

FREETHS

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28 November 2022

Our Ref: JXH/1684/2113604/3/LB

Dear Sirs

POST OFFICE HORIZON IT INQUIRY – COMPENSATION

Thank you for your communication dated 23rd November 2022 inviting submissions from Freeths LLP on the operation and delivery of the GLO scheme (the “GLO Scheme”), including all aspects of interim compensation and design of the final GLO Scheme.

We understand that this letter will be published by the Inquiry in the usual way along with all other submissions to the Inquiry.

We wrote to the Inquiry on 30th May 2022 explaining that on behalf of the GLO Claimants who choose to re-instruct Freeths LLP (and apologies to the Inquiry for the incorrect reference in that letter to past tense “chose”), we are consulting with BEIS and Justice for Subpostmasters Alliance (JFSA) regarding the development of a scheme that operates in the interests of those of the GLO Claimants who instruct us.

1. The scope and basis of Freeths LLP’s ongoing involvement

Having acted for the 555 GLO Claimants in the High Court proceedings, we have a deep knowledge of the background to the matter and of the Claimants’ circumstances. Based on that level of knowledge, our current and future role in this matter comprises:

(a) Administering interim payments made by BEIS

- We have continued to administer payments to GLO Claimants in accordance with direction from BEIS (and at Government’s cost) and in accordance with instructions to Freeths from each of the claimants.
- BEIS directed us as to the mechanism it had decided to use to calculate the amount of the interim payments to be paid to each individual, which was based on the approach taken to the allocation of net damages distributed following the settlement of the GLO proceedings.

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- The pragmatic mechanism adopted by BEIS to the distribution of interim payments has in our view been an effective way of paying money to the majority of GLO Claimants as quickly as possible.
- To facilitate the payments we re-engaged each GLO Claimant as a client of the Freeths LLP, with a narrowly defined scope of work, comprising verification of their details, advising as to the nature of the payments and then making of the payments.
- The mechanism for interim payments has involved us providing BEIS with sequential lists of the GLO Claimants who have instructed us, leading to BEIS releasing payments to Freeths in tranches. Upon receipt of each tranche from BEIS we have immediately distributed the individual payments to the multiple claimants within the tranche in question.
- As at the date of writing, 15 separate tranche payments have been made since August 2022, comprising aggregate total payments of **£16,467,304**, to **423 GLO Claimants**.
- Interim payments have not yet been made to a number of GLO Claimants, whose circumstances give rise to complexities which are being considered and worked through by BEIS. These more complex cases fall into the following categories:
 - (i) Bankruptcy/Individual Voluntary Arrangements: Complex legal issues impact on whether individual claimants are legally entitled to receive interim payments, or whether such payments should properly form part of the insolvency estate, such that some or all of the payment would have to be paid to the Trustees in Bankruptcy (or equivalent).
 - (ii) Deceased Claimants: Where probate issues need to be worked through for monies to be received into the Deceased's estate.
 - (iii) Company Claimants: Where issues such as dissolved companies need to be resolved.
 - (iv) Non-responding Claimants: The number of non-responding claimants is very low and steps will continue to contact them in order to establish their circumstances.

(b) Submissions to BEIS regarding the design and features of the GLO Scheme

As part of the re-engagement of each GLO Claimant, we agreed with them that we would, on their behalf and at no cost to them, make representations and submissions to BEIS as to the design and features of the Scheme. The purpose of this is to influence as far as possible the design and delivery of a scheme that will best serve the Claimants' interests.

The GLO Scheme will be designed and administered by BEIS and all decisions as to the features of the Scheme will be those of BEIS and other Government decision-makers.

Freeths LLP has no control over the final decision as what the Scheme will or will not include.

