry fully understands the position. Now at the time the HSS was set up and, as you know, and as we discussed at previous compensation hearings, it was set up on the assumption – an assumption which turned out to be incorrect – that a*

relatively small number of applications would be made and that that relatively small number of applications would be to a relatively small value.

SIR WYN WILLIAMS: Yes.

MR CHAPMAN: *That has proved not to be the case but that assumption has affected the way in which the taxation consequences were understood. Now the Department recognises that because of that there is potential unfairness to those within the HSS of a non-exemption for tax and it has looked, together with HMRC and The Treasury, at the possibility of exempting payments within the HSS from tax, in the same way as the other scheme[s]. The problem – and that is a suggestion that you yourself made, sir, in a previous hearing. The essential problem with that is that a number, a large number of payments have already been made and in order to – if those payments were retrospectively to be exempted from tax – it would make the – or place the recipients of those payments in a substantially advantageous position,*

as compared to recipients of payments under the other schemes. As is clear, as I have made clear previously, and as I'll go on to make clear, one of the Department's objectives is to ensure reasonable parity as between the different schemes.

SIR WYN WILLIAMS: Yes.

MR CHAPMAN: *What the Department is obviously keen to avoid is a situation where an exemption for the HSS payments is put into effect because that would, in order to achieve parity, involve retrospectively recalculating the payments and, in some cases, in order to ensure parity, seeking to or potentially seeking to recoup some of the payments and that is something that, for obvious reasons, it wishes to avoid. But it does have – HMG, the Government, does have a solution to this. The Government will support the Post Office with funding to make additional payments to Post Masters in the Historical Shortfall Scheme to ensure that compensation is not unduly lost to tax. So there are*

various ways of skinning the cat, but the Government, the Department, concluded that that is the best – in practice – the best way of doing it. The implementation of these payments is complex, and the Department will announce further details as soon as possible. But the outcome of that would be that recipients of compensation under the Historical Shortfall Scheme are in exactly the same position in relation to tax as recipients of payment under the other schemes were tax is exempted.

SIR WYN WILLIAMS: *Well, speaking – obviously having heard what you’ve said for the first time, speaking therefore to an extent without having thought it through, it’s obviously highly desirable that parity is achieved in this way, and I don’t suppose that will be controversial by any right thinking person. My concern is simply to ensure that the Department actually tells us what it’s going to do – and I am not trying to be unduly difficult – but sooner rather than later, because these things are taking time, Mr Chapman.*

MR CHAPMAN: *The Department gets that; it understands that loud and clear.*

SIR WYN WILLIAMS: *Alright, so I was going to ask you and Ms Gallafent to give me a tutorial in the assessment of damages and the impact of tax upon it, but am I now to understand that that is unnecessary because, one way or another, every applicant to whichever scheme will in the end be treated in the same way, in practice?*

MR CHAPMAN: *In practice, in outcome, yes.*

SIR WYN WILLIAMS: *In outcome, which is what presumably they are concerned about?*

MR CHAPMAN: *That's what matters, as far as the Department is concerned yes."*

101. On 19 June 2023 the Minister made an announcement in Parliament seeking to give effect to Mr Chapman's submissions at the hearing on 27 April 2023. The announcement contained the following summary:

- *Postmasters in the Historic Shortfall Scheme (HSS) will receive top-ups to their compensation,*

to ensure that the amount they receive is not unduly reduced by tax.

- *HSS claimants will also be able to claim up to £300 for independent advice on filing their tax returns.*
- *Government has introduced the top-ups to ensure that postmasters receive full and fair compensation.*

102. On the same date the recognised legal representative of DBT wrote to me as I had suggested would be appropriate at the hearing on 27 April 2023. I attach the letter as **Appendix 5** to this Interim Report.

103. I understand why, in this letter, what might be described as a pragmatic approach to dealing with exemptions from income tax for those who have been, and will be, compensated under HSS is advanced. Clearly the vast majority of applicants to HSS have been paid compensation under the scheme and precise calculations of additional sums to ensure precise exemption from tax liability may be very difficult to achieve in individual cases. I say now, however, that my primary concern is that all recipients of compensation from each scheme are treated equally in terms of their exemption from tax and until I receive evidence as to how this has been managed in practice (as I will in Phase 5 of the Inquiry) it is difficult

to draw any definitive conclusions from the written material so far provided by DBT and its lawyers.

104. I turn, finally, in this section to note some of the additional points which were made in written and oral submissions on behalf of some former and current sub-postmasters who are also Core Participants.

105. Howe+Co act for 157 former and/or current sub-postmasters who are Core Participants of the Inquiry (although, as I understand it, they are currently acting for only 10 of those in pursuing claims for compensation within HSS). In written and oral submissions made since compensation issues have been under the spotlight, they have repeatedly asserted that HSS has been operated so as to cause undue delay with consequent significant and unwarranted anxiety to their clients. In the written submissions sent to me in advance of the hearing on 27 April 2023 (paragraphs 98 to 100 thereof) Howe+Co suggest that unwarranted obstacles are placed in the way of obtaining expert evidence; that there is ongoing disquiet about the level of fees payable in respect of obtaining expert evidence and the process for determining such fees is slow and cumbersome. A specific complaint is raised about the computation of loss of earnings claims. By reference to a particular individual case (Ms Fiona Elliott), Howe+Co question the efficiency of those involved in

constituting the panels who recommend offers in settlement.

