

Sir Wyn Williams
Post Office Horizon IT Inquiry
1 Victoria Street
London SW1H 0ET
BY EMAIL ONLY

Our ref: DE/POHITI

9 January 2023

Dear Sir Wyn

Interim report

We write to request that, should you decide to issue an interim report, that you recommend in that report that the current end date of 7 August 2024 for the GLO ex gratia scheme be extended to at least 7 August 2025. This request is made by Hudgells solicitors, Freeths LLP and Howe + Co who, jointly, represent the overwhelming majority of SMPs for whom this scheme is intended.

Background

As Chair of the Public Inquiry, you are well aware of the government's announcement of an ex gratia scheme for subpostmasters and others who were Claimants to the group litigation Bates & Ors, and the reasons as to why that scheme is being developed. In summary, the scheme has been announced and will be implemented in order to attempt to put the victims who exposed the Post Office scandal on the same footing as others affected by this scandal.

The firms who make the request in this letter have engaged proactively with the Department of Business, Energy and Industrial Strategy (BEIS), over many months, regarding the development of the scheme. That scheme has not been finalised, and is not yet open for applications. However, it has been made clear that the scheme must conclude by 7 August 2024, and that all compensation applications, payments, representations and related matters must be concluded on or before that date. It is a hard stop.

Tel: 020 8840 4688
Fax: 020 8840 7209
Email: law@howe.co.uk
DX 315004 Brentford 5

1010 Great West Road, Brentford, TW8 9BA

Partners:
M.J. Howe BA (Hons)
K.P. O'Rourke LL.B (Hons)
D. Enright LL.B (Hons)

However, in meetings with BEIS we have made it clear that we anticipate that it will not be possible for all claims to be concluded before this date, and in the relatively short time available.

The reasons include:

1. The compensation scheme is not yet ready

You will recall that the government announced a further ex-gratia scheme for subpostmasters on 22 March 2022¹. It was not until September 2022 that the Minister for Small Business, Consumers & Labour Markets published a request for response to a consultation on that scheme². Following that announcement, subpostmasters waited until December 2022 (very shortly before the compensation hearing) for the publication of further (draft) details of how the scheme is proposed to operate³. Those details were incomplete.

Many important documents about the scheme's mechanism remain undisclosed. A number of processes and, critically, deadlines, are yet to be announced or agreed. In several places, the document setting out how the Scheme is to operate states that important parts of the scheme's mechanism are yet to be announced, discussed or agreed. In the document, BEIS states that it is not yet aware of the availability of the important claims facilitators who are to be integral to the operation of the scheme. The effect of these issues is that the details of the scheme are incomplete and the scheme is not yet open for claims from all eligible parties.

We submit that it is not possible or reasonable to impose a long-stop deadline on a scheme which is yet to be implemented, where its operation is not yet finalised, and which is not open for claims.

2. Issues with existing schemes and subpostmasters' circumstances

In submissions and in evidence, the Inquiry has heard of the serious and damaging delays which besiege the existing compensation schemes. Claimants to the Historic Shortfall Scheme (HSS) complain about poor communication, duplicated requests for information, and overall delays in their claims being considered and determined. In some cases, Claimants to the HSS have waited years without an acknowledgement of their claim, only to receive dozens of questions on the eve of their giving evidence to the Inquiry.

Issues persist in the interim compensation scheme, too. At the dedicated compensation hearings in December 2022, the Inquiry received detailed submissions concerning the delays experienced by subpostmasters with so-called "complex" or "difficult" cases. In the course of the hearing, you stated your intention to obtain independent legal advice on how compensation payments will affect those who are or were insolvent/subject to IVAs. Whilst you have invited submissions on this topic, which were made today, it remains unclear how the scheme will accommodate subpostmasters with "complex" or "difficult" cases.

¹ <https://www.gov.uk/government/news/victims-of-post-office-horizon-scandal-to-benefit-from-new-compensation-scheme>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1101991/minister-hunt-letter-to-glo-postmasters-02092022.pdf

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122408/Additional_compensation_for_GLO_Members.pdf

The provision of interim compensation to subpostmasters was announced in June 2022. On the date of the compensation hearings, in December 2022, there were still a significant number of GLO claimants who had not received any payments at all in spite of the comparable simplicity of a scheme for “interim” compensation.

