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## POST OFFICE HORIZON IT INQUIRY

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### FIRST WITNESS STATEMENT OF PROFESSOR CHRISTOPHER HODGES OBE

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I, PROFESSOR CHRISTOPHER HODGES OBE, Chair of the Horizon Compensation Advisory Board, will say as follows:

## **INTRODUCTION**

1. This witness statement is made to assist the Post Office Horizon IT Inquiry (the "Inquiry") with the matters set out in the Rule 9 Request dated 20 September 2024 (the "Request").

## **PERSONAL BACKGROUND**

2. My educational and professional qualifications are:
  - a. BA jurisprudence, New College, Oxford (1976); MA (1983).
  - b. PhD, King's College London (2004).
  - c. Solicitor of the Supreme Court of England & Wales (1979).
  - d. Solicitor of the Supreme Court of Hong Kong (1984).
  - e. OBE (2021).

3. From 1979 to 2004 I was a lawyer in international law firms (principally Slaughter & May, Clifford Chance, CMS Cameron McKenna) based in the City of London (and 1984-85 in Hong Kong), practising in litigation and regulation. From 1990 to 2004 I was a partner in what became CMS Cameron McKenna. For the last four years of my time in practise I held a part-time position at New College, Oxford. From 2004 until I retired in 2021, I was an academic at the Centre for Socio-Legal Studies, University of Oxford, leading a research programme in dispute resolution and regulatory systems. In 2014, I was appointed by Oxford University as the first Professor of Justice Systems, and by Wolfson College, Oxford as a Supernumerary Fellow. My current status is that of Emeritus Professor of Justice Systems, and Supernumerary Fellow, Wolfson College, Oxford.
  
4. I have published extensively in my specialist areas of dispute resolution systems and regulatory systems. Among the positions I have held are: Freeman of the City of London (1982); Chair of the International Bar Association's Committee on Product Liability, Advertising, Unfair Competition and Consumer Affairs (1999-2003); Chair of the Legal Issues Committees of both the European and UK trade associations of medical device manufacturers, EUCOMED/EDMA and ABHI/BIVDA (c1995 to 2005); Co-Chair of two Working Groups of the Health Industries Task Force, reporting to a Minister of Health (2003-7); Chair of the Pharmaceutical Services Negotiating Committee for England (2007-2011); Board Member of the UK Research Integrity Office (2008-2017); Erasmus Professor of the Fundamentals of Private Law, Erasmus University, Rotterdam (2011-2014); Honorary Professor the International Law School of the China University of Political Science and Law, Beijing, China (2013-2016); Visiting Fellow, Australian National University, Canberra (2014); a Director, Foundation

for Law Justice and Society (2014-19); Consultant Editor of Halsbury's Laws of England for the sections on Courts and Tribunals (2018-2024); Member of the Academic Panel of the Administrative Justice Council (2018-2021); Member of the Government's Committee on the Regulation of Property Agents (Best Report, 2019); Member of the Advisory Board, The Internet Commission (2020-2023); Independent Chair of the Housing & Property Redress Group (2020-date, comprising judiciary, Ombudsmen and redress schemes); Member of the Government's Commonhold Council (2020-date); Co-founder and a Director, International Network for Delivery of Regulation Limited (2021-); Chair of HM Government's Regulatory Horizons Council (2022-date); Board Member, Dialogue Through Conflict Foundation (2023); Board Member, Institute for Regulatory Innovation, Delivery and Effectiveness (2023); Member of the Civil Justice Council's Working Party on regulation of litigation funding (2023-date); Chair of HM Government's Horizon Compensation Advisory Board (2022-date).

## **THE CREATION AND REMIT OF THE HORIZON COMPENSATION ADVISORY BOARD**

5. The Horizon Compensation Advisory Board (the Advisory Board) was appointed by His Majesty's Government ("HMG") in late 2022 to provide independent advice to Ministers on aspects of compensation relating to the Horizon scandal. The Advisory Board was created initially solely in relation to the Group Litigation Order (GLO) Compensation Scheme, however that remit was then expanded to cover the Horizon Shortfall Scheme, the Overturned Convictions Scheme and the Horizon Redress Compensation Scheme (together, "the Schemes"). The Advisory Board has comprised four members:

- a. 2 parliamentarians recognised for their past involvement in pursuing the resolution of the Horizon scandal, Rt Hon Lord Arbuthnot of Edrom, and Rt Hon Lord Beamish (formerly Rt Hon Kevan Jones MP);
  - b. 2 academic experts in the field of alternative dispute resolution and legal ethics, Professor Richard Moorhead, Professor of Law and Professional Ethics, Exeter University and leader of research projects into the Horizon scandal; myself as an expert in Alternative Dispute Resolution.
6. The four key Terms of Reference of the Advisory Board mandate are:

*“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: <sup>1</sup>*

- 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***

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<sup>1</sup> When quoting documents in this statement the emphasis is as in the original except where otherwise stated.

*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.”

(**RLIT0000270** – Terms of Reference for Horizon Compensation Advisory Board).

7. The Advisory Board has no executive, administrative, managerial, governance, policy-making or implementation roles nor does it exercise ‘oversight’ in relation to any of the compensation Schemes or issues. The Advisory Board essentially gives advice to Ministers, and it is Ministers who have oversight of the various schemes. The Advisory Board does not consider any individual cases, nor therefore does it make any decisions on any individual case.
8. None of the Members of the Advisory Board receive remuneration for the considerable amount of time that they have expended on this work; travel expenses can be reimbursed.
9. The Advisory Board has met regularly roughly every six weeks since 29 January 2023, holding seventeen meetings as of 18 September 2024. All our minutes have been posted promptly on our website,<sup>2</sup> along with significant correspondence and papers that we have prepared.
10. The Advisory Board was initially constituted in late 2022 to advise solely on the

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<sup>2</sup> **WITN11710105.**

GLO Compensation Scheme that was then being created by HMG. However, it soon became apparent that it would be advisable to extend our remit to cover advice on all Horizon compensation schemes. Ministers readily agreed to this suggestion, and extended the Board's Terms of Reference accordingly in Spring 2023 (**RLIT0000270**). Updated Terms of Reference that included the Horizon Convictions Redress Scheme were confirmed by the new Government in August 2024 (**RLIT0000410** – Advisory Board amended Terms of Reference).

11. The remit and function of the Advisory Board developed over time, I will set out below the current position and how that position developed.
12. The Inquiry's First Interim Report included the following Recommendations:

- *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 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."*

(**INQ00002027** – First Interim Report on Compensation of 17 July

2023).

13. The Advisory Board had no prior notice of these Recommendations, nor any opportunity to comment on them in advance. The position was considered in detail in our Sixth meeting held on 31 July 2023. We were concerned that intervening in individual cases would undermine the Advisory Board's core role of advising on the fairness of the system. It would also be impractical for the four members to be asked to review large numbers of cases, or to put in place the large administrative mechanisms necessary to carry out such reviews and the re-opening of many settled cases (**RLIT0000265** Advisory Board Report of sixth meeting, paras 27-38).
  
14. In my letter to Sir Wyn of 15 August 2023, I explained the way in which the Advisory Board viewed their remit and what was relevant and appropriate in relation to its scope, and said:

*"It should go without saying that each of us is committed to the principle that the victims of this awful scandal receive full and fair compensation. However, we do not believe that it would be possible or advisable for us to intervene in the determination or outcomes of individual cases, nor to give an opinion on individual outcomes, or an opinion that full and fair compensation is being paid out to individuals. To do so would raise serious issues over interference in processes that involve procedural safeguards to ensure fairness (not least an review/appeal mechanism), and in individuals' rights and professionals' obligations and functions. We do hope that matters of concern, whether [in] individual cases or systemically, will be brought*



*to our attention so that we may advise the Minister on appropriate action.*

*We intend to continue to meet roughly every six weeks and to ensure that minutes of our meetings are published.*

*It is, of course, for the Department rather than ourselves to provide a formal response to your recommendations. I am copying this letter to Minister Hollinrake: I am sure that he will take it into account in formulating that reply.”*

**(WITN11710102** – Letter from Advisory Board to Inquiry of 15 August 2023).

15. Sir Wyn’s reply to me of 25 August 2023 said:

*“In response to the recommendations in paragraph 139 of my Interim Report, you expressed the difficulties HCAB are likely to experience should it intervene in individual cases. For the avoidance of doubt, it was not my intention for HCAB to investigate all individual cases, but to be provided with the mandate to review any case where it is necessary to do so, principally to ensure there is fairness in the operation of the compensate [sic] schemes as a whole. Without having the ability to review individual cases, it is my view that it may not be possible for HCAB properly to advise Ministers on the fairness of the compensation schemes pursuant to HCAB’s Terms of Reference. As you say, it is for the Minister to respond to my recommendations, and I await the Minister’s response to my*

*recommendations.”*

(**WITN11710101** – Letter from Inquiry to Advisory Board of 25 August 2023).

16. The Advisory Board considered Sir Wyn’s reply carefully but held strongly to our view that it would not be feasible or appropriate for us to intervene in the established processes, to operate as a sort of appeal or review mechanism for individual cases, and that it was entirely unclear how we might be able accurately to identify those individual cases where “it might be necessary” to investigate, at least without an extensive and possibly complete review by re-opening many or all decided and ongoing cases. Further, we did not see how we possessed the skills to review the ‘fairness and fullness’ of fact-specific decisions by independent lawyers and judges, or that it would assist for us to attempt to do so in either some or certainly all cases.
17. In the Government’s Response to the Inquiry’s Recommendations, it agreed with the Advisory Board’s position. The Government rejected Recommendation 1 and accepted Recommendation 3 in part, saying:

*“The advisory board’s aim is to help the department to ensure fair and prompt compensation to postmasters affected by the Horizon scandal and related issues. The department agrees that, in delivering this aim, it may be helpful for the advisory board to be given anonymised information about individual cases.*

*However, the department endorses the view expressed by the board, in the report of its 31 July meeting and in its letter of 15 August 2023*

*to the inquiry, that it would not be “possible or advisable for us to intervene in the determination or outcomes of individual cases, nor to give an opinion on individual outcomes, or an opinion that full and fair compensation is being paid out to individuals”*. [emphasis added]

*4. The Terms of Reference allow the advisory board to advise the minister whenever it sees fit. Reports of its 6-weekly meetings are communicated to the minister and published.”*

(**RLIT0000359** - DBT response to the Inquiry’s First Interim Report).

18. The Advisory Board has, therefore, operated on the basis that HMG set out in the Terms of Reference. The Advisory Board has continued to discuss and recommend means of addressing issues that have come to its attention, or it has itself identified, around the design and operation of the various schemes, and their delivery of full and fair compensation.

## **THE APPROACH OF THE ADVISORY BOARD**

19. The Advisory Board decided that we should adopt an approach based on a number of principles, including:
  - a. Transparency: Reports of our meetings have been published on our website. The Board has received reports on progress at each meeting, and since 7 May 2024 has received formal Case Manager Reports on each Scheme (see **RLIT0000275** – Report of fourteenth meeting held on 7 May 2024), identifying claim statistics and raising significant concerns. These have been discussed by the Board, and fed into our ongoing recommendations, recorded at each of our meetings.