106. I am invited to investigate the process by which panels are constituted, why delays in assessments by panels have occurred and why applicants to HSS are expected to apply for prior authorisation of expert witnesses. I assume that the invitation to investigate is an invitation to obtain evidence in relation to these issues in Phase 5.
107. Hudgells represent 125 applicants within the HSS. Many, if not all, of those persons are not Core Participants of the Inquiry. Most of the Core Participants represented by Hudgells are persons who were wrongly convicted of criminal offences and/or were Claimants in the GLO and, in consequence, they are not eligible for compensation under HSS.
108. In their written submissions of 6 April 2023 Hudgells acknowledge that “*there are some encouraging matters to report*” relating to HSS – see paragraph 22 thereof. Interim payments were being made on a regular basis (at a level of up to 80% of any offer made by the Post Office under the Scheme). All the applicants for whom Hudgells were acting who had sought expert evidence were afforded the opportunity to obtain such evidence. Although there had been a delay in agreeing a costs matrix which included provision for expert fees, such a matrix was close to

being adopted formally. In written submissions, Hudgells' primary concern was that a number of applications had been determined at a level which was not "*full and fair*" – a concern previously expressed both in writing and orally at hearings with a good deal of vigour.

109. Hodge Jones & Allen act for 10 persons who have been designated Core Participants.

110. I received written submissions from Mr Henry KC and Ms Page, dated 6 April 2023, which relate to compensation issues. However, these submissions did not touch upon individual applications to HSS. When I was addressed, orally, by Mr Henry KC on 27 April 2023, he did not make any observations about individual applications to HSS. I received written submissions from Mr Marshall on 24 April 2023, but they were not specific to any individual within HSS.¹⁴

111. Insofar as Mr. Henry KC, Ms Page and Mr Marshall criticise the operation of HSS in their submissions, they do so on grounds which are very familiar and about which they harbour considerable concern –

¹⁴ This is not a complaint by me. I have made it clear that it is not for me to determine individual applications for compensation and so I would not necessarily expect specific submissions about individual applicants from Mr. Henry KC or Mr. Marshall.

namely that HSS lacks true independence and transparency.

(iii) The Overturned Historic Conviction Scheme (“OHCS”)

112. As I have said, OHCS is not a voluntary remediation scheme. When the Deed of Settlement was concluded which brought an end to *the Group Litigation*, it was recognised that there would be Claimants within that litigation whose convictions for criminal offences might be quashed. The Deed of Settlement preserved the rights of that category of Claimant to bring proceedings against the Post Office for malicious prosecution. Primarily, at least, OHCS is a vehicle for providing “*full and fair compensation*” for those whose convictions have been quashed and who have claims for malicious prosecution (whether preserved by the Settlement Deed or on account of a cause of action for that tort which can be pursued).

113. As of 27 April 2023, the convictions of 86 persons have been quashed.

114. *The Progress Update* describes the process by which interim payments are considered and paid following the quashing of convictions. As of 27 April 2023, interim payments had been made to 80 applicants: one applicant did not wish to receive an interim payment and three applications for interim

payments had been refused (but see paragraph 117 below).

115. In *the Progress Update*, I described how Lord Dyson had been engaged by Hudgells and the Post Office to carry out what was described as an *early neutral evaluation* of the likely award of damages for non-pecuniary losses should the persons whose convictions had been quashed bring civil proceedings for malicious prosecution before the courts. A number of applications for non-pecuniary loss (ten in number I believe) were considered in detail by Lord Dyson who provided an opinion as to the likely individual evaluations of those cases should they be heard in court by a High Court Judge. The evaluations of such claims were not binding upon the Post Office and Hudgells' clients but it was always anticipated that they would be highly influential both as stand-alone assessments and as important guides to awards in other similar cases. In the main, that anticipation has turned out to be well founded.

116. As of 6 April 2023, 53 persons represented by Hudgells had settled their claim for non-pecuniary losses. When Ms Gallafent KC addressed me on 27 April 2023, she told me that the Post Office had received 69 claims for non-pecuniary losses and had made offers in respect of 67 of those claims. 55 applicants had accepted the offers made with the consequence, presumably, that negotiations were

ensuing in 12 more. The impression I gained was that all offers had been made to applicants represented by Hudgells, but that may not be strictly accurate.

117. The progress towards reaching agreement in respect of the pecuniary claims of those whose convictions have been quashed is in stark contrast. As of 6 April 2023, a total of 11 applications had been presented by Hudgells to the Post Office. Of those 11 applications, four have been settled; two of the four were cases in which interim payments had been refused; four applications were in negotiation following offers in settlement; and Hudgells were expecting offers in settlement in the three other cases.

118. By 27 April 2023, applications had been made to the Post Office by 14 applicants; 11 of the applications were fully particularised but, according to Ms Gallafent KC, three were not. My understanding is that no settlements of pecuniary losses had taken place between 6 April and 27 April 2023.

119. In *the Progress Update*, I expressed the non-controversial view that the process of making final payments of compensation to persons whose convictions had been quashed was in its early stages. Ten months has now elapsed and, although many payments have been made to applicants in respect of non-pecuniary losses, the number of payments made in respect of pecuniary losses is small.

120. The *Progress Update* encouraged the parties to engage in contingency planning with a view to avoiding a state of affairs arising whereby negotiations between the parties became bogged down with the consequence that the only alternative routes for resolving disputes were either mediation, binding arbitration or litigation. I encouraged the parties to consider a formal remediation scheme in respect of applicants to OHCS.
121. It is clear from the oral submissions made to me by Mr Moloney KC and Ms Gallafent KC on 27 April that, albeit belatedly in my view, Hudgells and the Post Office had begun the process of formulating written principles by which pecuniary losses are to be assessed under OHCS. Mr Moloney KC suggests that there has been undue delay on the part of the Post Office in reaching this point, but he expresses optimism that principles will be agreed which can then be used as the building blocks for determining final payments of many of the applications for compensation for pecuniary losses. In his oral submissions, he went so far as to say that he was optimistic that many, if not all, of the applications made to the Post Office will be determined by the end of this year.
122. It is also right to observe, however, that Mr Moloney KC frankly indicated that there are applicants to OHCS who would wish to defer the assessment of a final

award of compensation until all the evidence gathering in the Inquiry has been undertaken and perhaps even until after I have published my final report. It is also worth observing that although Hudgells currently represent the vast majority of applicants to OHCS who have presented claims, there remains the possibility of many more claims in the future and the possibility that future applicants will be represented by lawyers other than Hudgells and Leading and junior Counsel instructed by Hudgells. Self-evidently, in these circumstances, all lawyers who represent applicants to OHCS should be fully consulted about the principles by which pecuniary losses are to be assessed.