Given that the Inquiry has received clear evidence of delays in other Post Office-related compensation schemes, there is every reason to anticipate that there may be delays in this new scheme. As such, we consider that the likelihood of these potential delays is incompatible with a hard-stop date of 7 August 2024.

3. The need for comprehensive, independently-prepared expert evidence and advice, and gathering of evidence

Claims to the ex-gratia scheme will be necessarily complex. BEIS has indicated its agreement for the need for specialist advice and expert evidence in order to accurately assess quantum in cases. Whilst our clients welcome BEIS’s indication that it will make a decision on incurring the costs of expert evidence, nothing has been agreed. We do not yet know the process that will be adopted, or the limits which will be imposed upon the ability to obtain the necessary expert evidence.

Of particular concern to our clients is the time taken to obtain important documents from non-expert sources, including from HMRC and from Post Office itself. Documents from these sources are not only important, but in most circumstances critical relevant documents are available from these sources **only**. The Inquiry has heard in submissions and in witness evidence why so many subpostmasters do not have possession or control of important documents related to their branch or to the underlying business.

We are experiencing long delays in the provision of HMRC documentation and expect that these delays will continue or increase. Furthermore, we anticipate delays in obtaining necessary medical evidence including GP notes. Given that the scheme is not in operation and not yet settled, it is impossible to begin/progress these necessary tasks at this time. The delay in finalising a scheme is hampering our ability to commence evidence-gathering steps, all of which will take time.

Whilst we welcome Post Office’s assurances in respect of the provision of documentation to subpostmasters, we need look only at Post Office’s slow and partial disclosure to the Inquiry to see that delay in this respect is, unfortunately, possible.

The likelihood of delay in obtaining necessary evidence is another reason why the current hard-stop date for this scheme is inappropriate.

4. The hard-stop date has no rationale, and may adversely affect the most vulnerable

We and our clients share the sense of urgency which BEIS have proposed. However, we have seen no compelling evidence supporting the hard-stop date. We and our clients will do all we can to ensure that work is completed as quickly as possible, but where that is not possible (for whatever reason) the current hard-stop cut-off date only penalises those Claimants with more complex cases, or those with vulnerabilities (those with disabilities, the elderly, those with illness, with caring responsibilities, or those who find it difficult to access the internet).

In addition, it is important to note that there may be subpostmasters who would be entitled to apply to this scheme but who currently may be unaware of it. We see no reason why individuals who are not aware of the scheme should be prevented from applying to it at a later stage, or why they should be denied compensation.

We are sure that not all claims can be finalised by the currently proposed hard-stop date. There is readily available information detailing the length of time it normally takes to conclude a civil claim comparable to the cases to which this scheme will apply. That data shows that the time taken is considerably more than 12 months, for simple cases light on evidence. For example, Huggells solicitors advise that only two of the cases, whose convictions were quashed in the Court of Appeal, in April 2021 have settle (i.e. almost two years ago). Furthermore, it would be improper to force subpostmasters to rush submissions of their claims to comply with an arbitrary deadline.

If the date is not extended, there will be Claimants who will be denied compensation, and/or cases will have to be conducted with such speed that Claimants may not be able to fully and properly set out their claims. We are sure the Inquiry will agree that there can be no risk of under-settlement in this scheme. There is no prejudice to BEIS or any institutional CPs in extending the deadline, but there is a profound and likely prejudice to deserving, long-waiting Claimants.

It is for these reasons that, should you decide to issue an interim report, we ask you to agree to include in any such report a recommendation that the Government takes steps now to extend deadline to no earlier than 7 August 2025.

Finally, we are aware that you are considering whether your interim report should be a statutory report. Howe + Co urged, at the hearing of 8 December 2022, that you should issue a statutory report. Given the nature of the mechanism adopted for this scheme (an appropriation), we respectfully suggest that a recommendation to extend the deadline would be best made in a statutory as opposed to a non-statutory report.

Yours sincerely

A handwritten signature in black ink that reads "Howe & Co". The signature is written in a cursive, slightly stylized font.

HOWE & CO SOLICITORS