

IN THE MATTER OF THE INQUIRIES ACT 2005
AND IN THE MATTER OF THE INQUIRY RULES 2006

THE POST OFFICE HORIZON IT INQUIRY

**WRITTEN SUBMISSIONS ON BEHALF OF
THE DEPARTMENT FOR BUSINESS AND TRADE
FOR COMPENSATION HEARING 27 APRIL 2023**

Introduction

1. These written submissions are provided on behalf of the Department for Business and Trade (“the Department”) in advance of the hearing on 27 April 2023, which will be the fourth hearing on matters relating to compensation.
2. The Department was created on 7 February 2023 to bring together aspects of the work of the Department for Business, Energy and Industrial Strategy (“BEIS”) with that of the Department for International Trade. Amongst other areas of government work, the Department has taken on those functions relating to the Post Office which were previously carried out by BEIS.
3. These submissions address the four issues referred to in the email to the Core Participants on 23 March 2023 from the Inquiry Legal Team, namely:
 - a. Bankruptcy
 - b. Taxation
 - c. Factual progress update on the Historical Shortfall Scheme (“HSS”) and compensation for postmasters with Overturned Historical Convictions (“OHC”)
 - d. Factual progress update on the implementation and administration of the Group Litigation Order Scheme (“GLO”).
4. The broader points made by Mr Marshall in his written submissions have not been addressed, as CPs have not been specifically invited to deal with these in advance of the 27 April hearing. However, the Department is willing to respond on these issues, to the extent it can, if this would be of assistance to the Chair. Mr Marshall wrote a letter to Minister Hollinrake raising similar issues on 23 March 2023, copied to the Chair, and a detailed reply is being prepared, which will also be copied to the Chair once it is finalised.

Bankruptcy

Applicable principles of compensation

5. The overarching principle governing each of the schemes is that all claimants, including any who were made bankrupt as a result of Horizon issues, should be provided with full and fair compensation, restoring them to the position which they would have been in had the scandal not happened. This involves compensating them for both financial and non-financial losses.
6. Whether or not it is agreed that the compensation vests in the bankruptcy estate, the amount paid to claimants made bankrupt by the scandal will be increased to cover losses incurred by claimants in respect of the interest and fees arising from the bankruptcy. Compensation will also cover any Horizon-related debts within the bankruptcy through other heads of loss, such as loans taken out to repay shortfalls as well as related costs of debt financing. It will not generally cover debts unrelated to Horizon issues, such as a mortgage or credit card debt, although certain penalties suffered under these contractual debt arrangements may be covered by compensation. If, for example, it is a claimant's case that by repaying sums demanded under Horizon-related confiscatory or compensation orders they could not afford to make credit card or loan repayments on time and therefore suffered further charges or penalties as a result, then these would be included in the compensation paid.
7. The intention is therefore that postmasters made bankrupt as a result of Horizon will be left in the same position as others, with any additional losses arising from bankruptcies covered by extra compensation.
8. The Independent Advisory Panel for the HSS agreed principles in February 2023 for the determination of claims where bankruptcy is in issue. The Post Office are in a better position than the Department to provide details about these.
9. Similar principles have been announced for the GLO (these are set out at section 5.7 of the GLO Guidance¹). Under either scheme postmasters can claim for losses arising from a bankruptcy caused by a Horizon shortfall, including:
 - a. Diminution in the value of an estate or assets because of the bankruptcy;
 - b. Other consequential pecuniary loss, e.g. if they suffered a financial loss as a result of harm to their credit and reputation by reason of bankruptcy;
 - c. General damages, including injury to feelings as a result of the bankruptcy, distress and humiliation and non-pecuniary harm to credit and reputation (anticipated to be in the range of £20,000 to £60,000, although more may be offered depending on the circumstances of the case);