123. Applicants to OHCS have always enjoyed the most significant of the tax exemptions which have been conferred upon recipients of compensation under the three schemes identified in paragraph 2 above. Compensation payments under OHCS are exempt from income tax, capital gains tax and inheritance tax. As I have already noted it remains to be seen how DBT/the Minister/the Post Office proposes to achieve at least reasonable parity so far as tax liability and/or tax exemption is concerned as between the recipients of compensation from the 3 schemes – see, in particular, paragraphs 39 to 43 and 98 to 103 above.

124. I turn, finally, to the impact of bankruptcy upon compensation payments under OHCS. When he addressed me on 27 April 2023, Mr Moloney KC

informed me that bankruptcy issues relating to his clients who are applicants in OHCS had been resolved. He was not contradicted either by Ms Gallafent KC or by Mr. Chapman. Obviously, that is very welcome so far as it goes.

125. I am aware, however, that there are applicants to OHCS who were made bankrupt and who are not represented by Hudgells. Further, applicants may come forward in the future who are represented by lawyers other than Hudgells. Obviously, fairness demands that the impact of bankruptcy upon compensation payable to such persons should be the same as the impact upon the clients of Hudgells.

126. It was, I believe, in this context that during the course of his oral submissions Mr Moloney KC suggested that what he described, compendiously, as “stigma damages” for bankruptcy should be the subject of neutral evaluation by a suitably qualified independent lawyer of stature along the lines of the early neutral evaluation which was conducted by Lord Dyson in relation to non-pecuniary losses for malicious prosecution.

127. Mr. Moloney KC was the last of the advocates for the Core Participants to make oral submissions at the hearing on 27 April 2023. In consequence his suggestion that there should be a further neutral evaluation was not debated by the advocates for other

Core Participants. That said, I can readily foresee that the issue of compensation for the stigma of being made bankrupt over a range of cases is likely to be difficult to resolve especially when such compensation is inextricably linked with related heads of non-pecuniary loss. Further, the appropriate level of compensation will have to be considered under all 3 schemes and, in consequence, consistency of approach and fairness as between the applicants to the three schemes are crucially important. In consequence I have reached the clear conclusion that this suggestion is at least worthy of detailed exploration – as to which see paragraph 146 below.

Payments Under the Three Schemes

128. As of 6 April 2023, the Post Office had paid out to applicants to HSS approximately £62m, including interest and the deduction of withheld tax. It had paid out £18.04m in compensation to applicants to OHCS by the same date.
129. As of 6 April 2023, DBT had paid interim compensation under GLOS in the approximate sum of £19m.

130. Additionally, the Post Office and DBT will have incurred, and will continue to incur, very substantial sums in relation to the administration of the three schemes (primarily fees to their own advisors) and sums payable to the lawyers who represent the applicants to the schemes. I have not sought up-to-date information about this expenditure for inclusion in this Interim Report. On any view, however, the expenditure incurred will be of the order of many tens of millions of pounds.

Conclusions and Recommendations

131. At the commencement of this Interim Report, I thought it appropriate to stress that Ministers and representatives of the Post Office have asserted, unequivocally, that “*those wronged as a consequence of decisions taken on the basis of data produced by Horizon should receive compensation which is full and fair*”. In my view, that has been a constant which should have permeated and still should permeate all decision making relating to the assessment of compensation for each applicant in the three schemes.

132. It would be tempting for some to be sceptical about whether this can be achieved. As I wrote in the Progress Update, a commitment to provide

compensation which is *full and fair* is not the traditional stance taken by a defendant in our adversarial system of civil litigation.

133. In some of his legal analysis, Mr Marshall has gone so far as to suggest that there are and always have been legal impediments to DBT and the Post Office providing “*full and fair compensation*”. I do not agree. The Post Office has but one shareholder; that shareholder is ultimately controlled by HM Government, many different Ministers of which have provided unequivocal commitments to the effect that applicants for compensation will receive compensation which is *full and fair*. Duly authorised members of the Board of the Post Office have repeatedly committed to providing compensation to all applicants which is *full and fair*. I do not consider that there is any valid legal reason why DBT and the Post Office cannot give effect to the commitments which they have made. Certainly, if they seek to resile from such commitments they should provide a full a detailed justification for such a change of heart and, no doubt, any such purported justification would be subject to the most anxious scrutiny and, in all probability, withering criticism.

134. The commitment to provide compensation which is *full and fair* must apply with equal force to the compensation payable under all three schemes. The object of each scheme is to put the sub-postmaster into the position in which he/she would have been had

he/she not been the victim of unlawful tortious behaviour and/or the position in which they would have been had the various breaches of contract which they may prove had not occurred. It is incumbent upon all those involved in administering the three schemes and, in particular, in formulating offers in settlement under each scheme, to give full weight to those basic principles.

135. DBT has thought it appropriate to create *the Horizon Compensation Advisory Board* to advise Ministers on how best to manage delivery of compensation under all 3 schemes. While it might be thought that I have been hesitant about supporting the creation of such a board lest it leads to undue delay – see paragraph 52 of *the January Statement* – I have no doubt that its composition is such that the risk of delay associated with its work will be minimised.

