

## **Informal Consultation on the design and delivery of the Group Litigation Order (GLO) ex gratia payment scheme**

### **1. Introduction**

In 2019, a number of postmasters who had taken the first legal action against the Post Office over issues caused by the Horizon IT system agreed a settlement of £42.75 million plus legal costs. This group of postmasters will be referred to as the Group Litigation Order or “GLO” group for the purposes of this document. The settlement also led to the creation of the Historical Shortfall Scheme (HSS) to compensate affected postmasters who were not part of the GLO group, and had not been convicted of Horizon-related offences. Further separate compensation arrangements were set up for those postmasters whose convictions for Horizon-related crimes were overturned.

Much of the £42.75 million GLO settlement was swallowed up by the costs of funding the case. The government confirmed in March 2022 that it would therefore provide funding for a new scheme to ensure the GLO group has access to similar levels of compensation to their non-GLO peers.

After the March announcement, interim payments for the GLO claimants were prioritised and were paid from August 2022. An informal consultation was subsequently launched by BEIS, with input from the Justice for Subpostmasters Alliance (JFSA) and its advisors, to seek views from the GLO group and their representatives on their preferred design and management of the full compensation scheme.

This document outlines a summary and analysis of the responses received in response to the informal consultation.

### **2. Summary of responses received**

The informal consultation was published on the gov.uk website<sup>1</sup> in the form of a letter from Jane Hunt MP to GLO members on 2 September 2022. The end date for sending in responses was specified as 26 September 2022. Participants were invited to send their responses by email to a dedicated GLO Consultation mailbox. An additional note addressed to legal advisers was published alongside the Minister’s letter.

The total number of responses received was 56. Of the 56 individual responses received, 53 (95%) were from GLO claimants and 3 (5%) were from legal firms acting as representatives of GLO members. Howe & Co, a legal firm representing some GLO members, compiled the responses of 13 GLO members and provided BEIS with the full responses alongside a separate summary of key messages from their clients and the legal firm’s own views. The GLO members’ individual responses provided by Howe & Co have been included in the total number of responses. However, 3 of the 13 GLO members represented by Howe & Co also provided BEIS with their views directly (providing identical responses), and therefore the views of these respondents will only be counted once for the purpose of assessing the results of the informal consultation.

The way that the informal consultation was structured, in letter format with guiding questions, encouraged freeform responses. Two scheme options were outlined, and respondents were asked broad questions relating to their preferences. Respondents were also encouraged to provide any additional comments or suggestions.

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<sup>1</sup> <https://www.gov.uk/government/publications/post-office-horizon-group-litigation-order-glo-ex-gratia-payment-scheme>

Due to their containing sensitive and identifying information, we have not published the individual responses to the informal consultation in this report.

### 3. Questions asked

Respondents were invited to provide their views on their preferred option of scheme delivery (Choices: Option 1 or Option 2) as well as their preferred choice of body to deliver the scheme (Choices: BEIS or Post Office Limited). They were also encouraged to provide any additional comments and information on any barriers they foresee that could inhibit them from participating in the scheme.

Option 1 broadly envisages a similar scheme to the HSS. Claims would be assessed by an independent advisory panel and legal costs up to £1,200 would be covered by the scheme.

Option 2 was developed following consultation with JFSA and its advisors, with a view to minimising the stress and effort required from applicants. This option would allow legal advisors to develop a claim on behalf of the applicant, based on the documents which were already prepared for the High Court case in 2019.

More detail on both options can be read in the informal consultation letter.

Respondents were informed that each of the two options could either be delivered by BEIS and its advisors or potentially, subject to its agreement, Post Office Limited.

### 4. Results of the informal consultation

#### Option preference

Out of the 49 respondents who specified their preferred scheme option (either 1 or 2), 100% indicated that they would prefer Option 2 over Option 1. 7 respondents did not specify their preferred option. Despite not all 56 respondents identifying their preference, it is important to note that no respondent identified Option 1 as a preference. Some respondents commented that the HSS, which Option 1 was intended to mirror, has not worked well and has encountered delays, and therefore they would not be happy with a similar scheme being implemented for the GLO group. Others commented that as the HSS is run by Post Office Limited, they would not like an equivalent scheme.

#### Delivery preference

Out of the 44 respondents who specified their delivery preference (BEIS or Post Office or other), 39 (89%) identified BEIS as their preferred choice to deliver the payment scheme. Post Office Limited was not identified as a delivery preference by any respondents. Four respondents commented that they would prefer the scheme to be overseen by an entirely independent organisation, with two of the four expressing a preference for no Post Office or BEIS involvement at all, and another commenting that they would prefer a completely independent third party but would be willing to agree to BEIS running the scheme alternatively. The fourth, who also expressed a desire for no Post Office involvement, said they would prefer an independent assessment of claims, with the help of lawyers, BEIS and the JFSA in the form of a steering group.