We have continued to make representations (in collaboration with JFSA) to BEIS on the basis described above, including on the following points:

- Interim payments: At an early stage, we pressed BEIS to make early interim payments as a preliminary to the GLO Scheme.
- Reasonable costs: We raised with BEIS the need to ensure that the GLO Claimants receive legal advice and support throughout the Scheme process. We also made the case to BEIS that the claimants should be reimbursed by Government for any reasonable legal costs incurred by them in the GLO Scheme. It is essential that the GLO Scheme is designed so that there is no risk of Claimants' compensation being in any way depleted by legal costs. Government subsequently announced its commitment to pay the Claimants' reasonable legal costs in the GLO Scheme.
- A Scheme that incorporates ADR/claim facilitators: We proposed to BEIS that a valuable design feature of the GLO Scheme would be to have at its core a group of neutral/independent ADR professionals, who's role it would be to facilitate the fair resolution and settlement of claims in the Scheme. The claim facilitators would not make decisions about levels of compensation to be offered by BEIS. They would fulfil an entirely different role from the proposed Independent Panel that BEIS anticipates will be established, in a similar way to the panel that operates within the HSS Scheme.
- Representation made to BEIS on other important elements of the GLO Scheme: BIES shared with Freeths LLP and with various other law firms who are representing Claimants an outline of the proposed GLO Scheme. We and the other law firms involved have therefore had the opportunity to make representations and suggestions to BEIS.

We have also made representations to BEIS on additional important topics, including but not limited to:

- (i) Documentary evidence: We have provided our views on the scope of documents that should be produced by POL and made available to GLO Claimants and their advisers in the Scheme. We have contended to BEIS that any significant "gaps" in POL's disclosure of relevant documents should lead to an evidential presumption in claimants' favour in the Scheme. Further, we proposed to BEIS that such documentation should be accessible to Claimants via an on-line platform.
- (ii) Expert evidence: Evaluating the appropriate and fair level of compensation in each case will involve applying established legal principles of causation, loss and damage to the available evidence. This will include each Claimant's explanations/recollections, coupled with documentation and expert reports in the more complex cases. In such cases, expert evidence will be needed from forensic accountants and/or medical experts and/or property valuation experts. We have stressed to BEIS that Claimants should not be put at a disadvantage by BEIS (or its lawyers, or Claims Facilitators) building into the GLO Scheme a right of "veto" to refuse to pay the reasonable cost of an expert in cases where Claimants' lawyers advise that expert evidence is necessary to properly value a claim. That would in our view create a risk of injustice to Claimants.
- (iii) Counsel: We have informed BEIS that in the more complex cases, it is likely to be appropriate for Claimants' lawyers to obtain an Advice on Quantum from Counsel. Again, we are concerned about the potential injustice to Claimants of BEIS retaining the ability to refuse the costs of this.

- (iv) Independent Panel: We have expressed our view to BEIS that its current proposal of establishing an Independent Panel, in a similar manner to the HSS Scheme, is appropriate. The panel would comprise Leading Counsel, a forensic accountant and a retail expert.
- (v) Exceptional review: We have also expressed our view that BEIS proposal is appropriate, to build into the GLO Scheme an ability for Claimants to have a BEIS offer reviewed (by a retired Judge or similarly qualified and respected figure) in exceptional cases, where there appears to have been a manifest error or irregularity.
- (vi) Governance and oversight: We and JFSA have informed BEIS of our view that an independent committee or panel should be established to fulfil a governance and oversight function. The purpose is to ensure fairness, independence and transparency in all aspects of the design and operation of the GLO Scheme. We believe that this should be independent of BEIS/Government, albeit BEIS would clearly have representation on that panel.

2. The proposed timetable for completing the GLO Scheme

We have expressed to BEIS our serious concerns over the timescale within which all claims need to have been finally resolved in the GLO Scheme.

The proposed timetable is exceptionally challenging, with all offers and payments having to be made by BEIS no later than August 2024. We have stressed to BEIS on a number of occasions if that timetable is to be achieved, then urgent steps need to be taken now to begin preparing claims and dealing with matters such as collating and reviewing key documents and instructing expert witnesses where necessary. That work cannot commence unless and until formal confirmation is given by BEIS to the Claimants' lawyers as to the early work that they can carry out (based on reasonable costs being incurred) to avoid losing precious time.