136. In any event, given that *the Horizon Compensation Advisory Board* now exists the opportunities arising by virtue of this development must be maximised. The *Board* as constituted will, no doubt, be capable of assisting DBT to ensure that *full and fair compensation* is delivered under all schemes as envisaged. Where the payment of compensation promptly is an imperative (i.e. under GLOS) the *Board* can provide additional assistance in driving forward the making of payments. Further, the existence of the *Board* should go a significant way, in my opinion, to allay the fears of

those who are dubious about the sufficiency of independence safeguards within each scheme. That is of particular importance in relation to independence safeguards within GLOS for two reasons. First, the dispute resolution procedures are much less robust within GLOS than the fall-back dispute resolution procedures in HSS (compare sections 3.5 and 3.6 of the *GLOS Guidance and Principles* with the dispute resolution procedures in HSS described in the *Progress Update* at paragraphs 29 and 30). Second, GLOS provides no route to a resolution of disputes in a court of law whereas, of course, both HSS and OHCS permit applicants for compensation to resolve their disputes in the courts. *The Horizon Compensation Advisory Board* can have an extremely important safeguarding role.

137. I wish to stress, too, that, in my view, it is implicit in the concept of helping DBT to ensure the payment of full and fair compensation that *the Horizon Compensation Board* will take active steps to monitor whether compensation is being paid which is *full and fair*. I do not regard that as being inconsistent with the Board “*not consider[ing] individual cases*” for compensation. Quite the contrary; without such a monitoring role the Board’s ability to assist would be curtailed severely. However, if I am wrong about that, the words “*The Board will not consider **individual cases** for compensation*” (paragraph 4 of the Terms of Reference for Horizon Compensation Advisory Board)

should be removed from the Terms of Reference or paragraph 4 should read:-

*“4 The Board will not **determine individual cases** for compensation but it may monitor and examine the detail of individual cases so as to ensure that full and fair compensation is being paid to all applicants in all schemes.”*

138. On the basis of the limited information currently available to me, I see no reason why the personnel chosen to constitute the Board should not have sufficient capacity to discharge their Terms of Reference. Subject only to the practicalities involved, it would appear good practice for the same advisory personnel to be involved in each scheme. Additionally, the *Board* should, in the interests of openness and transparency produce written reports of its meetings and, in those reports set out its view upon whether compensation payments to applicants to each scheme are *full and fair*. In the event that the members of the *Board* consider that its personnel should be increased in size, further suitable individuals should be appointed.

139. Accordingly, I recommend:

- **Recommendation 1:** *The Horizon Compensation Advisory Board* should not be prevented from monitoring individual cases in which compensation has been or is to be determined by paragraph 4 of

its Terms of Reference. It must be one of the core duties of the *Board* that it monitors whether compensation payments are full and fair.

- **Recommendation 2:** *The Horizon Compensation Advisory Board* shall produce written reports in respect of each of their meetings in relation to each of the three schemes and publish the same within 21 days of the date of each meeting.
- **Recommendation 3:** *The Horizon Compensation Advisory Board* shall, as part of its advisory role, consider whether, in its view, full and fair compensation is being paid out to applicants under the three schemes and shall advise the Minister and the Post Office accordingly at three monthly intervals.
- **Recommendation 4:** If *the Horizon Compensation Advisory Board* as constituted consider it necessary, the number of persons appointed to the *Board* should be increased so as to ensure that the *Board* has sufficient capacity to perform the functions set out above.

140. Given the lapse of time between the hearing on 27 April 2023 and the date hereof, it is at least possible that steps will have been taken to resolve the difference of view as between Moore UK and applicants to GLOS as to whether any part of the

compensation payable to applicants who have been made bankrupt vests in the estate of a bankrupt sub-postmaster. If, however, that issue has not been resolved, I recommend:

- **Recommendation 5:** DBT shall take such steps as are necessary within 28 days of the date hereof, to seek appropriate directions under section 306 Insolvency Act 1986 so as to enable a court to resolve the difference of view between DBT and Moore UK and/or it shall take all appropriate steps (including providing appropriate legal funding) so as to enable a sub-postmaster to seek appropriate directions under that section.

141. I am not currently persuaded that I should recommend that those administering the GLOS should make further interim payments to applicants to the GLOS regardless of whether an applicant can demonstrate there is a need for such payments. As I recommend below there is a clear imperative to ensure that all payments of compensation under GLOS are made either by 7 August 2024 or by such further date as is provided for by legislation. I can envisage scenarios in which the making of further interim payments without investigating the circumstances of individual cases has the effect of reducing the possibility of final payments of compensation being made as soon as is reasonably possible.

142. There is still a lack of clarity as to the basis upon which tax is payable (or not payable as the case may be) under the various schemes. It is not possible to reach conclusions about equality of treatment as between applicants to the 3 schemes (especially in relation to liability for or exemption from income tax on compensation payments) without receiving evidence as to how, in practice, this issue is determined under the schemes. While the letter of 19 June 2023 from the recognised legal representative of DBT to me goes some way to re-assuring me that the applicants to the various schemes will be treated equally and fairly I am not yet convinced that is so.

143. Accordingly, I recommend:

- **Recommendation 6:** DBT shall publish in as much detail as it reasonably can and as soon as it reasonably can, its proposals for ensuring that applicants to all schemes are treated equally and fairly so far as their liability to or exemption from income tax, capital gains tax and inheritance tax is concerned as the same relates to compensation payments under each scheme.