¹ [GLO guidance and principles \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- d. The expenses of the bankruptcy (including annulment costs already incurred);
 - e. The statutory interest payable to creditors; and
 - f. Reasonable legal fees associated with getting an annulment.
10. Where the Post Office was the original petitioning creditor, postmasters can also claim for:
- a. Malicious institution of proceedings, where the bankruptcy proceedings were: (1) without foundation; (2) brought without reasonable and probable cause; and (3) brought without just cause, excuse or proper motive.
 - b. Abuse of process, where the bankruptcy proceedings were initiated and/or conducted for an improper purpose, in that the predominant purpose was for the Post Office to obtain an extraneous benefit.
11. In either of these cases, aggravated damages may also be awarded. Compensation for general damages and aggravated damages are personal to the postmaster and therefore will not form part of the bankrupt's estate.
12. There has not so far been a final settlement reached with any OHC claimant who was subject to a Horizon-related bankruptcy, and so the principles applicable in such cases are still in development. However, these will be shared with claimants' representatives shortly and are likely to be substantially similar to those applicable in the HSS and GLO.

Rights of creditors

HSS

13. It has been agreed with insolvency practitioners that, for HSS compensation, those elements of the postmaster's claim that fall within the postmaster's bankruptcy estate would vest in such. Those parts of the claim that are personal to the postmaster are then offered directly to them. The Department will leave for the Post Office any more detailed submissions on how this is operating in practice for HSS claimants.

GLO

14. In relation to the GLO claimants, the Department's view is that GLO *ex gratia* compensation payments do not amount to property which would automatically form part of the estate in bankruptcy. Therefore, if a postmaster has been discharged from bankruptcy, the creditors have no right to claim the money. The Department is grateful for sight of the opinion received by the Inquiry from Catherine Addy KC, which reaches very similar conclusions on this issue, albeit with two caveats which she sets out at paragraph 62.
15. The Department was concerned that, absent a binding court direction, insolvency practitioners could take their own view of the law. Given the desire to make interim

payments to GLO claimants urgently, there was not time to seek such a direction. The Department was therefore obliged to negotiate with practitioners on whether sums vested or not. All but one insolvency practitioner agreed with the Department's position and signed a waiver for GLO interim and final payments. The remaining insolvency practitioner took the view that it was arguable that GLO compensation did vest in the bankruptcy (notably Ms Addy KC disagrees with this analysis – see paragraph 63 of her opinion). This practitioner had 16 GLO cases. The Department entered into a settlement agreement with this practitioner which set out how much of the interim compensation should go to creditors. This agreement was without prejudice to the position of either side with respect to final payments. The Department understands that the interim compensation was enough to clear the debts of all but nine of these GLO claimants.

16. As Ms Addy KC suggests (paragraph 64 of her opinion), it may be appropriate for the Department to apply for a court direction under s.303 of the Insolvency Act 1986 (as amended) before final GLO compensation is to be paid. The Department is considering whether it should take this step.

OHC

17. The Department's view is that the OHC compensation payments also do not vest in the estate, if the postmaster has been discharged from bankruptcy. Issues raised by the aforementioned insolvency practitioner have now been resolved on the basis that compensation sums do not vest in the bankruptcy estates, enabling compensation payments to be made to those OHC claimants.
18. Other insolvency practitioners, including the Official Receiver, have confirmed they do not have a claim to OHC compensation in relation to the estates of OHC claimants to which they act as trustee in bankruptcy.

Taxation

Income tax

19. Pursuant to The Post Office Horizon Compensation and Infected Blood Interim Compensation Payment Schemes (Tax Exemptions and Relief) Regulations 2023 (SI 2023/184) ("the Regulations") and The Social Security (Contributions) (Amendment) Regulations 2021 (SI 2023/186), OHC and GLO payments are exempt from income tax, capital gains tax and national insurance contributions.
20. HSS offers have been calculated on a gross basis with tax on the final amount withheld and paid over. This is expected to be sufficient to cover the tax due on compensation by most postmasters.
21. As set out in the Department's letter of 10 March 2023 to the Chair, an outstanding issue has been identified on the tax treatment of some postmasters with claims for loss of earnings under the HSS, particularly those with larger claims, where postmasters may be pushed into a higher tax bracket due to receiving compensation in a lump sum as opposed to receiving those earnings over several tax years. The Department wants

to see fair compensation for all victims and is working urgently to address this issue with the Post Office, HMT and HMRC. If possible, an update on the steps that the Department will take will be provided orally at the 27 April 2023 hearing, or in writing at the earliest opportunity thereafter.