- b. Independence: The Advisory Board is independent of Government and of all parties involved. Advisory Board members are not paid, save for travelling expenses.
- c. Communication: Individual Advisory Board members have established a number of communication links that have enabled a consistent stream of information on issues as they have arisen. These have included long-standing communications with individual sub-postmasters (“SPMs”) and with leading journalists. The Advisory Board also made clear to claimants’ lawyers, through official and informal channels, that we wished to hear of generic issues that were causing problems. We have received informal and written communications from them, which have all been promptly considered and given rise to discussions on what might be effective responses. Regular liaison meetings were held separately between the lawyers and DBT officials, issues from which were reported to us. We were able to communicate informally with the legal community (in some cases quite regular communications have taken place with individual Advisory Board members) and have held three formal meetings to date.

## **THE VARIOUS HORIZON COMPENSATION SCHEMES**

- 20. The Board’s work has encompassed all Schemes, and the Board’s approach has been to provide consistency in relation to all Schemes and issues considered. As such, I think it helpful to provide a roughly chronological account of the work of the Board, identifying the major issues that arose under one or more schemes in their relevant context as the history of the matter developed.

21. Once the Advisory Board was appointed, the broad position, as of January 2023, was that:

- a. The Overturned Convictions (OC) Scheme had been created, and was operated, by the Post Office for victims who had had their conviction overturned on the grounds that it was reliant on Horizon evidence. This was an alternative to suing the Post Office or applying to the general scheme operated by the Ministry of Justice for compensating miscarriages of justice. No victims of the Post Office had applied under the MoJ scheme, and the OC Scheme appeared to be processing cases slowly. The OC Scheme had divided cases into pecuniary and non-pecuniary tracks, on the basis that it appeared to be simpler to resolve pecuniary aspects of claims, as discussed below (§65). As at 31 August 2023, 85 claims had been received, offers and payments had been made in 82 claims (**RLIT0000411** - Post Office Horizon financial redress data).
- b. The Horizon Shortfall Scheme (“HSS”), also operated by the Post Office as an alternative to victims suing, was open to those who had not been convicted. Post Office had received 2,417 eligible claims by March 2021, and by May 2023, offers were made to over 90% of the cohort, and, 1,965 claims had been paid. (By September 2023, offers had been made in 2,411 claims, and 2,016 claims paid (**RLIT0000411**.) Around 222 ‘late’ claims were also being processed. The number of claims settled at that point might be taken as an indication that a significant number of people were content to accept the sums offered. The Advisory Board accepted, of course, that, as with all disputes, some recipients might be dissatisfied with the offers received, and

were reluctant to accept them, but did so for a number of possible reasons, including from an absence of further review/appeal, or a desire to achieve closure. There was also an issue over the absence of funding for legal advice prior to submission of a claim, and whether that might have had an effect on acceptances (see §74 below). However, SPMs were continuing to come forward, technically after the 'closing date' of the Scheme.

- c. The Group Litigation Order ("GLO") Scheme was still under development, and was launched in March 2023. This was an *ex gratia* Scheme designed to make good the difference in compensation of those (originally 555) members of the GLO litigation against the Post Office who had only received around £20,000 each from the settlement of that litigation. The settlement was £57 million but around £46 million was paid contractually to the funders of the litigation and their lawyers. One of the first tasks of the Advisory Board was to review and comment on the Scheme design, including the Scheme Registration Form, the draft Application Form, and the draft Principles and Guidance (**RLIT0000261** – Report of second meeting, 6 February 2023, para 2). We noted that the guidance said that "awards should be full and fair" (**RLIT0000261**, para 3).
- d. In addition, we were later informed that the Post Office operated a process called the Postmaster Detriment Scheme, for compensating SPMs who had been entitled to pay while suspended (whether or not that suspension was related to Horizon) (**RLIT0000268** – Report of ninth meeting held on 29 November 2023, paras 10-16). At this point in time, the Advisory Board has not received any complaints from SPMs, or any other groups, about the

operation of this scheme.

22. A number of problems struck us from the start of our work. There were three individual schemes, each established at different times, as a result of different initiatives, and with different procedures. The Post Office had created and operated two schemes, whilst the DBT was establishing a new scheme, with each scheme applying to a particular cohort of victims. Over time, the position had become more complicated as the need for the different schemes arose.
23. It was initially unclear to us whether different rules, especially on sums awarded for the same types of damage, were consistent across the Schemes. We set about investigating these issues around procedures and rules, particularly through a series of meetings with the key professionals involved, to understand how they worked, their viewpoints and attitudes, and to identify major problems.
24. Our first task was to identify how each scheme operated. Accordingly, we considered the publicly available scheme documentation and received briefings on this from officials and interviewed key personnel involved. They included staff at the Post Office (Simon Recaldin and colleagues), its lawyers (Alan Watts of Herbert Smith Freehills), representatives of the independent lawyers involved in the HSS Panel (Alex Charlton KC, James Cross and Michael Davy), plus lawyers advising on criminal aspects (Simon Baker KC, Jacqueline Carey KC, Nick Vamos of Peters & Peters).
25. Meetings were held with the following:
  - a. Members of the HSS Independent Panel (See **RLIT0000259** – Secretariat note: discussion of 31 May 2023; **RLIT0000265**).

- b. Sir Ross Cranston, before and since his appointment as Reviewer of the GLO Scheme (see **RLIT0000266** – Report of seventh meeting held on 5 September 2023, para 13; **RLIT0000267** – Report of eighth meeting held on 25 October 2023, paras 1-2). Sir Ross made a number of suggestions on revision of the draft GLO Guidance and Principles, which were accepted by the Government and implemented.
- c. Sir Gary Hickinbottom, after his appointment as Chair of the OC independent panel.
- d. Claimants' lawyers (e.g. **BEIS0001033** – Report of eleventh meeting held on 22 February 2024, paras 6-10).
- e. The new Chair of the Post Office (see **BEIS0001028** – Report of sixteenth meeting held on 29 August 2024, paras 1-3).

## **CONCERNS OVER DELAY, AND ANALYSIS OF CAUSES**

- 26. A number of concerns of SPMs and their lawyers came to our attention over time, around the speed (pace/delay) of one or more Schemes. We were particularly focused on identifying the root causes of any delays. I discuss the proposals made at 64 below.
- 27. A considerable number of possible reasons exist that may be causes of delay in processing and resolving claims. First, at the systemic level, one should note:
  - a. The adversarial model employed in these schemes inherently requires parties and their lawyers to argue opposing positions. In commercial litigation, the tactical goal for a claimant is to maximize payment whereas



that of a defendant is to minimize it, that position is further entrenched by the professional duties owed by each sides' lawyers to their clients to achieve the best outcome, which is normally measured in terms of the value of any compensation awarded. As discussed at §38.f and 61-63 below, the Advisory Board tried to highlight the inappropriateness of that mindset and influence a change to it in relation to these Schemes given the fact that the victims deserved particular sympathy and support for what they had been made to suffer.

- b. Traditional procedural rules require the need for evidence to prove each element of loss, the claimant having the burden of proof and being required to satisfy a standard of proof. That approach was reflected in the rules on these issues in each of the Schemes. These rules may present significant barriers for SPMs for various reasons, notably that significant relevant evidence no longer exists, that proving a counter-factual of how much an individual might have earned can be highly challenging, and that the mental state of an individual may mean that they do not wish to engage with any relevant process.

28. In the case of Horizon claims, there can also be multiple reasons for delay in individual cases, such as:

- a. The lack of retained evidence, given its destruction or loss with the passage of time.
- b. Particular difficulties for claimants in assembling and remembering historical evidence.

- c. The understandable unwillingness of some victims, given their mental state, to engage in reliving traumatic memories, and risk re-traumatisation, and hence reluctance to assemble relevant evidence, even with legal assistance.
  - d. The perceived complexity of the application form and its details. On the other hand, the arguments for having a comprehensive checklist of the types of potential compensation, and of the applicable ranges of monetary payment, were intended to ensure that potential compensable losses were not overlooked and that there should be consistency between cases. There is an inevitable risk that such documents seem confusing to non-lawyers.
  - e. The time necessary for both the Post Office and an individual to search and obtain such records as exist. This is an inevitable consequence of the nature of an inquiry into both verification of what historical damage or losses actually occurred, but also of accurately identifying the counter-factual position of what the claimant's financial position would have been if they had not suffered as a result of the Horizon scandal and the Post Office's behaviour.
  - f. The time needed for obtaining medical and/or accountancy expert reports (especially given potential gaps in the evidence that the expert has to consider).
  - g. The difference in procedural design over the position of an independent Panel in the process as between the HSS and OC Schemes.
  - h. In the OC Scheme the significant size of sums claimed and the divergence of views on each side in offers and negotiations can give rise to friction.
29. The Advisory Board has heard all of the above complaints voiced about the

operation of individual schemes at different times, especially about the HSS Scheme, albeit usually in the context of ongoing argument over difficulties in settling *individual* cases.

30. We also considered whether other managerial approaches could be adopted, such as targets and monitoring progress through obtaining statistics. The Advisory Board requested at its first meeting on 9 January 2023, that “*BEIS should, by April, develop targets against which they could monitor case throughput*” (para 2.6).

*“The Board agreed that at future meetings [it] should consider:*

*5.1 Reports on progress against milestones.*

*5.2 Data on flow of cases, including cases of special concern. ... “*

*(RLIT0000260 – Report of first meeting, 9 January 2023, para 5).*

31. The Advisory Board has undertaken regular monitoring of the broad statistics, but this method fails to identify root causes either in individual cases or systemically. Thus:

*“6. The Board discussed the need for monitoring and evaluation against success criteria for the scheme. They supported the Department’s intentions in respect of objective measures such as timeliness and efficiency (process costs as a proportion of compensation paid). They discussed ways of assessing subjective issues such as trust in the scheme as it is developed and on completion. Direct feedback from claimants would be important. The*

*Department was already intending to develop a monitoring and evaluation plan and would take the Board's comments into account.*

*7. Members asked for a report on feedback from claimants' lawyers."*

**(RLIT0000262** – Report of third meeting, 8 March 2023, paras 5 & 6).

32. Once cases are settled, the level of dissatisfaction that is voiced tends to fall considerably. Delays have been attributed by different voices either to the Post Office or to claimants, in matters such as taking time to produce relevant evidence, in issuing authorisations to instruct an expert witness, in obtaining expert reports, in constituting a panel, in assessment by panels, and in obtaining approval in signing off offers.
  
33. In our view, the most effective way to address most of these procedural delays is through direct, regular case management scrutiny, such as that has been exercised by Sir Gary Hickinbottom as Chair of the Independent Panel in the OC Scheme (see §38.d below). Similarly, in the GLO scheme, Dentons have a mediation and case-management function that the Advisory Board understands has been helpful. Case management can bring to bear root cause analysis and targeted response in relation to both systemic and individual issues. A body such as the Advisory Board is not privy to the necessary detail in individual cases to be able to intervene other than through considering such issues as may be brought to its attention, essentially as being generic issues that might benefit from some systemic change.

