

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, ENERGY AND INDUSTRIAL STRATEGY
FOR COMPENSATION HEARING 8 DECEMBER 2022

Introduction

1. These written submissions are provided on behalf of the Department for Business, Energy and Industrial Strategy (“BEIS”) in response to the Chair’s Progress Update on Issues Relating to Compensation, dated 15 August 2022, and in advance of the one-day hearing on matters relating to compensation due to take place on 8 December 2022. They set out the developments that have taken place in relation to the three compensation schemes over the past three months.

The Historical Shortfall Scheme (“HSS”)

2. BEIS is grateful for the observations made by all Core Participants (“CPs”) to date on the HSS. BEIS has reflected on these and on the views expressed by the Chair in his Progress Update and has worked closely with the Post Office with the effect that they have implemented a number of improvements to their administration of the HSS.

Progress on offers

3. Good progress is being made on issuing offers to HSS claimants. As of 30 November 2022, 93% of claimants have now received an offer, meaning that a total of £70.8million has been offered. The Post Office will meet its own target of offers being made in at least 95% of cases before the end of the year. BEIS continues to encourage POL to make as many offers as possible during the remainder of this year, and to continue to make good progress thereafter.
4. The cases that remain are the most complex and therefore the most difficult to resolve, including malicious prosecution cases and cases where the claimant has been made insolvent. The Independent Advisory Panel is working with legal counsel to develop assessment principles for these cohorts to ensure that the treatment of these claims is fair

and consistent. BEIS expects POL to have made offers in most of these cases by the end of January 2023.

5. In addition to these cohorts, BEIS understands that there are a number of claims where the Post Office is awaiting claimants' responses to requests for further information to enable them to assess their claim fully. Whilst BEIS encourages the Post Office to resolve these claims as soon as possible, it recognises that it would not be right to put undue pressure on these claimants to respond.

Legal costs

6. BEIS is pleased to note that, in recognition of the complexity of the remaining cases and the Chair's views expressed in the Progress Update, the Post Office has added further flexibility to the legal support that subpostmasters can claim within the HSS, with provision for reasonable fees to be reimbursed. In addition, insolvent claimants can claim reasonable fees for professional advice specific to their bankruptcy.
7. In practice, the number of HSS claimants disputing their offer remains low (10% of those who have responded to their offer). The Dispute Resolution Process appears to have been operating effectively, with a team of case handlers with experience as subpostmasters offering support to claimants at each stage in the process.

Late applications

8. BEIS has confirmed that funding is available for subpostmasters who applied to the HSS after the 27 November 2020 deadline, so that they can receive any compensation due to them. BEIS strongly encourages any other subpostmasters who may have been eligible for the HSS to contact the Post Office about their claim at the earliest opportunity, and understands that a significant period of notice will be provided before the HSS is closed to any further late claims.
9. BEIS understands that the Post Office has now written to 228 subpostmasters who have been in touch about potential late claims to confirm that they will be considered. This includes the 186 subpostmasters mentioned at paragraph 61 of the Progress Update. So far the Post Office has received 59 further completed application forms from this group, and these are all being processed without any detrimental impact on the delivery of offers to other claimants in the scheme.

Interim payments

10. BEIS recognises the Chair's views expressed in the Progress Update and the fact that those claimants who are yet to receive offers or payments may have been waiting for a very considerable period of time for their cases to be settled. For these reasons, BEIS is pleased that the Post Office will introduce interim payments for those who have yet to receive an offer or who have chosen to dispute their offer. This will be in addition to the existing

hardship payments that the Post Office has already been providing to claimants in particularly difficult circumstances. These interim payments can be applied for regardless of a claimant's personal situation.

The Overturned Historic Convictions Scheme (“OHC”)

11. Good progress is being made on claims received from those with overturned historic convictions. As of 24 November, Post Office has paid out £11.3m in compensation. BEIS supports the Post Office's approach of handling non-pecuniary and pecuniary heads of loss separately in order to deliver compensation as quickly as possible to subpostmasters.

Non-pecuniary damages

12. As of 24 November, 45 claims for non-pecuniary damages had been received, in respect of which 82% had received offers totalling £4.7million, in addition to interim payments already received. Of these, 14% of offers have been accepted, with payments being processed, and 57% have been accepted and paid.
13. The Post Office has offered to share the Early Neutral Evaluation (“ENE”) report by Lord Dyson, which sets out an independent assessment of the range of awards available for non-pecuniary losses, with all claimants' solicitors and those without legal representation on condition of a confidentiality undertaking. So far, we understand that 5 of 6 law firms have received the report, and the Post Office is encouraging the last firm and any unrepresented claimants to do so as well.

Pecuniary damages

14. As at the date of these submissions, 8 claims for pecuniary damages have been received, of which 25% (2 claims) have fully settled and only 50% (4 claims) are fully quantified, with the remainder (2 claims) subject to requests for further information.
15. BEIS is concerned that, whereas the ENE report has unblocked barriers to speedy settlement on non-pecuniary damages, the pecuniary loss element of the claims is taking longer to reach resolution. For that reason BEIS has worked with HMRC to set up a bespoke process for claimants or their legal advisers to request their historic tax return data in order to support quantification of past pecuniary losses.

Interim payments

16. BEIS is pleased to note that, in light of the Government's decision to exempt OHC payments from tax (of which BEIS notified the Inquiry in its submission in October 2022) and the ENE report, the Post Office decided to increase the interim payment limit for new claimants to £163,000.

