

## ADDITIONAL COMPENSATION FOR GLO MEMBERS: SCHEME PROCESS

### Introduction

1. This paper sets out the process for review of claims under the GLO compensation scheme. The processes which it describes are summarised in the slides at Annex A.
2. BEIS will procure:
  - A firm of *external legal advisors* to advise BEIS on cases;
  - A firm of ADR experts who will be *independent claims facilitators* supporting the progress of claims and will provide arrangements for making relevant papers transparent to all parties;
  - An independent *Panel* comprising legal, accounting and retail experts (with assistance where necessary from a medical expert);
  - A senior lawyer (probably a KC or retired High Court judge) – the “*Reviewer*” – who will undertake exceptional review of cases.

### Objectives of the scheme

3. The scheme aims to provide unconvicted GLO members with prompt and fair compensation in accordance with established legal principles. Its detailed objectives are:
  - Ensure that, in line with Ministers’ commitments, the GLO group can access similar levels of compensation as their non-GLO peers;
  - Scheme delivers compensation rapidly, and minimises the risk that not all compensation will be delivered to all eligible claimants by 7 August 2024;
  - Claims can be submitted with minimal time and effort and stress on postmasters, i.e. there should be a low barrier to entry and participation in the scheme;
  - Scheme is trusted by postmasters and they feel supported through the process;
  - Delivery of the scheme is cost-effective.

### Making consistent and independent decisions on cases

4. Fair compensation requires that all claims are considered against a common framework, and that there are mechanisms to ensure that claims with similar facts receive similar treatment. This consistency needs to apply both across the GLO scheme and with other schemes. Most importantly, there will be similarities between the facts of many GLO and Historical Shortfall Scheme (HSS) cases. There will also be similarity between GLO cases involving malicious prosecution (i.e. the 13 individuals who were prosecuted but not convicted) and Overturned Historical Convictions (OHC) cases in the same circumstances: the principles established in Lord Dyson’s Early Neutral Evaluation (ENE) of non-pecuniary losses may be relevant here. It may be appropriate for the Panel to seek similar advice to inform their decisions on other categories of case. More widely, development of the scheme will also need to have regard to

the compensation offered by other Government schemes, notably those relating to Windrush and infected blood.

5. The framework for the GLO scheme will therefore need to be based on the HSS framework. It will also take account of the provisions of other schemes. It will be determined by BEIS following discussion with stakeholders, including the claimants' advisors.
6. The framework for the GLO scheme should be as transparent as possible. It will include
  - published **principles** of the scheme to be set by BEIS, which reflect those for the HSS – i.e. the elements of the [Panel Terms of Reference](#) and consequential loss [principles and guidance](#) that are not about process – which are not expected to change once agreed. The principles being carried across from the HSS are set out at Annex B; and
  - more detailed underpinning **guidance**, which will be published and updated by BEIS in the light of previous decisions.
7. Drafts of these documents will be discussed with claimants' legal advisors, the scheme and (if timing permits) panel members.

#### **Scheme timetable**

8. The timetable for the scheme will be driven by the objective of paying compensation as promptly as possible (and certainly by 7 August 2024).
9. Jane Hunt MP's letter of **2 September 2022** encouraged claimants to ***instruct legal representatives*** to act for them. Claimants' lawyers ***should now start to develop claims***.
10. In order that expert evidence can be commissioned without delay, later this month BEIS will invite claimants' legal advisors (and any unrepresented claimants) to submit proposals for the ***additional evidence*** required – e.g. medical or forensic accounting reports. BEIS will respond to such requests within 15 working days. It will agree such proposals unless it seems likely that the extent of any disagreement about the relevant aspect of the claim would not be sufficient to justify the costs of expert evidence. (This decision will be taken by BEIS because others are unlikely to be in place at the point at which the evidence needs to be commissioned.) If this agreement is forthcoming, it would trigger allowance for reasonable legal costs in line with a tariff to be set by costs draftsmen.
11. BEIS is working with Post Office Ltd to ensure appropriate disclosure can be made of the information they hold for each claimant. Analysis of some information provided may be required to assist claimants with their claims. The scope of any analysis, and the timetable for Post Office disclosures is being discussed with claimants' legal representatives and with the Post Office.
12. HMRC have indicated that disclosures about claimants' tax records should be sought by means of a bespoke Subject Access Request from the claimant's lawyers. We will circulate the template for such disclosures to claimants' legal representatives. The timetable for HMRC disclosures is being discussed with claimants' legal representatives and with HMRC.
13. There will be some cases where at least partial payment will be urgent because of individuals' circumstances (e.g. exceptional hardship or acute ill health). For the remainder of cases there will be a balance between securing early payment in uncontentious cases

(which will generally be the smaller ones) and making early progress on those cases which are likely to take longest. In **early 2023** BEIS will develop and discuss with claimants' lawyers a taxonomy of cases, and a broad ***timetable for the handling of cases in each category***. This taxonomy will need to pay special attention to cases where technical difficulties can be expected, such as bankrupt or deceased claimants; company claimants; claimants whose partners are also claiming under this or other schemes; or claimants lacking capacity and no legally-appointed representative.