144. On any reasonable view, there is a clear and real risk that final compensation payments under GLOS will not be delivered to each applicant by 7 August 2024. Despite the well-expressed intentions of DBT to make all payments of compensation by that date, that must

be so. Indeed my current, strongly held view, is that the scheme administrators will be unable to deliver compensation payments to all applicants to GLOS by 7 August 2024. I do not consider that recommending the publication of a timetable for completing the making of payments under the scheme will achieve its intended purpose of ensuring that all payments are made and that they are all *full and fair*. Further, there is no reasoned justification for limiting the time available for making compensation payments under to GLOS to 7 August 2024. That date represents an entirely artificial cut-off point. Accordingly, I recommend:

- **Recommendation 7:** HM Government shall bring forward and use its best endeavours to ensure that legislation is enacted so as to allow payments of compensation under GLOS to be made to applicants after 12 midnight on 7 August 2024 if that proves to be necessary.

145. I accept the view of the Post office and DBT that there must be an endpoint after which no further applications for compensation to HSS should be entertained. Accordingly, I recommend:

- **Recommendation 8:** No applications for compensation to **HSS** shall be entertained after such date as shall be agreed by the Minister/ DBT,

the Post Office and the *Horizon Compensation Advisory Board*.

146. In my view, the applicants to the 3 schemes who are pursuing compensation for being made bankrupt are very likely to benefit from an early neutral evaluation of the likely awards of compensation for non-pecuniary loss. I base that view primarily on the largely successful outcome of the early neutral evaluation undertaken by Lord Dyson in relation to non-pecuniary compensation for malicious prosecution. It also seems inherently probable that an early neutral evaluation would prove to be successful if undertaken by a distinguished lawyer who would inspire confidence on the part of both the Post Office and DBT on the one hand and those seeking compensation on the other. I appreciate, however, that this issue was not addressed by anyone at the hearing on 27 April 2023 apart from Mr Moloney KC and that, in those circumstances it may be thought precipitous to make a specific recommendation in relation to his suggestion. That said the suggestion clearly requires proper consideration in early course by all concerned including *the Horizon Compensation Advisory Board*.

147. The criticisms which I make in the *Progress Update* and the *January Statement* of the delays which have occurred in the administration of the schemes for delivering compensation remain justified. My definitive view upon whether the schemes have delivered

compensation which is *full and fair* must await my investigation under Phase 5 of the Inquiry.

Sir Wyn Williams

Sir Wyn Williams

17 July 2023

Appendices

The Post Office Horizon IT Inquiry: First Interim Report: Compensation – 17 July 2023

Appendix 1: Letter from Victoria Atkins MP to the Inquiry Chair, dated 29 June 2023



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Sir Wyn Williams

29 June 2023

Dear Sir Wyn,

I am writing to notify you that the Government has today published a Written Ministerial Statement outlining its intention to take action to exempt compensation for postmasters from inheritance tax (IHT).

I am aware that the Post Office Horizon scandal has had a devastating impact on the lives of many postmasters since it began over 20 years ago. The Government is deeply concerned about ensuring the fair treatment of this group. The tax treatment of payments made under the Horizon Shortfall Scheme (HSS) and the Group Litigation Order (GLO) scheme is of vital importance to ensure fair compensation, and a key part of this is the consistency of such treatment with other historic compensation schemes, and the principles behind such decisions.

The Government has already announced its decision that payments made under the GLO scheme and payments to postmasters with overturned convictions will not be liable for Income Tax and that top-up payments will be made to ensure that the compensation of those on the HSS is not unduly reduced by tax.

As the Government has stated previously in correspondence to your inquiry, payments made to victims under the HSS and the GLO scheme are designed to compensate primarily for financial losses rather than non-pecuniary damages, unlike those made to postmasters with overturned convictions. Historically, IHT exemptions have not been provided for schemes of this nature where they are designed to put individuals back into the financial position they would have been otherwise.

However, the Government recognises the egregious nature of the Post Office Horizon scandal and the impact on those affected by it. We have also taken note of the discussion at the Horizon Inquiry's recent hearing on compensation. The Government is therefore announcing today that it will not collect any IHT that may arise in relation to payments made to victims under the HSS and the GLO scheme. This exemption recognises the unusual nature of the HSS and GLO scheme.

The Government will legislate to exempt these payments from IHT in due course, but to ensure that recipients have certainty over their tax position prior to legislation being introduced, from today HM Revenue and Customs (HMRC) will not collect any IHT in relation to payments made up to the date the legislation comes into force. Any IHT paid by the personal representatives of estates who did not previously qualify for relief from IHT on HSS and GLO scheme payments will now be entitled to a refund from HMRC.

The Post Office Horizon IT Inquiry: First Interim Report: Compensation – 17 July 2023

We are grateful for your continued engagement in these issues and for your leadership of the crucial work being undertaken by the Horizon IT Inquiry.