17. For those who had received the original interim payment amount of up to £100,000, the Post Office is prioritising reaching settlement of their non-pecuniary damages as set out above. The Post Office had written to all the claimants' legal representatives to encourage them to submit their claims for non-pecuniary damages by 1 December for settlement ahead of the end of the year. However, if a claimant who received the original interim payment amount has not submitted a non-pecuniary claim by early December, such that it is unlikely that their non-pecuniary claim will be settled by the end of the year, the Post Office will offer a top-up payment of £63,000. BEIS supports this approach, recognising the importance of making compensation payments as quickly as possible.

Insolvency issues

18. All insolvency practitioners, including the Official Receiver, confirmed that they do not have an interest in OHC compensation at the point of an interim payment being made. There is one insolvency practitioner who has asserted the compensation sums do vest in the bankruptcy estate. The Post Office and their legal advisers are working to resolve this problem in order that the claimants in question receive the sums to which they are entitled in line with insolvency legislation.

Mrs Adedayo, Mr Kalia and Mr Patel

19. As noted by the Chair at paragraphs 91-93 of the Progress Update, there are three CP subpostmasters whose convictions have been quashed but who have not received interim payments. This was on the basis that their convictions were quashed because it would not have been in the public interest to hold a retrial. They remain able to submit a full claim for compensation, which will be considered on its merits.
20. In relation to these three CPs, and any subpostmasters who find themselves in a similar position, the Chair expressed concern that the Post Office was acting as the 'final arbiter' in determining whether they should receive interim payments. To address that concern, the Post Office and the three subpostmasters have agreed to hold a mediation process with an independent mediator. Hudgells Solicitors, which represents all three claimants, will be required to submit a claim for each subpostmaster ahead of this meeting. The objectives of the mediation are to ascertain the degree of liability the Post Office holds in these cases, and the potential quantum of any claim. BEIS hopes that this will provide a mutually agreed way forward.

Other claimants

21. There are potentially other OHC claimants. So far, 83 historical convictions have been overturned and we expect more to follow. Post Office is supporting work to review convictions by the non-Post Office prosecutors, including in Scotland and Northern Ireland. BEIS is working with the Post Office and other prosecutors to reach as many convicted subpostmasters as possible and encourage any with potentially unsafe convictions to lodge an appeal:

- a. The Post Office has carried out several rounds of “mail-outs” to potential future appellants (“PFAs”), with letters being sent to 674 of 706 (95%) identified PFAs. The Criminal Cases Review Commission (“CCRC”) has now agreed to take over this process. BEIS understands that the CCRC is continuing efforts to trace the 32 PFAs who remain uncontacted.
- b. The Post Office is funding a support programme for PFAs provided by Citizens Advice, which commenced on 1 November 2022. It offers dedicated, trained contact centre agents, web pages and guides, with PFAs directed to lawyers to support with the application process.

The Group Litigation Scheme (“GLO”)

22. As the Inquiry knows, the GLO scheme is an *ex gratia* compensation scheme administered directly by BEIS. Interim payments continue to be made to the GLO claimants, with £16.4million being paid to over 85% of claimants (423 individuals) as of the date of writing. Unsurprisingly, it is the most complex cases which have taken longest to resolve. In particular, for subpostmasters who have been declared bankrupt, BEIS has urgently been working to reach agreement from all the relevant Insolvency Practitioners to release full or partial interim payments. Full payment has now been made to five bankrupt subpostmasters and partial payment to a further two. Payments are yet to be made to the remaining 16 bankrupt subpostmasters. Agreement has not yet been reached with all Insolvency Practitioners, and so BEIS has sought external legal advice on the issue of whether GLO compensation payments should vest in the bankruptcies.
23. The remaining 10% of outstanding interim payments (46 cases) relate to dissolved company claimants, claimants who are deceased, claimants who have capacity issues, claimants who are in an Individual Voluntary Arrangement and claimants who have returned incomplete paperwork or not submitted an application at all. BEIS remains committed to providing interim payments to all of these claimants or their estates soon and is obtaining external legal assistance to resolve these issues as quickly as possible.
24. BEIS has noted the Chair’s views in the Progress Update in relation to GLO members who were acquitted of Horizon offences, and the suggestion that they should be eligible for the OHC scheme. As a result, BEIS has concluded that, in relation to the small number of acquitted GLO members who have not already received more in compensation than those who were convicted have received by way of initial interim payments, additional interim compensation is appropriate. The precise amounts will be confirmed in the light of decisions on full compensation for HSS claimants who were acquitted, to ensure consistency and fairness, and offers will be made as soon as possible.

Other issues

25. BEIS is pleased to note that, as part of its efforts to address historical operational issues and make improvements to its corporate culture, the Post Office is setting up a scheme to provide compensation to subpostmasters who did not receive remuneration during a period in which they were suspended from their position.
26. The Government will provide funding to the Post Office to cover compensation to subpostmasters for unpaid suspension remuneration and any associated consequential loss. BEIS will provide oversight to ensure that this compensation is delivered quickly and effectively to affected subpostmasters.
27. Fairness dictates that comparable claims should result in a comparable outcome as far as possible, whilst also taking account of the need to deliver compensation quickly, regardless of which of the three schemes applies. For that reason, BEIS is ensuring there are mechanisms to check that claims with similar facts are receiving similar compensation. For example, the framework of the GLO scheme is based on the HSS framework (in its current, improved and updated form).

Conclusion

28. As Ministers have repeatedly said in public statements, and as was stated in this Inquiry at the hearing in July, BEIS is committed to ensuring that all affected subpostmasters receive full and fair compensation as quickly as possible. It is hoped that these submissions provide a helpful update on the progress that continues to be made. BEIS looks forward to hearing the observations of the other CPs and, in turn, those of the Inquiry.

5 December 2022

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