Inheritance tax

22. As set out in the Department's 10 March 2023 letter, OHC payments are exempt from inheritance tax under the Regulations, whereas HSS and GLO payments remain subject to inheritance tax. This is because of the different basis of the OHC payments. OHC claimants are all receiving compensation for the malicious prosecution to which they have been subjected, and their claims have a significant focus on non-pecuniary damages. The view of HMRC and HM Treasury is that this makes them consistent in nature with previous schemes compensating people for harm or hurt which received an exemption from inheritance tax under Schedule 15 to the Finance Act 2020 (e.g. the Troubles Permanent Disablement Payment Scheme and Windrush Compensation Scheme).
23. By contrast, GLO and HSS payments are based on the principle of restoring the recipient to the financial situation which would have applied, had the Horizon scandal not happened and Post Office not breached its contractual obligations. Although some of these claimants may also have claims for malicious prosecution, the claims generally have a significant focus on pecuniary losses. The view of HMRC and HM Treasury is that such compensation is subject to inheritance tax on the basis that, had postmasters continued in the financial situation they should have been in but for the scandal, their estate would have been subject to inheritance tax in due course.
24. The estates of deceased postmasters who have received compensation will not pay inheritance tax if the value of the estate at death is below the £325,000 inheritance tax threshold (£500,000 if the home is left to the children), or if everything above the inheritance tax threshold which does not qualify for one of the inheritance tax reliefs is left to a spouse or civil partner.
25. Where a claim has not been made or accepted by the date of a postmaster's death it will not have any value for inheritance tax purposes, so estates claiming compensation on behalf of a deceased postmaster can return a nil value in relation to the claim if they are required to complete an inheritance tax account.

Factual update

26. As the Chair is aware, the Department is responsible for delivery of the GLO scheme, scrutiny of the Post Office's delivery of the HSS and OHC compensation schemes, and the maintenance of consistency across all three schemes.

HSS

27. As of 4 April, the Post Office has made offers to 99% of the original tranche of 2,417 eligible applications to the HSS. Of these, 81% have been accepted. 398 have entered

the dispute resolution procedure. 119 of these disputes have been resolved, leaving 279 outstanding.

28. In each of the remaining 24 cases in which no initial offer has been made, responses are awaited from claimants or third parties: the cases will be resolved as soon as possible once these have been received.
29. The Department has agreed with the Post Office that late applications to the HSS should be considered without examining the reasons for lateness. As of 4 April, the Post Office has received 245 further applications, of which 189 have been accepted so far. 32 are yet to be assessed and 23 have been deemed ineligible for reasons unconnected with lateness of submission. There is also 1 additional claim with an outstanding query. The HSS has to date made offers in respect of 15 of these applications.