## EVALUATING MAJOR ARCHITECTURAL CHANGES

34. The Advisory Board considered early in 2023 whether major architectural reforms would assist. Three options of particular interest were:
- a. To remove the Post Office from the governance and operation of all schemes in which it was involved.
  - b. To replace all Schemes with a single new Scheme.
  - c. To move existing Schemes from an adversarial model to an investigative model. A precedent for this would be the model of many sectoral Consumer Ombudsmen, and public sector Ombudsmen such as the Parliamentary and Health Service Ombudsman and Local Government & Social Care Ombudsman, which use an investigative approach involving no cost to a complainant and require no legal representation.
35. Highly attractive as one or all of these options may have been, we concluded that such major changes were not feasible in view of the circumstances of the history of this scandal and of the established status of the HSS and OC Schemes, plus the established reliance of many victims on their lawyers. A significant number of claimants under the HSS Scheme had already reached resolution. Any major structural changes would upset the expectations of claimants who were currently in the system, raise concerns for the significant number who had already concluded settlements, all leading to destabilization and issues of trust. Further, creating a new structure is not something that can be done at the drop of a hat. The design and procurement stages of the GLO and the Horizon Convictions Redress Scheme (HCRS) both took over 6 months. The availability of officials

and external lawyers to undertake this work was also limited, and officials had their hands full dealing with the establishment of the GLO scheme, overseeing the two other schemes, and before long, the passing and implementation of the legislation overturning convictions, and the creation of the HCRS. The procurement rules require outside contractors to be subject to fixed processes of selection and appointment that take time.

36. Nevertheless, the Advisory Board's desire to change governance and delivery structures influenced HMG's decision to itself oversee and run the HCRS scheme in 2024, and later to create a new 'in house' appeal process for HSS claimants.
37. It may be that, as time progresses, further opportunities for change can be identified by HMG, for example as the number of cases in the OC and HSS schemes that are resolved increases, or fresh decisions are taken in relation to processing the 'late applicants' to the HSS scheme through what might be described as 'HSS2'.

## **STRUCTURAL REFORMS IMPLEMENTED**

38. The Advisory Board has recommended a number of structural changes that have been implemented. Important matters have been:
  - a. Oversight over all schemes – as noted, HMG swiftly agreed to widen the remit of the Advisory Board to cover all schemes. When HCRS was created, we were consulted by DBT on its principles and design.
  - b. We have received regular updates on the status of each Scheme, from spring-2024 in the form of formal reports that are published. These give descriptive and statistical information that enable us to see progress, and

also identify major issues and challenges, so that we can offer our views on resolution.

- c. Appointment of a judge as a final appeal stage in the GLO scheme (Sir Ross Cranston).
- d. Supporting the initiative of discussions between the lawyers and HMG for the OC scheme that a judge should play a role in the Panel evaluation stage (initially envisaged as an independent assessor role: see **RLIT0000266** – Report of seventh meeting held on 5 September 2023, para 11). Sir Gary Hickinbottom was appointed as Chair of the independent panel (see **BEIS0001034** – Report of tenth meeting held on 10 January 2024, para 7) and, as we anticipated, he adopted a strong case management role on cases, holding regular meetings with lawyers involved, which helped identify specific reasons for delay in cases, and hence enabled targeted actions and pressure to resolve blockages. This was also a mechanism for identifying issues that could be brought to the Advisory Board and DBT for review. (It is fair to note that Sir Ross's appellate position in the architecture of the GLO Scheme does not provide the same opportunity for case management intervention at earlier stages in the process. However, in general, progress of cases in the GLO Scheme has been relatively good, and the lawyers and officials involved have given the impression of being proactive in identifying and resolving barriers.)
- e. In August 2024, HMG implemented our recommendation that a new 'appeal stage' be created at the end of the HSS Scheme. The Advisory Board understands that this will be based on the principle of 'new evidence'

becoming available, but with the benefit of paid legal representation. DBT are currently finalising the precise details.

- f. Supporting a change in culture within the process, involving moving away from a strictly legalistic approach to a more flexible and compassionate approach, emphasising the principle and objective of achieving full and fair compensation. This, we believe, achieved a number of appropriate short cuts in quantification and speeded up the making of offers in individual cases. We continue to hear anecdotal reports from claimants' lawyers and DBT of where this less adversarial approach, also involving what might be regarded as a more common sense approach on the part of the Post Office and DBT, has shortened cases. We also hear of discussions about further innovations to shorten or simplify approaches, as the professionals engage with the more complex cases that progress slowly through the systems. Equally, we hear of some frustrations, but this enables everyone to contemplate how challenges might be overcome.
39. A further option considered was recommending that an audit be undertaken of decided case decisions, especially under the HSS Scheme, to evaluate to what extent individual outcomes were 'full and fair'. The Advisory Board decided, with some reluctance, against recommending an audit for a number of reasons. It was considered that an audit would be unlikely to be justified as it would be slow, costly, and disruptive of expectations and parties' peace of mind. The Advisory Board was also influenced by the firm opinion of Sir Ross Cranston arising from his experience of an audit in the HBOS Inquiry (this is quoted at §60 below). We have, however, remained mindful of that option and other options, and reconsider



issues in the light of changing developments. The risk of the occurrence of significant unfairness in HSS outcomes has hopefully been significantly reduced by two mechanisms: the introduction of the lump sum mechanism, and associated ‘topping up’ of settlement values below £75,000 (\$64 below), and the announcement in August 2024 of a new appeal mechanism for HSS cases, that will be operated by DBT.

## **THE PRINCIPLE OF FULL AND FAIR COMPENSATION**

40. One of the first issues that the Advisory Board considered was the basis on which compensation was being, and should be paid. We immediately stated our core belief that compensation should be “full and fair”:

*“Board members agreed that ... As with the general law, the goal should be to restore the claimants to the position that they would have been in if the scandal had not happened.”*

(**RLIT0000260**, para 2).

41. I believe that our public adherence to this principle had a number of positive practical and psychological effects on those involved in the operation of the compensation schemes. It assisted people to lift their focus from the detail of applying cold legal rules in individual cases to applying a values- and principles-based approach of delivering just outcomes in individual cases.
42. Individuals’ views on what constitutes ‘full and fair’ can differ, since these concepts are principles and values that involve individual judgment in concrete situations, especially in complex situations. In giving practical reality to individual outcomes that are ‘just’ or ‘fair’, a number of considerations apply that may

require fine judgment in balancing different considerations and different values such as delivering speed and closure.

43. For example, the following considerations might arise:
- a. The need to ensure that all elements of loss of damage have been identified and compensated. This can be assisted by having checklists of types of loss and damage (heads of damage). However, this can result in lengthy and legalistic lists that can seem confusing to a non-lawyer.
  - b. The need to ensure that every type of loss receives full and fair compensation. This requires consistency in several dimensions – between different claimants whose individual circumstances have both similarities and differences, and between the Horizon victims and all those who receive compensation awards from the courts generally. This leads to two broad categories of loss:
    - i. Individual sums that have been ‘lost’ and need to be ‘repaid’, such as sums paid by SPMs to the Post Office, or other specific sums that can usually be quantified fairly readily (pecuniary damages).
    - ii. Elements of loss or damage that present much greater challenges of quantification (non-pecuniary damages), such as sums paid for mental distress, for loss of income that would have been earned had the original wrong not occurred. These situations need:
      - 1. firstly, precedent in order to achieve consistency (and to be aligned with the extensive list of sums, ranges and considerations set out in the Judicial College Guidelines (currently 17<sup>th</sup> edition) as applied by

the courts), and

2. secondly, evidence from experts, especially medics and psychiatrists in relation to the nature, duration and severity of psychological and physic damage, and from accountancy professionals in relation to the quantification of what a person or business would have earned if they had continued to operate without closure or bankruptcy (quantifying the counter-factual situation).
44. It is a fundamental legal principle that decisions on compensation must be *based on evidence* that supports and quantifies the 'exact' nature of the loss and of the compensation due. This leads to legal tools such as that a claimant has the burden of proof, and has a particular standard of proof (usually in civil cases 'the balance of probabilities'). These rules are also in place to prevent taxpayers' funds being paid out without valid justification (the public accounts considerations). But multiple challenges arise in the current circumstances. Much evidence has been lost because of the passage of so much time, many SPMs found it very painful to relive the need to go over what had happened in the past in what would be normal forensic detail. Much of the accountancy evidence might need to be based on gaps.
45. Applying all the available factual and expert evidence to the matrix of guidelines requires skilled, objective, professional expertise. Opinions can differ. Accordingly, one expects to see the involvement of independent, dispassionate professional lawyers. Various schemes have adopted familiar mechanisms that decisions are reached by involving panels of independent senior lawyers, and of using mediation between parties to try to reach mutual compromise and

agreement, but these mechanisms can take time and expense. The 'softer' techniques of mediation and negotiation still remain within a system that is essentially adversarial, and claimants can perceive that processes, rules and outcomes are unfair. These are, I am afraid, all familiar consequences of almost any dispute resolution system, especially one that is an adversarial model.

46. Opportunities for mediation have been introduced into the Schemes (at the end of the HSS process; in the GLO scheme facilitated by Dentons) and the case management approach applied later by Sir Gary Higginbotham had a similar result. We made clear that we strongly supported attempts by the parties to discuss and agree resolution of areas of disagreement. Resolution of disagreement inevitably involves compromise by one or both parties. This is a well-recognised feature of all civil litigation. Individuals may value compromise for various reasons, such as 'just to get the thing over with' or to be paid quickly. Claimants may feel short changed in situations in which they face significant challenges such as over the unavailability of evidence or considerations of delay. Inevitably, some claimants can feel that the outcome is not what they were entitled to, or is unfair. It is unavoidable that compromise may conflict with the ideal of a 'full and fair' settlement in any individual case. The underlying issue in the Post Office cases is whether processes or techniques have led to undue or widespread unfairness. This raises challenges of verifying and reopening the outcomes of cases that have been settled, as well as deciding how and what to substitute as a different outcome, and what effect that might have on many other cases. I return to this at paragraph 60 below.
47. Added to these complex challenges of achieving justly quantified outcomes in

multiple individual cases, there are a number of wider considerations, notably:

- a. The overriding need to support trust in the various systems, through the delivery of principled and consistent redress. Risks here would include the perceptions that 'they got more than I did', 'I would have got more if I had been in that other scheme'. It could reasonably be foreseen that a wholesale re-opening of settled cases would trigger the collapse of all confidence in all schemes.
- b. The need to deliver speedy outcomes, for obvious reasons. These victims had been suffering and deprived for far too long, and their cases needed speedy resolution. There has been a need to deliver certainty and closure for victims, especially distressed victims, who may have wished just to get everything over with, and not for new arrangements to prolong things even further.
- c. The need to ensure that victims are responded to with compassion in view of the awful nature and scale of what has happened to them, and the amount of time for which they have suffered. This is, we believed, the mark of a civilized society – a phrase I have used publicly several times.
- d. The need to ensure that public money was not wasted or paid out fraudulently. One aspect of this is the cost of lawyers and experts in an adversarial, legalistic system. Another aspect is the problem of balancing the need for compassionate and speedy delivery of compensation to many, whilst avoiding making payments at a level that is difficult to justify on the basis of the presently available evidence, thus being potentially inappropriate

expenditure of public funds. Government is rightly conscious of the 'public accounts' viewpoint.