Yours sincerely,

GRO

VICTORIA ATKINS MP

Appendix 2: Terms of Reference for Horizon Compensation Advisory Board



Department for
Business & Trade

Terms of reference for Horizon Compensation Advisory Board

1. The Board's aim is to help DBT to ensure fair and prompt compensation to postmasters affected by the Horizon scandal and related issues.
2. It will advise DBT ministers on how best to manage the delivery of the **GLO Compensation Scheme** announced in December 2022, with the aim of ensuring that it:
 - provides **fair compensation** to GLO postmasters;
 - does so **promptly** – and certainly before the deadline of August 2024; and
 - does so consistently with the expectations of Parliament that public money is spent in line with the **Accounting Officer's duties**.
3. It will advise DBT ministers in respect of **DBT's oversight of other strands of Horizon-related compensation** by the Post Office, including the Historical Shortfall Scheme, arrangements for compensation in respect of overturned historic convictions and compensation for postmaster detriment.
4. The Board will not consider **individual cases** for compensation.
5. The Board should:
 - be provided by DBT with **information** it requests as necessary to discharge its functions;
 - review regular **reports** from DBT on the overall progress of cases within the various strands of compensation;
 - regularly review an **issues list** setting out unresolved policy or process questions (notably those relating to the maintenance of fairness between postmasters in different compensation strands) and a timeline for their resolution;
 - consider such **issues** in accordance with that timeline;
 - be consulted on **guidance** or equivalent documents relating to the various strands of compensation, and any subsequent changes to them;
 - **monitor** the overall progress of all compensation strands, ensuring that processes are working well and identifying any blockages; and
 - **provide updates** to the Accounting Officer and/or Minister if it believes that to be necessary.
6. Its membership will comprise:
 - Professor Christopher Hodges (Chair), Emeritus Professor of Justice Systems at the University of Oxford and an expert in Alternative Dispute Resolution;
 - Lord Arbuthnot and Rt Hon Kevan Jones MP, Parliamentary campaigners in support of postmasters; and
 - Professor Richard Moorhead, Professor of Law and Professional Ethics leading the University of Exeter's Post Office Project.
7. DBT officials will attend as observers.
8. DBT Ministers will revise these terms of reference as they see necessary.



Department for
Business & Trade

Horizon Compensation Advisory Board

Report of fourth meeting: part I, held on 29 March 2023

Members present: Lord Arbuthnot; Kevan Jones MP; Prof. Richard Moorhead.

Apologies: Prof. Christopher Hodges (Chair)

Also present: Rob Brightwell; Eleanor Brooks; Eleri Wones; Elena Michael (all DBT).

Development of bandings for GLO scheme

1. The minister had asked the Board to consider recent public comments about the bandings for awards set out in the scheme's Principles and Guidance in respect of issues such as reputational damage.

2. DBT described the way in which bandings for selected heads of loss in the Principles and Guidance had been prepared. Freeths, as part of their contract with the Department, had been asked to identify and give anonymised details of "moderate", "serious" and "severe" cases which could serve as benchmarks for the GLO scheme. The Department's lawyers had developed an upper and lower figure for the cases described for each band based on awards made to claimants by the Independent Panel for the HSS: those awards had in turn been based on legal principles and the Independent Panel's obligation to secure fair settlements. Given the pace at which the scheme had been developed, there had not been time to consult claimants' lawyers on the figures attached to each band.

3. DBT noted that those figures were advisory and did not impose limits on compensation. The guidance required that each case should be considered on the basis of its individual facts. The Independent Panel would be under an obligation to secure fair settlements. Board members pointed out that the guidance did not make these points sufficiently clear. They were concerned that claimants and their lawyers might be inhibited from making full claims, and that the Panel might not be clear about the flexibility available to it. They were also concerned about the way in which the figures had been derived, and wanted more information.

4. In the light of the Board's discussion it was agreed that DBT would provide further information about the way in which the figures had been set. Board members would speak to lawyers representing claimants in the GLO and HSS schemes. The meeting would reconvene when this additional information was available.

Report of fourth meeting: part II, held on 21 April 2023

Members present: Prof. Christopher Hodges (Chair); Lord Arbuthnot; Kevan Jones MP; Prof. Richard Moorhead.

Also present: Carl Creswell; Rob Brightwell; Beth White; Eleri Wones; Joshua Scott (all DBT).

5. The Board reconvened to discuss additional information provided by DBT and the results of Board members' discussions with claimants' lawyers.

6. The Board agreed to recommend to Minister Hollinrake that the scheme's Guidance and Principles should be revised to make clear that:

- the bands were not limits but indicative guidance to claimants, their lawyers and the Independent Panel
- each case would be decided on its merits

- the figures for each band were derived from decisions made by the HSS Independent Panel on HSS cases where there was good reason to expect cases were generally less serious. The more serious cases were likely to still be going through dispute resolution. The GLO Compensation Scheme expects to find some cases where the facts of the case would demand awards significantly higher than the upper figure for the top band.
- if a claimant's compensation cannot be agreed through the Alternative Dispute Resolution process, they have the right to have it considered by the Independent Panel including a KC and other experts
- as for other aspects of compensation, where the Principles and Guidance set out bands, decisions would be taken by the Independent Panel based on the facts of each case looked at "in the round" and guided by considerations of fairness

7. Board members wanted to understand the legal rationale and case law on which they had been based as they were aware of case law which might suggest significantly higher indicators, such as serious defamation cases. The Board therefore agreed to hold discussions with members of the HSS Independent Panel with a view to confirming the way in which the figures had been devised and used; and securing greater transparency about those issues.

GLO project review

8. DBT presented progress on the GLO scheme.

9. They reported that the Post Office was recruiting additional staff to ensure that information relevant to GLO claimants was disclosed as quickly as possible. There was no issue about meeting the costs of this work but the pool of people with the necessary skills was limited. The Post Office would deal with cases in the order requested by the scheme – and, in practice, determined by claimants' lawyers – so that complex claims could be submitted without delay. DBT had commissioned the development of a timeline for the whole scheme. This would be discussed with claimants' lawyers and reported to the next meeting.

10. Dentons and Addleshaw Goddard were both now firmly in place as claims facilitators and legal advisors to DBT respectively. DBT was working with them to develop processes and governance so that claims could be dealt with fairly and quickly.

Revised terms of reference

11. The Board welcomed the expansion of its Terms of Reference to cover DBT's oversight of the compensation schemes being delivered by the Post Office. [Note: these are being published in parallel with this report].

Controls to assure fairness between schemes

The Board noted the arrangements which DBT had in place to ensure that claimants were treated in a similar way no matter which scheme applied to them. These included a new Programme Board of officials focussed on ensuring fairness across schemes.