OHC

30. The Department is pleased that the interim payment limit has been raised from £100,000 to £163,000 and the Post Office has made further interim payments where appropriate, including in cases of hardship. As of 4 April, interim compensation had been paid to 79 of the 84 individuals whose convictions have so far been overturned. Of the remaining five, one has decided not to apply for interim payment and has received an offer for non-pecuniary damages. Another submitted an application for interim compensation on 7 March and the Post Office has made an offer.
31. The remaining three are the 'public interest' cases (those in which the Post Office did not consider Horizon evidence to be essential to the prosecution but decided that it would not have been in the public interest to hold a retrial and therefore did not oppose the quashing of these convictions). The Post Office has now agreed compensation settlements with two of these individuals and a without prejudice offer was made to the third.
32. As of 4 April, over £18m had been paid out in OHC compensation. In terms of final compensation, the strategy agreed between the Post Office and the Department for compensating those with overturned convictions has been to enable as much money as possible to be paid out rapidly to as many postmasters as possible by focussing first on settling non-pecuniary claims.
33. As of 4 April, the Post Office had received 67 non-pecuniary claims. The Post Office had made offers to 66, of which 53 had been accepted. The Department welcomes this good progress on payment of non-pecuniary claims, which was unlocked by the Early Neutral Evaluation process which took place in Summer 2022.
34. As of 4 April 2023, of the 67 who had submitted non-pecuniary claims, 14 had also submitted pecuniary claims, and the Post Office had made offers to 9, of which 4 had been accepted and paid. This includes the two settled 'public interest' cases noted above. In parallel to making offers on pecuniary claims already received, the Post Office has been developing principles to enable it to change its approach from individual negotiation to a remediation scheme, in line with comments made in

previous inquiry hearings. The Post Office is now consulting claimants' lawyers about details of this scheme. The Department and the Post Office are continuing to urge claimants' lawyers to submit more pecuniary claims.

35. The Department hopes that the change of approach to a new principles-based remediation model process will speed up the delivery of pecuniary compensation and reduce waiting times for claimants.
36. Whilst OHC claimants have a right to take Court action if they wish, the Department strongly believes that this would be undesirable. The new remediation model process will provide an opportunity for disputed heads of loss to be addressed by an independent assessor, which should also help to facilitate settlement of claims.

GLO

37. The Minister announced on 23 March 2023² that the GLO compensation scheme is open for applications. Full details of the scheme are on the Department's website.³ The Department is very grateful for the help which the scheme's Advisory Board, the JFSA and claimants' lawyers have provided – and continue to provide – in the development of the scheme's principles, guidance and process, using an ADR approach. In the interests of fairness, care has been taken to ensure that, wherever possible, postmasters in the HSS and GLO schemes who are in similar situations will receive similar compensation. The Principles and Guidance for the GLO scheme reflect this aim.
38. For some heads of loss, the Principles and Guidance set out bands for compensation for non-financial losses. Any financial losses would be the subject of additional compensation. The amounts ascribed to each band reflect awards made in the HSS by the HSS Independent Advisory Panel which are based on established legal precedents. The text indicates the range with which offers will generally fall but does not set absolute limits. Offers will be determined according to the relevant facts on a case-by-case basis.
39. The Department recognises that there has been some recent speculation about the bandings in the Principles and Guidance. For instance, there have been some statements that £10,000 is the maximum limit being applied to compensation relating to reputational harm. This is not correct: £10,000 is not a cap or maximum. Moreover, it is important to look at overall compensation offers in the round, recognising that each one will be determined with reference to the specific facts of that case. For example, the Department would expect a number of GLO applicants to receive more than £10,000 for reputational damage, either within the reputational harm head of loss or under the broader head of distress and inconvenience.
40. The Department expects awards for mental distress and damage to reputation for postmasters who were prosecuted but not convicted to be in the range of £10,000 -

² <https://questions-statements.parliament.uk/written-statements/detail/2023-03-23/hcws664>

³ <https://www.gov.uk/government/publications/compensation-scheme-for-group-litigation-order-case-postmasters>

£40,000, as stipulated in the malicious prosecution principles section of the Principles and Guidance.