48. Taking all the issues referred to above into account can present real difficulties. How should the need for fairness, fullness and justice be balanced, taking into account a compassionate approach, the need for evidence and procedures, the need for speed and closure, and the public accounts considerations? It can be an immense challenge to reach decisions like this in individual cases.
49. The Advisory Board gave particular scrutiny to issues of fairness under the HSS Scheme. This issue was in our minds throughout the past two years. A relatively early example of detailed discussion was:

***"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].<sup>3</sup>*

- 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.*

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<sup>3</sup> WITN11710106

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.***

(**RLIT0000250** – Report of fifth meeting held on 14 June 2023, paras 1 to 13).

50. A further example, with the benefit of advice from Sir Ross Cranston, was on the introduction of a Reviewer for the HSS Scheme: see **RLIT0000268** – Report of ninth meeting held on 29 November 2023, paras 1-6.

51. The Inquiry asks if the HSS Scheme, in its current format will provide compensation that is full and fair. The board has held this question in respect of all of the Schemes at the heart of its discussions over the time it has operated.

This is in many ways both simple and difficult. I have referred elsewhere (§42 and 46 above) to the various factors that influence a person's decision to settle their claim, and it is axiomatic that there will always be those who are content and those who for differing reasons are not. The Board cannot answer the question by reference to individual cases, however it has been very careful in its scrutiny of the Schemes over the last two years, and in its recommendations for improvements, and firmly believes that the victims of this scandal and the public at large should be able to have confidence in the Schemes and their operation and the outcomes they deliver.

### **REORIENTING THE RULES, PROCEDURES AND CULTURE OF SCHEMES**

52. The discussion above has highlighted the importance of decisions being reached as a result of clear and fair procedures and rules, of consistency between Schemes, of an appropriate culture and attitudes towards compensating victims. The Advisory Board was able to prompt a number of changes in these elements of schemes, as discussed at 61-63 below.

#### **Clarification of the rules on levels of damages**

53. In particular, we wanted to ensure that there was not only clarity but also consistency between Schemes. All Schemes adopted written Principles that set out heads of damage and ranges of relevant damages.

54. We were told that discussions had taken place at the commencement of the Schemes between claimants' lawyers and the Post Office over the creation of a matrix of levels of damages, based on the Judicial College Guidelines, with certain elements clarified in an Early Neutral Evaluation (ENE) exercise between

the parties and Lord Dyson. We asked to review the Dyson award but did not see a copy (which included redactions) until 2024 because of confidentiality reasons that may otherwise have involved obtaining authorization from all of the OC claimants.

55. We expressed our reservations about the amount quoted for some elements in the Dyson award, especially the level of compensation for damage to reputation. We still think that the Dyson figure was too low. But these are fundamentally matters which judges should decide, rather than an Advisory Board, so it confirmed our feeling that adding judges into the architecture of the Schemes was the appropriate response.

56. Under the GLO Scheme, we considered the bandings set out in the Principles and Guidance:

*“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.”*

**(RLIT0000263** – Report of fourth meeting: part I, held on 29 March 2023, paras 3 & 4).

*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."*

(RLIT0000263 – Report of fourth meeting: part II, held on 21 April 2023, paras 5 to 7).

57. On 26 April 2023, Minister Hollinrake announced that he accepted the Advisory Board's recommendations, set out above.

### **Consistency between Schemes**

58. On consistency, an early discussion took place in April 2023. DBT Officials made the following points:

**“Controls to assure fairness between schemes**

*The Department is working to achieve fairness – including consistency – between the OHC arrangements, the HSS and the GLO scheme through the following measures:*

- *The principles of each scheme are based on the **same established principles of law**;*
- *The Department’s oversight of all three schemes is led by the **same Senior Responsible Officer (“SRO”)**, with input from the **same lawyers, policy officials, accountants and analysts**;*
- *There is considerable **cross-membership of the internal governance bodies** for all three schemes;*
- *The published **GLO principles were developed with the HSS principles as a starting point**, and whilst subsequent changes aimed to improve the accessibility of the guidance to postmasters and provide additional transparency about the approach in the light of HSS experience, those changes did not lead to any material disparity between the principles of the two schemes;*
- *So far as the compensation schemes delivered by the Post Office are concerned, there is **extensive discussion across the Department’s team about cross-cutting issues and solutions**, aimed at maintaining consistency; and*
- *We are considering arrangements for reviewing a sample of GLO*



*cases against HSS precedents.*

- *For most claimants and most heads of loss the Department is confident that these efforts are successful. The Department works to prevent other such issues arising in the first place, and where they do arise, it acts as quickly as possible to resolve them, whilst being careful that the solutions do not cause unintended and unfair consequences, including delay to settlements.*
- *To provide greater assurance of this oversight the Department has recently taken the following two additional steps:*
- *The remit of **this Board** has been extended to include the Department's oversight of the HSS and OHC.*
- *A new internal **Programme Board** of senior civil servants has been established, covering all three schemes, which will meet every four weeks. The Programme Board will review and resolve any interactions between the schemes relating to groups of claimants, heads of claim, processes, resources, risks, communications and lessons learned."*

**(WITN11710103 – HCAB Dashboard 21 April 2023, slide 10).**

59. The Advisory Board noted:

*"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.”*

(**RLIT0000263**, final para).

60. The Advisory Board returned to the issues in October 2023, focusing especially on a rejection of adopting an audit, but identifying the concerns of claimants’ lawyers, and recommending the appointment of a Reviewer for the HSS to follow the GLO model:

***“Assuring fairness and consistency between schemes***

3. *The Board’s aim was to ensure fair and prompt compensation for postmasters, including consistency between the HSS, GLO and overturned convictions arrangements. It was concerned that the schemes should not only be fair but be seen to be fair. It had discussed at its June meeting some recommendations to this end, which the Department had agreed to consider.*
4. *Since becoming Reviewer for the GLO scheme, Sir Ross had conducted a short review of the scheme’s principles, which largely echoed those of the HSS. In the light of that review he set out some recommendations which he had made to the Department. These included enhanced arrangements for transparency and to ensure consistency within the scheme.*
5. *The Williams Inquiry’s interim report on compensation had recommended in July that:*

*... It must be one of the core duties of the Board that it*

*monitors whether compensation payments are full and fair.*

*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.*

6. *Sir Ross noted that he had undertaken a full assurance review of compensation following criminal misconduct at HBOS. His review had involved sampling of a statistically valid stratified sample of cases. It had taken a year with a large team of consultants and had been very costly. He strongly recommended that a similar approach was not followed in respect of the Horizon schemes. Board members commented that it was essential to give postmasters closure in respect of Horizon as quickly as possible. A lengthy review would prevent that.*
7. *Board members asked whether a less comprehensive – and hence quicker and cheaper – approach to sampling would be viable. Sir Ross advised that a smaller sample would not produce reliable results, and hence was not worth doing. In particular it was less likely to identify any problem unless it was widespread. It could therefore provide false assurance.*

8. *The Board accepted Sir Ross's advice but noted that it needed to find alternative routes to assure itself of the fairness of the three compensation arrangements. They noted that any scheme run by the Post Office or its appointees would be distrusted by many because of the organisation's past behaviour. Particular concerns arose in respect of the HSS because most claims had been made without legal help.*
9. *The Board noted that the Post Office had told their September meeting that it was consulting claimants' lawyers on a new process for overturned convictions compensation. An independent assessor – likely to have judicial experience – was to be appointed in discussion with claimants' lawyers to provide an independent appeal route should claimants disagree with an offer made by Post Office.*
10. *The Board noted that in the GLO scheme, where compensation could not be agreed between the postmaster and the Department decisions would be made by an independent panel and, if necessary, subjected to review by Sir Ross. Claimants had Government-funded legal representation.*
11. *An alternative way to test the fairness of the scheme would be to establish the views of claimants' lawyers. The Board already received via the Department regular reports on those views. The Department invited the Board or Sir Ross to speak to those lawyers directly if they wished.*

12. *The Board wanted to hear regularly from Sir Ross about his views of the scheme. If his work gave rise to systemic issues the Board would recommend remedial action. All of these arrangements were independent of the Post Office.*

13. *In conclusion, the Board*

- *Appreciated and supported the recommendations made by Sir Ross;*
- *Took the view that it was essential that compensation was settled quickly, delivering closure to individuals who had suffered from the scandal for many years;*
- *Noted the Inquiry's recommendation that the Board should regularly advise the Minister as to whether full and fair compensation was being paid to applicants under the three schemes; but accepted Sir Ross's advice that a full review of the HSS, including sampling of a representative number of cases, would take too long and require substantial amounts of money to be spent on lawyers and consultants which would be better directed to postmasters themselves;*
- ***Recommended the appointment by Government of a Reviewer for the HSS to follow the GLO model. The HSS Reviewer would consider cases which met similar criteria to those which will apply to the GLO Reviewer.***

- *Recommended that the GLO and proposed HSS Reviewers and the OC Assessor should regularly report to the Department and the Board any systematic concerns about the fairness of the schemes, and believed that such reports represented the most effective way of securing the assurance which the Inquiry had recommended;*
- *Agreed to keep this mechanism under review as it was developed and operated.”*

(RLIT0000267 – Report of eighth meeting paras 3-13).

## **Culture**

61. The culture within the operation of the OC and HSS Schemes was initially reported to us, anecdotally, as being notably adversarial, and it was said that this was impeding a collaborative and swifter approach towards resolution of cases.
62. The Advisory Board emphasized the need for a shift in culture towards a less rigid adversarial approach, and involving increased compassion and flexibility. The adversarial model, perhaps inevitably, was reported to have given rise to a lack of trust by the claimants (and their lawyers) in the Post Office (and their lawyers), and a lack of general trust on the part of the SPMs. A more flexible approach was needed for these claimants towards issues of strict proof through evidence and on the burden and standard of proof. We urged the lawyers and administrators of every scheme to adopt a more user-friendly and compassionate approach, involving greater flexibility on lack of evidence, adoption of a more

mediative mode, and reaching sensible solutions in negotiation more swiftly. For example:

*“8. DBT noted the pilot for encouraging claimants’ representatives on the GLO Scheme to take a proportionate approach to evidence was at an early stage but proving so far successful, though more cases were to be tested before formally implementing more widely and developing the arrangement further. Officials emphasised that unless claimants trusted the scheme they would be reluctant to sign off lighter-touch claims. Such trust could only be built gradually.”*

(RLIT0000275, –para 8).