Department for
Business & Trade

Horizon Compensation Advisory Board

Report of fifth meeting held on 14 June 2023

Members present: Prof. Christopher Hodges (Chair); Lord Arbuthnot; Kevan Jones MP; Prof. Richard Moorhead.

Also present: Carl Creswell; Rob Brightwell; Eleanor Brooks; Beth White; Eleri Wones (first part of meeting) (all DBT).

Fairness of the HSS

1. The Advisory Board agreed that
 - Fair compensation should be delivered that puts victims in the position that they would have been in if the scandal had not occurred and properly reflects the significant harms that had been visited on their lives and reputations.
 - Legal or other related costs should be reimbursed in full, so that compensation payments were fully compensatory.
2. It recognised that Government already subscribed to those principles. Its concern was that they should be effectively implemented, and that postmasters and others should have confidence that they were being applied fairly. Officials informed the Board that Ministers would shortly be announcing their intention to fund top-ups to HSS payments to address the issue relating to tax. *[Post-meeting note: announcement to Parliament is [here](#)].*
3. The Board noted that offers had been made to 99.3% of postmasters who had originally claimed under the HSS, and that 82% of these offers had been accepted. However there had been public comment about the outcomes and handling of a number of cases perceived to have been unfair. Some of these had not yet completed the dispute resolution process within the HSS.
4. The Board have had a discussion with KCs from the HSS Independent Panel. The KCs had explained that the Panel had adopted a practice of 'acting as advocates for claimants' where it could see matters within a claim that were not addressed in the options presented by HSF, rather than as wholly disinterested arbiters, and had adopted a presumption in favour of applicants if there was a shortfall and no other explanation.
5. The Advisory Board believed that the Panel had been guided by principles of independence and professionalism, and by legal precedent so as to seek consistency between awards, in reaching decisions in individual cases.
6. The Board noted the difference in process between the HSS and GLO schemes. Under the HSS, the independent Panel recommended an offer. If the offer was not accepted there was a dispute resolution process managed by the Post Office, including referral back to the Independent Panel and then with independent mediation as a final stage. By contrast in the GLO scheme an initial offer was made by DBT followed, if necessary, by independently facilitated discussions. Only if these did not produce agreement was a case referred to an independent Panel. There was provision for review by a senior legal figure in the event of manifest error or irregularity. A broadly similar sequence was being envisaged for the new arrangements for compensation for overturned convictions.
7. The Board also noted the different remuneration arrangements for representation and the very high levels of cases without representation in the HSS scheme.


8. In the Board's view, having an independent Panel (and, if necessary, the Reviewer) in place at the end of the process to make final decisions on individual claims increased the trust which could be placed in the final settlement.
9. The Board noted that given the history of mistrust in the Horizon scandal born of adversarial litigation, many postmasters would lack confidence in the fairness of any compensation delivered under the auspices of the Post Office or its legal advisors. They also noted concerns about the administration of HSS, including issues in respect of the application form.
10. They concluded that if the Scheme was to be seen to be fair, individuals who were unhappy about the settlements which they had received needed to have recourse to an assessment which was wholly independent of the Post Office. This should come at the end of the process, on similar lines to the role of the GLO Independent Panel. **They recommended that the Minister should consider how such an appeal process could be introduced. It should focus on assessing whether settlements were fair based on the evidence provided, whilst allowing consideration of elements of a claim which had been missed or not included on the original form.**
11. The Panel discussed the differences in the extent and timing of legal advice in the schemes, which tended to suggest there may be merit in the concerns that unrepresented claimants have been disadvantaged under the HSS scheme. The Board noted that the HSS had been established under schedule 6 of the agreement between the Post Office and JFSA which had settled the GLO case. DBT's understanding was that, in the light of their members' difficult experiences in the High Court and elsewhere, the JFSA had argued for a process which did not expect postmasters to take legal advice in making applications. The Post Office had, however, provided support with the costs of legal advice to help claimants consider compensation offers. The HSS Panellists had also explained that they took the approach of scrutinising HSS applications with a view to identifying any heads of loss that had not been explicitly included. Nonetheless, claimants' lawyers had suggested that claimants who were unrepresented may have received smaller awards than those who had engaged legal advice.
12. The Board noted that many of the concerns about the fairness of settlements related to the overall treatment of individual postmasters by the Post Office over many years. They noted that the HSS had paid careful attention to legal principles and precedents in respect of loss of reputation, stigma, distress and inconvenience and related heads of loss, but that this had led to potential differences between different claimant groups. However they believed that the facts of some Horizon cases went beyond those of precedents, for instance in respect of damage to reputation irrespective of prosecution given the impact of any branch intervention or civil action, the prominence within the community of many postmasters, the length of time during which the individual suffered damage, and the consequences for family members and family unity. If such cases were decided by the Courts, there were good reasons for thinking that judges may well create new, more generous precedents, especially given the egregious and bullying behaviour of the Post Office during the course of the scandal – behaviour whose impact was increased by virtue of the Post Office's credibility as a Government-owned organisation. They were also concerned that the operation of some rules of thumb in the scheme (such as the 26 month guideline on termination and the starting points for assessing reputational harm) risked unfairness to some claimants.
13. The Board was therefore not convinced that the application of existing principles and precedents would lead to consistently fair results. They noted that postmasters who had been prosecuted by the Post Office would receive exemplary damages. Whilst such damages were intended to punish the Post Office, they also had the effect of acknowledging the sustained personal impact which its actions had had on individuals. **They recommended that the appeal process recommended above should put particular weight on securing a fair outcome in respect of the issues described in the preceding paragraphs.**