41. The Department's legal powers to make payments under the scheme expire in August 2024. The Department intends to complete delivery of the scheme well in advance of that date. It has recently procured Dentons LLP to act as independent claims facilitators and Addleshaw Goddard as its legal advisors. It is working with these firms and with claimants' legal advisors to agree a detailed timetable for the scheme, against which delivery will be monitored and publicly reported. The timetable will be reported to the Inquiry when it has been agreed.
42. The Department has undertaken to meet the reasonable legal costs which postmasters will incur in seeking compensation under the scheme. A tariff for these costs agreed with claimants' legal advisors was published on 10 February 2023. Advisors' general costs will be reimbursed at four milestones: on submission of a registration form; on submission of an overview of the claim; on submission of a substantially complete claim form; and when the claimant agrees the award.
43. To date, the Department has received 377 scheme registration forms and two applications for support for the costs of expert evidence, both of which have been agreed.
44. One claim for substantive compensation has been received in respect of a postmaster in urgent and acute difficulty. The Department has undertaken to make every effort to make an early offer in respect of this claim, accompanied by a further payment.
45. Generic interim compensation totalling £19 million has been paid. The only claimants who have not yet received interim compensation are:
 - a. 7 deceased claimants in respect of whom grant of probate has not yet been received;
 - b. 8 company claimants, many of which are wound-up companies. Action is being taken to identify the legal successor to these companies who can receive the compensation due to them and the creditor position where relevant;
 - c. 2 persons subject to individual voluntary agreements ("IVAs") in relation to whom discussions are continuing with their IVA supervisors;
 - d. 1 bankrupt claimant who had until recently not responded to the offer of compensation: details are now being collected so that the Department can commence discussions with the Official Receiver in relation to payment being made; and
 - e. 4 people who had until recently not responded to the offer of interim compensation – details are now being collected so that compensation can be paid.

46. The Department has agreed to pay additional interim compensation of £75,000 to any member of the GLO group who was maliciously prosecuted but acquitted. As previously announced, so that convicted people receive more interim compensation than those who are acquitted, such payments are subject to a cap of £100,000 on the total of compensation received to date (including both the amounts which postmasters received under the High Court settlement and the generic interim compensation described in the preceding paragraph). That cap will not, of course, apply to final compensation payments. Payment has now been made.
47. Professor Richard Moorhead, who leads Exeter University's Post Office project, has been added to the GLO Compensation Advisory Board, joining Professor Christopher Hodgson, Lord Arbuthnot and Rt Hon Kevan Jones MP. Reports of the Board's meetings, together with its Terms of Reference, are published on the Department's website.⁴

Consistency between schemes

48. The Department is working to achieve consistency between schemes through the following measures:
- a. The principles of each scheme are based on the same established principles of law;
 - b. 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;
 - c. There is considerable cross-membership of the internal governance bodies for all three schemes;
 - d. 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; and
 - e. 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.
49. For most claimants and most heads of loss the Department is confident that these efforts are successful. In some cases, apparent inconsistencies between compensation streams have been brought to light through external comment, including through evidence to the Inquiry, such as the issues of tax treatment described above.
50. 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

⁴ <https://www.gov.uk/government/groups/group-litigation-order-glo-compensation-scheme-advisory-board>

that the solutions do not cause unintended and unfair consequences, including delay to settlements. To provide greater assurance of this oversight, and taking into account the Chair's comments in his 9 January 2023 statement on compensation issues, the Department has recently taken the following two additional steps:

- a. The remit of the GLO Compensation Advisory Board has been extended to include the Department's oversight of the HSS and OHC. This will ensure a holistic view of all compensation schemes, and will aid in the consistent treatment of postmasters regardless of what scheme or programme they are in.
 - b. 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.
51. The Department wishes to ensure that the schemes are taking a consistent approach to restorative justice and welcomes the Post Office's offer of an in-person apology from senior Post Office leaders to those postmasters involved in all three schemes. Whilst not all postmasters will want to take up such an offer, for some this may help achieve closure on the hurt and trauma that the Horizon scandal caused them.

Conclusion

52. The Department hopes that these submissions are helpful to the Inquiry and looks forward to providing such further assistance as it can at the hearing on 27 April 2023.

6 April 2023

NICHOLAS CHAPMAN
Temple Garden Chambers

ALASDAIR HENDERSON
1 Crown Office Row