63. In contrast, the culture around creation of the various new Schemes (GLO, HCRS, HSS appeals) seemed to be notably collaborative, with consultation between DBT, the SPM lawyers, and the Advisory Board. This collaborative approach appeared to have also been increasingly visible in the operation of the various Schemes over time. Potential improvements in ways of working are now being discussed, trialled and implemented on a regular basis between lawyers and DBT.

### **Delays**

64. The Advisory Board paid repeated attention to issues around delays and ways in which progress could be speeded up. The following extracts from minutes record this.

## ***“Speeding up***

### ***Introduction***

1. *The Board had developed two packages of proposals for discussion with the Minister, Sir Ross and Sir Gary. Introducing the proposals, the Chair said that the first package included measures which could be introduced quickly to speed up financial redress. The second group were structural proposals formulated in the light of the large number of additional cases now coming forward.*
  
2. *The Chair noted that the systems for determining Horizon redress had elements of alternative dispute resolution but were largely adversarial. It was the Chair’s view that redress for future scandals should be provided on a more investigative basis, using models which had proved successful in other countries. However, with some 3,000 cases already determined and a premium on pace, it was now too late to introduce such an approach into Horizon redress.*
  
3. *Sir Gary noted that his role on overturned convictions (OC) redress encompassed case management, including driving individual cases towards settlement. He had recently met claimants’ lawyers to discuss progress and would do so again in future. He noted that the Bill to overturn convictions could lead to perhaps ten times as many cases as were currently going*



*through the OC scheme. That created new challenges – for instance for the capacity of lawyers representing claimants. Officials said that DBT recognised these challenges and were keen to work with the Board on them.*

- 4, *Board members agreed that it would be helpful to have regular reports to the Board on progress and pinch-points in all three schemes from their respective case managers. **The Minister agreed to commission this.***

#### **Speeding up redress**

5. *The meeting discussed the first package of proposals, intended to speed up redress.*
6. *OC claimants already received an interim payment of £163,000. The Minister said that, on Sir Gary's recommendation, the Post Office was planning to top this up to £450,000 on the submission of a full claim. This would provide early help to claimants and would incentivise their lawyers to submit claims promptly. **The Board welcomed this change.***
7. ***The Board recommended a similar top-up payment to GLO claimants of £50,000 on the submission of a substantially complete claim. The Minister agreed to this.***
8. *The Minister added that following requests from postmasters, if a GLO case enters the claim facilitation process DBT would now pay 80% of the offer (or 80% of £75,000, if higher). The*

*remaining 20%, plus any subsequent additions, would be paid once the award was agreed by the claimant or decided by the independent panel. **The Board welcomed this approach.***

9. *The Board noted that people applying for redress for overturned convictions could choose between having their claim assessed individually or accepting a fixed £600,000 offer, which could be agreed quickly and without substantial process. A similar offer of £75,000 had been introduced for the GLO: the smaller sum reflected the disparity between typical awards in the two schemes. As well as providing quicker redress for those who chose to accept the offers, these measures meant that resources could be focussed on the larger claims, accelerating them too.*
10. *In both schemes, claims which had already been settled when the fixed offers were introduced were topped up to the level of the offer.*
11. ***The Board recommended that a similar offer should be introduced for HSS claimants.** A range of options for amounts was discussed. Typical awards for the HSS were smaller than those for the GLO. On the other hand one of the principles of the approach to redress was that similar amounts should be available to postmasters in similar circumstances, whether they were in the HSS or GLO.*

12. *The Board made two further recommendations in this package:*
- *Provision of regular information for claimants in all schemes on claim status;*
  - *Bringing the approval process for legal costs for overturned conviction cases into line with that for the GLO.*
13. *The Minister thanked the Board for the proposals described in paragraphs 10 and 11 above and agreed to give them very serious consideration.*
14. *Officials noted that they were discussing with claimants' lawyers further positive ideas to speed the submission of GLO claims, including a fast track system. They agreed to report back to the Board on these at future meetings. The Board agreed to maintain consideration of any further ideas for improving the operation and speed of the various schemes."*

(BEIS0001033 – Report of eleventh meeting held on 22 February 2024, paras 1-13).

***"Speeding redress***

4. *The Board's own discussion with the Minister the previous week had been focussed on identifying practical steps to accelerate redress. They were glad to see that a number of these were already being taken forward and had been announced in the*

*House of Commons on 26 February, including paying 80% of offers made under the GLO scheme if a postmaster chooses to challenge the offer. They would continue to monitor this issue and bring forward further practical ideas for improvement.*

5. *At the previous meeting they had agreed that it would be helpful for the Board to receive regular reports on progress and pinch-points in all three schemes from their respective case managers. These would build on the data which the Department already published monthly. The Board now further **recommended that these reports should be published and sent to the Select Committee.** DBT officials would ensure that formal letters issue to Dentons, Sir Ross Cranston and Sir Gary Hickinbottom to confirm these arrangements.*
6. *The Board agreed to meet lawyers advising postmasters in the schemes to discuss further options for improving redress.”*

(RLIT0000273 – Report of twelfth meeting held on 28 February 2024, paras 4-6).

**“Redress**

8. *The Board noted the good progress outlined in the latest redress data [footnote 1].*
9. *The Board noted that an extension of the time limit for accepting £600,000 for those who have had convictions overturned by the Court has been implemented, following views from claimant*

*legal representatives and a recommendation from Sir Gary Hickinbottom. DBT confirmed that, for any claimant who had submitted a claim on or before 14 June 2024, the £600k fixed sum offer would remain open unless and until that claimant makes any further claim. This would allow claimants proper time to consider the offer.*

10. *The Board asked how pace was being increased on each scheme. DBT confirmed that Sir Gary was considering various options for the overturned convictions scheme. A case management function would also be procured for the new Horizon Convictions Redress Scheme, similar to that already in place on the GLO scheme. Board members reported positive feedback from some postmasters' lawyers on offers being made under the GLO scheme.*

11. *The Board considered whether there would be disparities in settlement sums arising from a lack of legal representation for some claimants. DBT confirmed that there is extensive case comparison across the schemes to ensure fairness as far as possible between cases with similar fact patterns. Post Office would also shortly be writing to claimants with regard to the £75k fixed sum offer for those who have not yet settled or have already settled below that amount in the Historical Shortfall Scheme. DBT would continue to consider the Board's previous recommendation of an independent HSS appeals process with*

*Ministers, following the election.*

12. *The Board noted they would continue to look at the treatment of family members and how these claims are dealt with. In particular there was a risk that families where splits had occurred could receive different treatment than those families which remained amicable. The Board agreed they would consider this further with claimants' legal representatives."*

**(BEIS0000841** – Report of fifteenth meeting held on 17 June 2024, paras 8-12).

- "12. The Board noted that a large number of HSS cases had been submitted in recent months, stimulated by the ITV drama Mr Bates vs the Post Office. They expressed concern that the Post Office was making few offers in response. DBT noted that many of these cases may benefit from the £75k fixed sum offer. Payments on such cases should begin to issue shortly. In the Board's view, the two difficulties posed by HSS were the need for panel assessments before offers are made and the continued involvement of the Post Office and its lawyers in the process (beyond disclosure where it was unavoidable). DBT agreed to look further at the pace of the HSS and provide information to the Advisory Board on take-up of the £75k offer.*
13. *The Board also requested further data on the rate of redress payments over time.*

14. *A number of HCRS claimants had stated that they did not wish to appoint legal representation for their claims for fixed-offer redress, because they wanted to reduce the amount of public money spent on lawyers. The Board discussed whether there should be a process of 'sense checking' the cases of claimants who choose not to seek legal representation."*

(BEIS0001028 – Report of sixteenth meeting held on 29 August 2024, paras 12-14).

***“Redress***

11. *DBT gave an update on their initial thinking on the HSS appeals process which the Minister had announced on 9 September. They outlined how they are learning from the schemes already in place to ensure the process is as speedy and appropriate as possible. DBT are currently talking to the Post Office to ensure the right data sharing protocols are in place.*

12. *DBT said they were keen to consult the Board, former postmasters and other experts at scheme design stage.*

13. *The Board asked about HCRS claimants who choose not to seek legal representation. DBT stated that so far this has only happened with people who wish to accept the £600k fixed sum. DBT assured the Board that claimants are strongly encouraged to appoint legal counsel and provided with information on how to do so. The Board remained concerned that this posed risks to*

*some claimants, but understood the reasons why some claimants did not wish to be represented.*

14. *The Board asked whether the department was having trouble getting law firms to sign up to the HCRS tariff. DBT said 11 firms had already agreed to use the tariff, and to make no other charges to postmasters.”*

(**RLIT0000407** – Report of seventeenth meeting held on 18 September 2024, paras 11-14).

65. Many of the issues discussed above are interrelated. A further example of this will be apparent from the extensive discussion with representatives of the Post Office and its lead external lawyer on 5 September 2023, in which a number of themes were emphasised, especially independent legal advice funded by the Post Office (see also §74 below), the need for an independent assessor, consultation with the SPMs’ lawyers, and the need for speed:

1. *The meeting was joined for this item by Simon Recaldin, Neil McDaid and Nick Lowman of the Post Office and Alan Watts of Herbert Smith Freehills.*
2. *The Post Office team described the evolution of the system for compensating former postmasters whose convictions have been overturned. All these people had been encouraged to seek legal representation, with such costs being paid by the Post Office. Postmasters whose convictions had been overturned (other than those whose appeal had been allowed on the grounds that a retrial*



would not be in the public interest) had also been offered substantial interim payments (initially £100,000, now increased to £163,000). These had been paid promptly.