Overtaken convictions

14. The Board noted that of about 900 people prosecuted by the Post Office in 2000-2015, to date only 86 convictions had been overturned. More were in the process of appealing and the Post Office had recently written to a further group to indicate that it would not oppose their appeals.
15. In the Board's view, postmasters would inevitably distrust any action of the Post Office or its advisors in reviewing cases, even if this were done with the utmost professionalism.
16. The Board believed that the criteria set by the Court of Appeal for Horizon cases were too tight, and that a significant number of miscarriages of justice could be outstanding. They also believed that the Court of Appeal's judgment was based on a limited understanding of the extent of problems with financial systems in the Post Office and with the extent of wrongdoing lying behind the "affront to public justice" finding. This led to a much wider and higher level of concern about Post Office prosecutions (and their review) with a number of critical documents not apparently disclosed and available to the Court.
17. The Board recognised that Government cannot challenge the decisions of the Courts. **They agreed that their Chair should write to the CCRC and its equivalents in other nations to strongly encourage it to propose a wider set of criteria in the light of the full range of cases prosecuted by or on behalf of the Post Office.**
18. **They also agreed to recommend that the Minister should**
 - a. consider whether the Government or Post Office could do more to encourage postmasters to appeal their convictions;
 - b. arrange that a review of all Horizon prosecutions be undertaken, by a team independent of the Post Office and without any prior involvement, to identify appeals that should be reviewed as unsafe, based on a presumption of innocence; and
 - c. encourage the Post Office, when considering which potential appeals meet the Court of Appeal's criteria, to only resist appeals in which there remained substantial evidence wholly free of taint.
19. **They agreed to look further at the issue of cases not yet appealed.**


The Post Office Horizon IT Inquiry: First Interim Report: Compensation – 17 July 2023

Appendix 5: Letter from DBT legal representative to Inquiry Chair, dated 19 June 2023




**Government
Legal Department**

Sir Wyn Williams



Litigation Group
102 Petty France
Westminster



www.gov.uk/gld

By email only to:
Solicitor [GRO]
[GRO]

Our ref: Z2013328/PBJ/JD3

19 June 2023

Dear Sir Wyn

Horizon IT Inquiry – tax treatment of Historical Shortfall and Group Litigation Schemes

At the compensation hearing on 27 April, DBT's Counsel provided an update to the Inquiry on the tax issue that has arisen on the Historical Shortfall Scheme, noting that the Department would shortly bring forward details on its plans to provide Post Office with funding to make additional payments to ensure that compensation is not unduly lost to tax.

The Department has today published a Written Ministerial Statement outlining these plans – <https://questions-statements.parliament.uk/written-statements/detail/2023-06-19/hcws860>.

Further to your request in the hearing that it would be helpful to receive a written summary of what the Department is seeking to achieve in relation to these steps on compensation taxation, the Department has provided the following details:

The Department is announcing on 19 June 2023 that it will provide an estimated £26m of funding to make additional payments to postmasters in the Historical Shortfall Scheme to ensure that compensation is not unduly lost to tax.

To calculate top-up payments for tax precisely would require specific information from postmasters on both their current and previous earnings. The Department's view is that this would be an arduous and lengthy process to administer and more importantly, arduous for postmasters to engage with.

Top-up payments will therefore be calculated so that no postmaster pays more than the basic rate of tax on their compensation. This is in line with the intention to restore the postmaster to the position they would have been in if they had kept their jobs and received remuneration and paid tax in the normal way. It will be assumed that the taxable elements of the compensation will be subject to the additional rate of tax (45% in England, Wales and Northern Ireland, 47% in Scotland). The top up payment will

Gary Howard - Head of Division
Fiona Montgomerie - Deputy Director, Team Leader Planning, Infrastructure & Environment



The Post Office Horizon IT Inquiry: First Interim Report: Compensation – 17 July 2023

then be for the difference between the compensation taxed at the additional rate and the compensation taxed at the basic rate. These additional payments will be exempt from Income Tax, Capital Gains Tax and National Insurance contributions.

For example, if the taxable amount of compensation was £100,000, Post Office will assume that, due to the postmaster's other earnings, this will be taxed at 45%. Our intention is for the recipient to be treated as if they were taxed at the basic rate (20%). The top up would therefore be for £25,000 – the difference between £45,000 of assumed income tax and £20,000 of income tax. This example is for illustrative purposes and does not account for any allowances that the postmaster may have, including the termination allowance.

Further to this, for taxable interest applied to non-taxable heads of loss (e.g. Horizon shortfalls), a different approach will be taken. We don't think it is right that this element of compensation should be taxed and therefore we will issue a top up payment which will cover any subsequent tax bill to the postmaster. Top ups will be calculated to account for the difference between the additional rate of tax and 0% to mitigate the impact of tax entirely. In the above example, this would mean a £45,000 top-up (assuming all the £100,000 is interest on non-taxable heads of loss). This is consistent with the OHC and GLO, where the tax exemption means that interest applied to non-taxable heads of loss is also exempt from Income Tax, Capital Gains Tax and National Insurance contributions.

In practice, postmasters are unlikely to be paying tax on all compensation received at the additional rate, so the top-ups will more than cover the impact of any losses to tax. However, this approach is the most proportionate in the context, where postmasters have already faced long delays in receiving the compensation due and where imposing an additional burden to the postmasters to provide further tax information is undesirable.

Every postmaster enrolled in the scheme will benefit from the additional payments. The Department continues to seek fair treatment for those affected across the various post office schemes, including corporate entities.

Additionally, all claimants involved in the scheme will be able to access funding for independent tax advice of up to £300 to support them in filing their tax returns.

Should further detail of the relationship between taxation and compensation be helpful, the Department would be happy to provide this.

Yours sincerely

[GRO]

Peter Johnson
For the Treasury Solicitor

D [GRO]
E [GRO]