BEIS has explained that the statutory basis upon which Government is making the funds available for the GLO Scheme is such that the deadline cannot be extended. The reason given is that no more than 2 years can elapse from the date of the first payment (i.e. the date of the first interim payment in August 2022) to the date of the last payment.

Approximately 370 GLO Claimants have engaged Freeths LLP to act on their behalf in preparing and submitting their claims in the substantive stage of GLO Scheme (i.e. all stages beyond interim payments). However, only limited steps can be taken due to the Scheme having not yet been signed-off or launched by BEIS.

We would add that the level of "*reasonable costs*" has not yet been quantified by BEIS, therefore it is not yet possible for Claimants' lawyers to carry out work with any knowledge as to the level and extent of work that will be deemed as reasonable.

We have nevertheless taken preliminary steps as far as we are able, including writing to all the Claimants for whom we act regarding preparatory steps that can be taken.

We have no doubt that BEIS continues to move this matter forward as quickly as it is able, however it is constrained by the machinery of Government, on matters such as procurement of external servicers and Ministerial approval and sign-off.

Our view is that despite the best efforts of BEIS and the Claimants' lawyers, there is a very real risk of the more complex and difficult cases not being concluded by August 2024 – and that further consideration should be given now by Government to an alternative basis upon which further time can be afforded beyond August 2024. If that requires legislation then we would urge that the necessary steps begin now.

It is unconscionable for a situation to arise where BEIS must unilaterally make final offers to remaining Claimants due to a deadline, in circumstances where those Claimants have not had the opportunity to see their claims move all the way through the Scheme in the way that all other Claimants will.

3. GLO Claimants with extant criminal convictions

BEIS has informed us of its intention (on policy grounds we understand) not to make interim payments to any GLO Claimants who were criminally convicted, but who's convictions have not been overturned.

We also understand that BEIS' current position is that these claimants will not be permitted to submit claims in the GLO Scheme.

We believe that there are approximately 17 claimants in this situation, each of whose circumstances will be different. We are not privy to the up-to-date intentions of those individuals, but we understand that a number of them have not applied to the CCRC to have their convictions overturned (for varying reasons – by way of example, "*unable to face it given the history*" has been mentioned to us as a reason given by a claimant).

Messrs Hudgells solicitors may be in a position to provide more clarity; however we believe there to be difficulties in claimants in this category pursuing claims for malicious prosecution.

We have raised with BEIS our concerns over this, because there appears to be a risk of injustice for the following reasons:

- One or more claimants whose convictions are unsafe may have genuine reasons why they have not/will not seek to have their convictions quashed, yet they risk being shut out of any route to compensation.
- Claimants in this category may well have incurred losses that flowed from contractual breaches by POL and which are recoverable under civil damages law, irrespective of the existence of a conviction and separate from the act(s) that were the subject of the conviction.

We therefore strongly urge BEIS to allow these Claimants to submit claims into the Scheme, so that a proper and fair assessment can be made of their individual entitlements to compensation.

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4. **Summary**

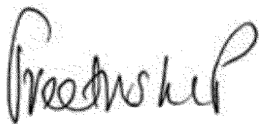
We are encouraged by the proposed design of the GLO Scheme, albeit subject to the very important outstanding points of detail outlined above, which remain to be finalised and which require careful monitoring.

The timing issues for the GLO Scheme are of particular concern for the reasons set out above.

We acknowledge the ongoing commitment shown by the BEIS team (i.e. Rob Brightwell and his colleagues) to advancing this complex project as quickly and effectively as they are able, within the normal governmental constraints referred to above.

We trust that the information in this letter is helpful to the Inquiry and we would naturally be happy to expand on or clarify any points if requested to do so by the Chair.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Rob Brightwell', written in a cursive style.

Freeths LLP
Please respond by e-mail where possible