3. Full and final settlements in two lead cases had been negotiated bilaterally with claimants' lawyers. Pecuniary losses (e.g. loss of earnings) had been considered separately from non-pecuniary ones such as personal injury or damage to reputation. The former Supreme Court judge Lord Dyson had been commissioned jointly by the Post Office and lawyers representing a number of claimants to undertake an "Early Neutral Evaluation" (ENE) of a sample of non-pecuniary claims. On the basis of this evaluation he had recommended ranges for the non-pecuniary heads of loss to be applied across all former postmasters with overturned convictions, with the offers for each individual being within the range and which were sensitive to the facts of each case. As a result, 59 of the 83 eligible postmasters had agreed settlements of their non-pecuniary losses. Eight were considering offers, with three further claims being assessed. Another 13 postmasters had not yet submitted claims.
4. The Post Office was now seeking to make similar progress with pecuniary losses by establishing a process which was transparently fair, consistent and claimant oriented, drawing on learning from the ENE. It had consulted claimants' lawyers on principles for assessing such losses and a process for delivering

*consistent and fair assessments against those principles. That process had three key elements to ensure fair outcomes:*

- Independent legal advice to the postmaster throughout the process, with reasonable costs met by the Post Office;*
  - An independent assessor who was being appointed to provide an independent appeal route should claimants disagree with an offer made by Post Office. Claimants' solicitors had been invited to reach consensus on the individual(s) who should perform this role and were currently considering candidates. The person chosen as Chair was likely to have judicial experience.*
  - Retention by postmasters of the right to have their compensation determined by the Courts – but the purpose and aim of the new process was to ensure that fair settlements could be reached without needing to take such a step.*
- 5. After several rounds of discussion with claimants' lawyers, the Post Office were now close to finalising the principles and agreeing the process. Further comments from claimants' representatives had been requested by 15 September.*
- 6. The Board welcomed the promulgation of principles and a timetable for agreeing them and the final process. They wanted the new arrangements to come into force as quickly as possible. They encouraged Post Office to document and communicate the*

*approach thoroughly so that it was fully understood by postmasters. They urged claimants' lawyers to reach early agreement on the identity of the independent assessor and to submit remaining claims as quickly as possible.*

- 7. The Board also expressed concern that claiming that the 'retention of litigation rights' was restating a right claimants had in any event and should not be presented as a benefit of the scheme.*
- 8. The scheme should if operated well on both sides avoid litigation. To aid this, and especially for reasons of consistency and oversight across all the schemes the Board took the view that the reviewer proposed by the Board under the HSS scheme should be the same person as the Reviewer under the GLO scheme. The Department could consider asking him to play a similar role for the compensation for those with overturned convictions, in addition to the assessor.*
- 9. The Board noted that the Chair has written*
  - a. to the CCRC asking for more information about cases, their process, and the status of cases, and*
  - b. a generic letter to the Non-Post Office Prosecuting Authorities, including the DWP, and authorities in Scotland and Northern Ireland, asking for more details of their procedures, number of cases, and status of cases.*
- 10. Copies of these letters are being placed on the Board's web-page."*

(**RLIT0000266** – Report of seventh meeting held on 5 September 2023).

## **THE LUMP SUM MECHANISM TECHNIQUE IN THE OC AND HSS SCHEMES**

66. On 18 September 2023, the Government announced that all eligible HSS claimants would be entitled to a fixed sum award of £600,000. I believe this novel technique was the idea of the Minister, Kevin Hollinrake MP. Claimants are offered an option of accepting a fixed lump sum in full and final settlement of their claim, whilst retaining the option of continuing, if they prefer, with full (forensic) investigation and quantification of their losses. The Advisory Board supported the introduction of this offer (see **RLIT0000267** - Report of eighth meeting paras 14-16). Subsequently, the Advisory Board queried, and was able to clarify, the position as regards time limits:

*“10. The Board sought clarification on whether there was a time limit for the upfront ‘fixed sum’ offer of £600k for individuals who have had their conviction overturned by the courts. DBT confirmed that there is no time limit for a claimant to accept this offer. However, if an individual chooses the fixed sum offer, there would not be an option to pursue a full assessment of their claim. Similarly, an individual choosing to pursue the full assessment route would be eligible for £450k once they have submitted their full claim, but not then be able to take the option of the ‘fixed sum’. DBT confirmed they had written to all claimant representatives outlining this.”*

(**RLIT0000275**, para 10).

67. In January 2024, the Minister announced that a fixed lump sum offer of £75,000 would be made to all members of the GLO Scheme (see **BEIS0001034**, paras 5-6).
68. On 13 March 2024, the Government announced that all eligible HSS claimants would be entitled to a fixed sum award of £75,000.
69. The lump sum mechanism meant that, whether individual claimants felt that they were, or might have been, owed more or less than the lump sum, they could take that sum and resolve everything without further ado. It also set a floor for settlement of all cases in the relevant scheme. All those who had earlier accepted sums under the lump sum have been paid a further sum to bring them up to the lump sum level.
70. The lump sum mechanism has proved to be an effective short cut for a significant number of victims, saving them considerable angst by avoiding having to go through an uncertain and unfamiliar process, and saving time, effort and costs for both claimants and the state.
71. The technique has resolved a good number of cases swiftly. This has shortened queues and freed resources on all sides to concentrate on the more difficult cases.

## **SPECIFIC ISSUES ADDRESSED**

72. A number of issues have been highlighted by the Advisory Board, and solutions been found in most instances. Particular issues raised are outlined below.

### **Urging SPMs to come forward and claim**

73. It was noted throughout 2023 that whilst claimants who had not been convicted were continuing to come forward, many appeared to be reluctant to come forward. The Advisory Board made repeated statements (in our minutes, on social media and other contacts with claimants and lawyers, and in media interviews) urging people to come forward. As time progressed, psychological reasons for reluctance to come forward became more apparent (for example, see §28.c above).
74. In the HSS Scheme, there was a lack of provision of funded legal advice to claimants at the initial stage of them submitting a claim (unlike under the GLO Scheme). This has remained a source of contention and difficulty. The principle of legal representation, funded by the Post Office (and hence the state), was obvious. The difficulty was the practical one that the vast majority of claims had already been settled. There was a level of confidence that the process and in particular the approach of the independent Panel was broadly fair. Confidence was increased by the addition of a judge to the system (Sir Gary), the introduction of the £75,000 lump sum that acted as a floor, and the introduction in later 2024 of an HSS1 appeal mechanism.
75. As far as the Advisory Board are aware, all of the late applications referred to in the Interim Report were accepted. The Advisory Board understands that any further late claims will be addressed by a scheme operated by DBT, the details of which are still under internal discussion.

### **Use of 'without prejudice' in offer letters by the Post Office**

76. This struck Advisory Board members as inappropriate, a potential abuse of power in negotiations, and potentially a breach of professional ethical rules (**BEIS0001034**, para 8). The Advisory Board raised the practice with the Post Office and with the Solicitors Regulatory Authority, after which it appeared that practice was changed.

### **Remuneration tariffs for lawyers**

77. Given that the state was paying for claimants' legal representation (apart from the initial stage of the HSS1 Scheme), there are advantages for all, not least the taxpayer and those required to undertake state budgeting, as well as for speeding the reimbursement of the lawyers involved, if a tariff can be established for remuneration of the claimants' lawyers.

78. Some objections were raised either to a tariff or to the sums payable, but these were largely *ex gratia* schemes, and although fair representation was essential, and should be paid fairly, the court-based approach of assessing legal costs at the end seemed unwieldy. Some strong criticism was also heard that 'it was the lawyers' who slowed the process down, and were paid large sums of money. As with many issues, this was an issue of balance. It needed to be recognised that the system involved lawyers not just for the Post Office and HMG but also for the claimants. The total bill is considerable, and it is right to consider whether some constraints are achievable.

79. Almost all the lawyers agreed a costs tariff with HMG in relation to all Schemes, and recently in relation to the HCRS.

*“7. The Board discussed adopting a legal tariff for the Horizon Convictions Redress Scheme (HCRS) and strongly agreed that DBT should implement one, as it has for the GLO Scheme. They noted a concern about whether legal representatives would sufficiently expand their capacity in advance of the implementation of HCRS given the number of claimants likely to come forward.”*

**(RLIT0000275).**

80. The Advisory Board was able to be a mechanism for clarifying some misunderstandings.

*“The BEIS team confirmed that the proposals on legal fees had been misrepresented. The first payment of £900 was for initial contact with the client only. BEIS was currently developing a full tariff of fees in discussion with claimants’ lawyers.”*

**(RLIT0000260, para 3).**

## **Bankruptcy**

81. This issue was a matter of concern two years ago, but the Government resolved the issue so that those who were made bankrupt or subject to an Individual Voluntary Arrangement (IVA) did not end up out of pocket. Thus:

*“4. DBT updated members on the principles which will be adopted for bankruptcy claims, and the legal position of the compensation payments, to ensure insolvency claims are fairly dealt with.*

*5. The Board welcomed DBT’s commitment to a proactive approach*



*to assessing claims and ensuring full losses are recovered and offers are fair.”*

(RLIT0000262, paras 4 & 5).

82. The Advisory Board has not had any complaints drawn to its attention since that update was given.

### **Tax**

83. The Advisory Board confirmed its view that individuals should not lose out because of tax rules. HMG responded similarly, confirming that individuals would not end up being penalised by losing their compensation entitlement.

### **‘Tainted’ Post Office staff**

84. There was concern expressed that individuals employed by the Post Office who had been involved in earlier unacceptable behaviour, especially in investigations, prosecutions and suspensions, should not remain involved in any part of work dealing with the entitlement of victims to compensation or of the various Schemes. The Advisory Board raised this issue on a number of occasions with both DBT and the Post Office. For example:

*“11. The Board asked for reassurance from DBT that those who were working on redress in the Post Office had not played a role in the Horizon scandal. DBT confirmed they had asked the Post Office this question when setting up the GLO scheme and they had received reassurance on this point. The Board agreed that the Chair should write to the Post Office CEO to seek assurances that other people*

*who had played a role in the scandal were not still involved in redress or appeals in any way.”*

(**RLIT0000275**, para 10).

85. I subsequently raised the issue in correspondence (see **BEIS0000841**, para 13). We were given assurances of investigation that we indicated were far from satisfactory. The issue was raised recently with the new Chair of the Post Office:

*“3. The Board expressed strong concern that some Post Office staff who were thought to have been involved in the scandal continued to be employed on matters relating to Horizon redress. The Chair said that he fully understood the Board’s concern: this was a matter on which the Post Office had made some progress and on which the Board continued to work actively. The Board were grateful for the Chair’s update and hoped to hear further news in the near future.”*

(**BEIS0001028**, paras 1-3).

86. We look forward to closure of this issue being achieved soon.

### **Legal charging practices**

87. A small number of lawyers charged or agreed success fees at the same time as tariff reimbursement was available. The details are issues of professional conduct, and the Advisory Board has drawn the attention of the professional regulatory authorities to the issue for them to consider. See **BEIS0001034**, para 8; **RLIT0000273**, paras 8-10.

### **THE ISSUE OF OVERTURNING CONVICTIONS**

88. As soon as the Advisory Board's remit was extended to cover all the extant compensation Schemes, it became clear that, at that stage, the largest cohort of SPMs who remained without compensation comprised those perhaps 900 or so individuals whose convictions had not been overturned. The Advisory Board asked why they could not be paid compensation swiftly. We were told that they could not be compensated before their convictions were overturned.
89. That led us to investigate the reasons why convictions were not being overturned more quickly. We interviewed the independent lawyers advising the Post Office on its response to criminal appeals. We also interviewed the Criminal Cases Review Commission (see **RLIT0000250** – Report of fifth meeting held on 14 June 2023, paras 14-19) and spoke to the Law Commission, who had started a project on criminal appeals. There seemed to be a considerable obstacle in bringing cases before the Court of Appeal. The underlying problem seemed to be that lawyers felt bound to apply the criteria for overturning Post Office Horizon convictions that had been set by the Court of Appeal.
90. In our view, those criteria were clearly too restrictive, especially given the abundant evidence that was then being revealed by the Inquiry about fresh grounds for overturning convictions in view of what appeared to be the systemic and appalling behaviour by Post Office investigators, and in procedural failures to disclose information on the unreliability of the Horizon system. However, it did not then appear that the CCRC or lawyers would feel able to bring forward appeals to try to expand the Court of Appeal criteria until at least after the Inquiry had issued its Final Report in 2025. Even then, we detected concern amongst the lawyers over what the Court of Appeal's decision might be.