One respondent commented that they would prefer Freeths to deliver the payment scheme. Another respondent suggested that the Chair of the Horizon IT Inquiry, Sir Wyn Williams, should play an active role in delivering compensation but that BEIS should oversee the process.

All three legal representatives commented that significant independent oversight is required, with the imperative inclusion of an independent claims facilitator and an independent panel in the scheme's

design. The independent claims facilitator and panel are both included in design for Option 2 as detailed by Jane Hunt MP in the 2 September letter.

33 of the total 56 respondents explicitly commented that they would not like any involvement from Post Office Limited and many expressed varying reasons for this. Howe & Co equally highlighted that it would not make sense for scheme to be delivered by the organisation which “caused the harm that the scheme is designed to help repair”.

Howe & Co and one GLO member commented that the Post Office’s involvement should be strictly limited to supplying relevant information which would allow claims to be accurately calculated.

A handful of respondents also specified other groups they would prefer not to be involved in the scheme. One responded indicated they would not like any involvement from any present or former Post Office Board member or employee, nor any present or former Fujitsu employee. Another respondent did not want any involvement from HSF (Herbert Smith Freehills) or WBD (Womble Bond Dickson), legal firms which have represented Post Office Limited.

#### Additional comments

In addition to identifying their preferred scheme delivery model, respondents were encouraged to provide any further comments that they wanted BEIS to take into account when designing the scheme. The key themes are grouped and detailed below.

- **Timelines**

Multiple respondents expressed frustration at the August 2024 target date which has been identified for all compensation to be delivered by, commenting that the matter needs to be dealt with urgently once the process is established. One respondent expressed deep concern that no claims would be accepted by the end of the year.

Howe & Co commented that they would want to see indications of the timescales for each part of the compensation process. They commented that timelines should be clarified at the very start of the scheme.

- **Simplified process**

Respondents commented that the evidence required to claim should be minimal, and the process for claiming should be as simple as possible so it is accessible to all who are eligible. Two respondents expressed concerns about core documents having been destroyed or lost, and were worried that this would mean they are not eligible to claim. They both requested clarity on this situation once the design of the scheme has been finalised.

One respondent commented that claims should be taken at “face value, providing they seem reasonable,” so that minimal evidence is required for claims to be accepted.

- **Non-pecuniary losses**

Many respondents commented that they would expect consequential losses which were not strictly economic to be compensated for. Examples provided by respondents included loss of income, physiological impact, loss of reputation, and resulting health issues. One respondent noted that many of these non-pecuniary losses are difficult to quantify, so specified that they would like cases to be assessed in an open and flexible way, considering personal circumstances on a case-by-case basis. Two respondents specified that they would like it to be confirmed prior to the claiming process that the

scheme will compensate for non-pecuniary losses and which categories will be covered. One respondent asked for clarity on who will assess these specific areas for compensation.

- **Legal costs**

Many respondents commented that any legal costs should be entirely covered by the scheme and that this should be confirmed early on. Hudgells added that the amount of money put aside for covering legal costs needs to accurately represent the actual work required.

- **Tax implications**

Many respondents highlighted the importance of ensuring that compensation payments are entirely exempt from any taxation. One respondent was concerned that the compensation payment would be significantly diminished if they had to pay 40% tax on it. Multiple respondents noted that they would like clarity on tax implications to be provided from the very beginning.

Hudgells noted that a block exemption of tax has recently been announced for convicted clients, and hoped that this will be replicated for the GLO group.

- **Appeals process**

One respondent commented that there should be an appeals process built into the scheme. Howe & Co added that any legal representation should extend to dispute resolution and the appeals process.

- **Compensation for family members**

One respondent noted that, as a result of his wife passing away, he is not the original litigant. He has not been able to pursue a claim for an interim payment and it is not clear to him whether he can receive full compensation in place of his wife. This respondent requested clarity on his situation.

Howe & Co equally noted in their response that as the issues with Horizon have been going on for a long time, it is apparent that some Subpostmasters have passed away before they can be compensated. Therefore, Howe & Co deem it important that in situations where there is a “surviving spouse, child, family member or other successor,” clear guidance on how they can claim should be provided from the beginning of the process.

- **Jurisdiction-specific legal support**

One Northern Ireland-based respondent commented that GLO members in Northern Ireland should be able to be aided by a local solicitor when preparing claims, and should not be required to use a lawyer based in England.