91. A further obvious impediment to appeals being brought was that the rules required an individual to come forward to instigate an appeal in their case. But it was becoming increasingly clear that many of the SPMs were so traumatised that they simply did not wish to come forward. They were, reasonably enough, unwilling to revisit traumatic past history, to have anything to do with the state or its courts, or even to talk to lawyers who might be able to help, but who might well advise of the uncertainty of launching any appeal.

92. I referred to these issues in my letter to Sir Wyn of 15 August 2023:

*“We believe that there is already sufficient evidence to demand a positive presumption that unless clear evidence to the contrary remains, all Post Office convictions are unsafe and should be overturned. Further, we believe that a change in the law may be needed that a tainted investigation undermines other and previous investigations by the same tainted team. Such changes need to be done rapidly: as you know, many of those wrongly convicted are now elderly, and some have sadly already passed away. Because these people are still regarded by the law as criminals, they are not eligible for compensation. That is a matter of grave concern to us.”*

**(WITN11710102).**

93. In his reply of 25 August 2023 **(WITN11710101)**, Sir Wyn confirmed that he intended to continue with hearings on Phase 4 issues until 23 December 2023 and then set out his findings and recommendations on all matters he has investigated, including criminal actions against SPMs, in his final report. Our

discussions with the Law Commission also confirmed that their timetable for considering the possible reform of criminal appeal procedures stretched forward over several years.

94. We continued to investigate the situation (see **RLIT0000267**, paras 17-22 and attached note of meeting with the Law Commission on 23 October 2023; **RLIT0000268** – Report of ninth meeting held on 29 November 2023, paras 17-18) and on 14 December 2023 I wrote on behalf of the Advisory Board to the Lord Chancellor attaching a detailed paper. My covering letter said:

*“I am writing as Chair of the Horizon Compensation Advisory Board, on behalf of myself and colleagues: The Rt Hon Lord Arbuthnot of Edrom, The Rt Hon Kevan Jones MP, and Professor Richard Moorhead.*

- *Over 900 postmasters were prosecuted during the Horizon scandal. **There could not have been such a massive outbreak of criminality** amongst people who were, and remain, as a group of citizens, careful, law-abiding and trustworthy individuals.*
- *These convictions were the most egregious effect of the Horizon scandal: **until they are overturned we cannot put the scandal behind us.** Many victims remain traumatised and ostracised by their communities.*
- *The convictions are unsafe not only because they relied on the Horizon computer evidence, but also because of egregious systemic **Post Office behaviour** in interviews and pursuing*

prosecutions, vividly demonstrated in evidence to the Williams Inquiry. This led to **guilty pleas and false confessions**, driven by legal advice to victims to minimise sentences, and by the **psychological pressure** of dealing with an institution systematically disregarding the truth and fairness.

- Individuals can apply to the CCRC and Courts to have convictions overturned – but only 93 of the 900 have done so successfully. So **the current approach is not working**. This is because:
  - Over two decades, much of the **evidence has been lost** or destroyed by the Post Office.
  - Individuals' **unwillingness to appeal** given their understandable deep distrust of authority.
  - The Court of Appeal rules impose limitations on the **Post Office's ability to concede** cases.
  - The unreliability of evidence about **other Post Office-related systems** (and DWP payments), which has still not been adequately examined, and may never be.
  - In cases where Post Office concludes that a retrial would not be in the **public interest**, the conviction is overturned but the postmaster is **denied full compensation** and left with an implication of continued guilt.

For these reasons we believe the only viable approach is to **overturn**

***all 900+ Post Office-driven convictions from the Horizon period.***

*A small minority of these people were doubtless genuinely guilty of something. However, we believe it would be worth acquitting a few guilty people (who have already been punished) in order to deliver justice to the majority – which would not otherwise happen.”*

(**BEIS0000893** – Letter from the Advisory Board to the Lord Chancellor of 14 December 2023).

95. Professor Richard Moorhead and I investigated further the difficulties faced by victims who continued to suffer stress, or who were having to relive their distressing history through having to deal with official processes. Together with his colleagues at Exeter University, Dr Rebecca Helm, Dr Sally Day, Dr Emily Spearing and Dr Karen Noakes of UCL, we wrote a paper, published on the Advisory Board’s website, that examined the scientific basis for individuals predictable experience of stress in these conditions, and the triggering of desires to avoid any reengagement with the past or the state.
96. Public concern peaked in the first week of January 2024 after the screening by ITV of the series *Mr Bates v The Post Office*. Within a few days, the Government decided that the only option was to overturn all convictions by legislation. This led to the Post Office (Horizon System) Offences Act 2024 (the “Overturning Legislation”). Individual members of the Advisory Board continued to engage members of the judiciary and legal profession on the reasons why traditional means of overturning convictions were non-responsive in these circumstances, and why the Act did constitute an essential upholding of the rule of law and fairness in this country, rather than a constitutional affront. In my view, this was

essentially not a conflict between Government and judiciary, but would have been one between judiciary and the populace if the Government had not reacted swiftly, as it did.

97. The next major challenge for DBT and the Advisory Board was to establish a fresh compensation scheme for those whose convictions would be overturned by the Act. This was announced in August 2024 as the Horizon Convictions Redress Scheme (HCRS). Importantly, it was accepted that the HCRS would be run by DBT rather than the Post Office, which the Board had supported for some time.
98. Details of HCRS were discussed between officials and the Board from early 2024 onwards (see **WITN11710104** – DBT Note on Horizon Convictions Redress Scheme). This illustrates that it takes time and considerable careful effort by officials to design and establish a fresh scheme (as I touched upon at §35 above).
99. Suggestions that a new scheme or major reform to an existing scheme is necessary can fail to appreciate how much effort goes into delivering and implementing such changes. Throughout our work, the Advisory Board was aware that recommendations that involved major restructuring might seem simple to describe or call for, but might take so long, and be so destabilising of the whole Post Office compensation landscape, as to be undesirable.
100. However, having some time to consider details meant that we were able to assist officials through continuing to debate fine tuning of aspects. One example was the wording of notification letters to those whose convictions would be overturned, and the wording of either undertakings by them or of explanations of



conditions designed as anti-fraud measures.

## **THE SECOND COHORT UNDER THE HORIZON SHORTFALL SCHEME**

101. The January 2024 TV series and publicity of the Overturning Legislation had the effect that around 1,900 victims came forward for the first time in the first half of 2024. From early 2024, the Advisory Board and HMG were mindful of the need, opportunity and benefits of making changes so as to avoid operating the HSS Scheme for the 'new cohort' and instead to create a new Scheme (HSS2), especially if it could be governed and managed by DBT (or some other independent body) rather than by Post Office. My perception is that the Government understandably had to devote extensive attention during 2024 to the Overturning Legislation and the creation of HCRS, but after those challenges had been surmounted, it was possible to scope the options for addressing HSS2, including issues of limitations on available legal resources and procurement hurdles, and also to introduce a new appeal mechanism for HSS1.

102. An early discussion on the issues took place in February 2024:

***"HSS2***

### ***Structural changes***

*15. The meeting turned to the Board's more structural proposals.*

*16. The Board noted that the significant number of new HSS cases stimulated by Mr Bates vs the Post Office, and the large number of OC cases to be overturned by legislation, would require more capacity and create opportunities for changes which could increase both the*

*pace of redress and claimants' trust in the system. OC cases arising from the legislation would effectively require a new scheme – "OC2".*

*17. That capacity would need to include additional external legal advisors. The Board recommended that this should be used as an opportunity to employ new legal advisors in Horizon redress (for those with overturned convictions) as quickly as could be managed without unnecessarily disrupting delivery. New advisors should be instructed to make full and fair offers as quickly as possible without unnecessary quibbling.*

*18. As well as external lawyers, new in-house capacity needed to be established to run OC2. That could be built in DBT as easily as in the Post Office. In the interests of claimant trust, **the Board recommended that OC2 should be managed by DBT, draw on the Department's experience of running the GLO scheme and involve Sir Gary in a similar way to his existing OC role.** They suggested that if possible, claimants should be allowed to choose to defer OC claims and include them in OC2. Whilst they thought that it would in principle be desirable in the interests of postmaster trust to make a similar recommendation in respect of HSS claims, they concluded that this would risk unacceptable disruption to the delivery of the scheme.*

*19. The Board had previously recommended the creation of an independent appeals process for the HSS. If their recommendation to introduce a minimum payment for HSS was accepted, the number of*

*postmasters who might want to take advantage of an appeal mechanism should be reduced substantially, reducing the associated practical difficulties. **They therefore reiterated their recommendation. The appeals process should be run by DBT, again adopting much of the GLO model with Sir Ross as Reviewer.***

*20. The Minister agreed to consider the proposals in paragraphs 16-18 above very closely as the Department developed plans for the implementation of OC2.”*

(BEIS0001033 – Report of eleventh meeting held on 22 February 2024, paras 1-5).

## **THE CURRENT SITUATION**

103. At the current time, the major challenges and unresolved issues that the Government faces include:

- a. The number of individuals coming forward since the ITV series. This in effect requires an ‘HSS2’ Scheme. It is certainly an opportunity to reform the Scheme landscape further. In a significant number of cases, we hear that individuals suffer from mental distress in going over very painful history, especially if they need to approach state officials or institutions, and some can have difficulty talking to their own lawyers. As noted above, the Advisory Board has recommended that governance of the OC and HSS Schemes should be transferred from the Post Office. I suspect that serious consideration is being given to achieving this end. A significant challenge has

been that the DBT has faced a series of major operational challenges in establishing and running first the GLO Scheme, then the Overturning Legislation, then the HCRS Scheme, then an appeal mechanism under the HSS Scheme. Decisions may be significantly affected by the scale of the remaining number of cases that remain as at around the end of 2024, given the progress made in operation of the various Schemes and the resultant ongoing pressure on overall resources, and especially the extent to which the two lump sum options are taken up by claimants.

- b. To ensure that the GLO and new HCRS Schemes continue to operate well. The performance statistics on the GLO Scheme (e.g. of responding to claims within 90 days) are encouraging.
- c. To respond well and swiftly to the recent information about those who have been 'victims of Capture'. HMG has recently received a Report and Addendum from investigators, which found evidence of shortfalls, investigations, demands for repayment of sums allegedly owed, and prosecutions, during the period of operation of the Capture software. I wrote to the Lord Chancellor on 23<sup>rd</sup> October 2024, on behalf of the Advisory Board, saying that we could see no reason to distinguish the position of 'Capture victims' from 'Horizon victims' and calling for legislation to overturn convictions and for compensation arrangements to be put in place.
- d. To provide clarity over whether those prosecuted by the DWP have convictions that are unsafe.
- e. To ensure that the employees of postmasters and retailer companies have

been dealt with fairly. See **RLIT0000273**, para 7.

- f. To respond fairly and with consistency to those whose appeals that were rejected by the Court of Appeal, mainly on the basis of applying its restrictive 'Horizon system essential to the prosecution' criteria, but where we consider that other grounds would have been valid if the cases were eventually to be considered by the Court of Appeal. Cross-party support for overturning all these cases had been indicated to Lord Arbutnot during discussions on the Overturning Legislation, but failed to materialise when Parliamentary time was curtailed by the sudden announcement of the General Election, with the result that such cases did not make it into the Act that was agreed in the 'wash up'.
- g. Family members have suffered psychological and material harm as a result of what happened to their parents, spouses or relatives. Some family members have been able to benefit from being included in SPMs' claims but some have not. The legal rules and boundaries need clarification. This issue will need illumination of complex factual issues, and careful consideration of other situations that have arisen involving family victims of other scandals.
- h. The Advisory Board recently noted the adoption of a flexible approach by DBT:

*"9. The Board reiterated their concern that members of postmasters' families should receive full redress. DBT described their guidance to GLO claimants' lawyers, which says that:*

*"The aim across all Horizon compensation schemes is to*

*compensate postmasters directly and attempt to put them back in the same financial position they would have been in but for POL and the issues with Horizon. The policy does not extend to direct compensation for family members, however we do compensate some pecuniary losses in situations where there is evidence of a partnership / joint loss where the loss claimed should be considered as a single economic unit and/or a party to the contract with POL by virtue of that partnership and/or foreseeability of pecuniary loss being caused to the partner or joint asset owner.*

*In keeping with the general policy objective above, we do not compensate family members for any non-pecuniary damages. However, it is clear that witnessing family members in distress may have a distressing impact on the postmasters themselves. In those instances where it is claimed we consider it fair to consider this element under the claimants claim for Distress & Inconvenience.”*

*10. DBT confirmed that it had been able to apply this guidance even in cases where family members were now estranged.*

*11. The Board’s view was that the Department’s guidance was not sufficiently broad and raised some contrasting examples of family members. They would discuss this issue with claimants’ legal advisors.”*

**(BEIS0001028, paras 9-11).**

104. The Advisory Board continues to engage on these issues and to support the

development of effective responses.

## **ISSUES FOR THE FUTURE**

105. A number of issues remain largely outside the scope of the existing compensation arrangements but should be addressed as more effective responses to future national scandals.

### **Providing mental health support**

106. Traumatized victims need swift mental health support and therapy. This is not currently capable of being addressed by a legal system that is essentially focussed on providing a remedy in the form of money. It is an issue that is of fundamental importance, but will remain unaddressed for as long as people cling to adversarial mechanisms. The Advisory Board has had a number of conversations with charities, the Victims Commissioner, the NHS Patients Commissioner and others about possible future responses. A veterans charity has established an admirable system that refers military personnel suffering from PTSD for swift and effective courses of therapy, which could be utilised but faces a number of challenges in providing support to non-military personnel, including issues of potentially large numbers, possible triage, and funding. The issue deserves serious attention in any future redesign of whether something more responsive than just a 'compensation/redress scheme' can be delivered.

### **Prevention and Response Mechanisms**

107. The essential elements that need to be delivered are:

- a. Corporate governance requirements, and organisational cultures, that

prevent inappropriate institutional behaviours and closed minds.

- b. A system and culture that identifies problems swiftly.
- c. A system that responds to problems, both prospectively, so as to identify relevant changes, and retrospectively by providing care and psychological, practical and financial support.
- d. A system that ensures that required institutional and cultural changes actually occur.

108. A major challenge is that every time Government decides to create a new compensation scheme in responding to a new disaster, this has to be done at speed, and the default mechanism is to adopt a scheme that is adversarial and legalistic. This situation does not enable learning to be applied from other possible models, so that schemes are improved from the traditional 'court-like' default model. The traditional approach fails to enable the creation of a model that is more responsive to the needs of a particular cohort of victims. Considerable learning is available from previous schemes, from the needs of particular groups of victims (such as the need to avoid compounding their vulnerability or trauma), and from other successful models. Two leading models, which I have researched extensively with academic colleagues, are Ombudsmen for consumer complaints against suppliers in regulated markets (in which the UK and Belgium are international leaders) and administrative schemes for personal injury claims (the 'no blame' schemes of all Nordic states). The consumer Ombudsmen and the Nordic personal injury schemes provide strong examples of successful investigative and victim-friendly models, delivering consistent, fair



and speedy outcomes without alienating people through an adversarial process.

109. The Advisory Board published in July 2024 a paper that I wrote on these issues.

I believe that new permanent standing mechanisms are required, not just for delivering compensation but also for what can generically be described as in the 'regulatory' sphere (**RLIT0000288** – “Future approach to Compensation” report).

In relation to delivery of compensation, a process is needed that is more efficient and less costly and slow – this need will be better addressed by an investigative rather than adversarial process. This points to a new authority and system that is closer in model and style to an Ombudsman system than to an adversarial system. Another welcome innovation would be to have a “sympathetic independent friend” available to assist and support victims, this would be a person who is not a lawyer, but familiar with processes and systems, who can for example support victims in telling their stories and hunting for documents, in situations where formal legal advice is unnecessary.

110. In relation to a mechanism for ensuring that change is actually implemented, there have been many reports of disasters in the public sector (e.g. in the NHS, and recently the Infected Blood, and Grenfell Inquiries) following which recommendations have been made but are, or may remain, unimplemented. One can contrast the role of regulation in the private sector, which has a function of overseeing implementation of change so as to reduce future risk. The Board considers that what is needed is a new mechanism, such as a standing investigative authority and a linked but independent response authority, that effectively oversees not just the implementation of recommendations but is also capable of influencing the future behaviour and culture of public bodies

(**RLIT0000288**, page 5). Without such a mechanism, it is predictable that public bodies will give rise to major disasters that could be prevented, or at least be identified, far more quickly than at present.

111. What is also needed is a centre of expertise on compensation schemes within government (presumably within Cabinet Office) and a standing facility for the operation of compensation schemes that could be triggered swiftly in the future to identify and adopt a mechanism that is responsive to the particular needs of the situation and victims, especially in its ability to adopt more flexible and investigative modes. Templates and principles for future schemes should be developed that provide appropriate flexibility in responsiveness, and move away from the adversarial mode.

112. I should note to the Inquiry, for completeness, that I have raised these thoughts with the National Audit Office and also with Professor Sir Jonathan Montgomery and Cabinet Office officials, who were at the time designing the Infected Blood Compensation Scheme.

113. The Inquiry invites me to reflect on the experience of the Advisory Board. Has the mechanism of having an Advisory Board been a success? To my knowledge, the Advisory Board is almost unique as a feature of a Government compensation scheme, however, based on the engagement I and the other members of the Board have had since its inception, with parties on all sides, it seems widely regarded as having played a helpful part in the process.

114. The Advisory Board has no executive power, but has been able to exert considerable influence for changes and improvements that supported key

outcomes. Our role has been as an independent assistant, clearly motivated by the twin goals of delivering full, fair, and speedy redress and compensation to the victims of this awful saga, whilst also recognising the need to provide assistance to the state, and able to communicate with all major groups and act as a channel for trusted communication in raising issues and supporting discussions over finding appropriate solutions. There has been a strong problem solving element to our work, and generation of a number of reforms and innovative solutions. As explained above, the Advisory Board has no remit or power to implement any recommendations, and decisions on implementation are made by those responsible for a relevant Scheme, such as the Post Office and Ministers. I do not believe that the Board should have had (or should have) any such implementation role. The influence of the Board has been significant precisely because it is functionally independent from the administration and governance of the Schemes.

## STATEMENT OF TRUTH

I believe the content of this statement to be true.

Signed: 

Dated: 30<sup>th</sup> October 2024

**Index to First Witness Statement of Professor Christopher Hodges**

<b>N°</b>	<b>URN</b>	<b>Document Description</b>	<b>Control Number</b>
1	RLIT0000270	Terms of Reference for the Horizon Compensation Advisory Board.	RLIT0000270
2	WITN11710105	<a href="https://www.gov.uk/government/groups/horizon-compensation-advisory-board">https://www.gov.uk/government/groups/horizon-compensation-advisory-board</a>	WITN11710105
3	RLIT0000410	Updated Terms of Reference for the Horizon Compensation Advisory Board (2024).	RLIT0000410
4	INQ00002027	The Post Office Horizon IT Inquiry - First Interim Report: Compensation.	INQ00002027
5	RLIT0000265	Horizon Compensation Advisory Board Report of sixth meeting held on 31 July 2023.	RLIT0000265
6	WITN11710102	Letter from Horizon Compensation Advisory Board to the Inquiry of 15 August 2023.	WITN11710102
7	WITN11710101	Letter from the Inquiry to the Horizon Compensation Advisory Board of 25 August 2023.	WITN11710101
8	RLIT0000359	DBT response to the Post Office Horizon IT inquiry's first interim report: compensation, published 26 October 2023.	RLIT0000359
9	RLIT0000275	Horizon Compensation Advisory Board. Report of fourteenth meeting held on 7 May 2024.	RLIT0000275
10	RLIT0000411	Post Office Horizon financial redress data: September 2023 (Updated March 2024).	RLIT0000411
11	RLIT0000261	Horizon Compensation Advisory Board. Report of second meeting, held on 6 February 2023.	RLIT0000261
12	RLIT0000268	Horizon Compensation Advisory Board. Report of ninth meeting held on 29 November 2023.	RLIT0000268
13	RLIT0000259	Secretariat note: Discussion of 31 May 2023.	RLIT0000259
14	RLIT0000266	Horizon Compensation Advisory Board Report of seventh meeting held on 5 September 2023.	RLIT0000266
15	RLIT0000267	Report of eighth meeting held on 25 October 2023.	RLIT0000267
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21	BEIS0001034	Horizon Compensation Advisory Board Report of tenth meeting held on 10 January 2024.	BEIS0001034
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23	RLIT0000263	Horizon Compensation Advisory Board Report of fourth meeting held on 29 March 2023.	RLIT0000263
24	WITN11710103	Horizon Compensation Advisory Board Dashboard, 21 April 2023.	WITN11710103
25	RLIT0000273	Horizon Compensation Advisory Board Report of twelfth meeting held on 28 February 2024.	RLIT0000273
26	BEIS0000841	Horizon Compensation Advisory Board Report of fifteenth meeting held on 17 June 2024.	BEIS0000841
27	RLIT0000407	Horizon Compensation Advisory Board Report of seventeenth meeting held on 18 September 2024.	RLIT0000407
28	BEIS0000893	Horizon Compensation Advisory Board letter to the Lord Chancellor of 14 December 2023.	BEIS0000893
29	WITN11710104	DBT Note on Horizon Convictions Redress Scheme.	WITN11710104
30	RLIT0000288	Horizon Compensation Advisory Board Report "Future Approach to Compensation".	RLIT0000288