14. The first date for ***submission of claims*** will be constrained by the availability of the claims facilitators. This is expected to be in ***early Spring 2023***.
15. Following discussions with claimants' lawyers BEIS will announce a relatively early date by which ***all claims should have been submitted***.

### **Development of claims**

16. Claimants' statements and supporting documentation from the High Court case are expected to form part of their evidence base but most claimants will want to augment them with further information, especially about claims arising since the settlement reached with Post Office in December 2019. It has been suggested that some claimants will feel psychologically unable to engage further with their traumatic experiences. In such cases they could simply sign off the High Court documentation as their statement of claim. Whilst that might not produce an optimum outcome for them, it should still allow their claim to be considered.
17. The scheme will follow the HSS approach in respect of the burden of proof for shortfall claims. Claimants and their advisors will be asked to particularise shortfall claims with (i) the basis for the claim, (ii) the amount claimed, and (iii) the relevant dates within which shortfall loss was suffered.
18. Due to the absence of records and the amount of time that has passed since losses were incurred, postmasters may face challenges in evidencing their claim.
19. A lack of supporting information will not be a barrier to entry to the scheme. In making decisions the Panel will have the discretion to take into consideration a lack of supporting evidence when making its recommendations, so that an applicant who has clearly articulated a claim will not be disadvantaged if there is a lack of records to support their claim.
20. Scheme guidance will follow the precedent of the Consequential Loss Principles and Guidance for the HSS, which states that "3.1.2 Where the postmaster is unable to satisfy the burden of proof in relation to their claim, their claim may nonetheless be accepted in whole or in part if the Scheme considers it to be fair in all the circumstances". This guideline is designed to ensure that postmasters who have been affected by the scandal, or their beneficiaries, are not prejudiced and can receive fair compensation.
21. Case examples describing how this process has worked under the HSS are given on pages 18-19 of the Government's April 2022 [response](#) to the BEIS Select Committee.
22. It may be helpful for expert evidence to be provided at an early stage in support of some more complex claims. BEIS will invite claimants' legal advisors to identify lists of medical,

forensic accounting and property valuation experts from whom such advice can be sourced. By focussing work on a limited number of experts the amount of “reading-in” required for each case – and hence the cost – should be reduced. It may also be possible to encourage experts on the list to set aside time for GLO cases in their future schedules, which may speed the provision of advice. A tariff for fees for expert evidence will be provided by costs draftsmen.

23. There will be an expectation that submitted claims are as complete as possible except insofar as:

- The claim indicates that such evidence is expected;
- It has been requested by the claims facilitator; or
- It arises from unforeseen events since the submission of the claim.

#### **Receipt and triage of claims**

24. BEIS will ask claimants’ legal advisors to categorise each case against the taxonomy described above. The claims facilitator will be guided by the timetable for the category selected in this triage, unless that category is challenged by BEIS’s external legal advisors (in which case the claims facilitators will ascribe a category based on the taxonomy). Their decision will be final. The categorisation of cases of any claimants without legal advice will be determined by the claims facilitator.

25. BEIS will agree with claimants’ legal advisors a structure for claimant identifiers, to be used by claimants’ legal advisors, the claims facilitators, BEIS’s external legal advisors, and in the submission of evidence by POL and HMRC.

#### **Development of BEIS offers**

26. Claims will be considered by BEIS’s external legal advisors in accordance with the priority set through triage, leading to an initial offer. In the light of further progress with the claim as described below, they will reconsider this offer.

27. If BEIS is not prepared to accept a claim, it will seek further information from the claimant. If, following such investigation, BEIS does not accept the claim then it will make an offer (or nil offer) with an explanation for the offer.

#### **Submission of offers and dialogue**

28. BEIS’s external legal advisors will communicate the BEIS offer to the claims facilitator, claimant’s advisor and claimant. This communication will explain the approach adopted when calculating the offer and its justification by reference to the evidence provided in the claim form and the scheme principles. It will set out the reasons for any divergence from the amount claimed.

29. Once an offer has been received from BEIS’s external legal advisors in respect of a claim, unless BEIS has agreed to pay the claim in full, the claims facilitators will aim to promote common understanding and agreement between the parties who are to have regard to the principles and guidance in the light of the facts of the individual case. As a first step they will

invite the legal advisors to the claimant and BEIS to a discussion. They may follow up on this by adopting any of the following approaches:

- Requesting further information from the claimant's representative;
- Recommending that expert evidence is sought;
- Encouraging the claimant and/or BEIS's external legal advisors to revise their positions;
- Referring the case to the independent Panel for a first or final assessment.

30. The claims facilitators will monitor progress in the light of the steps taken.

31. BEIS's legal advisors will update the communication described above as the evidence or the parties' positions change. Updates will be made available to the claimant and their representative, and it will be open to the parties to comment on them. If parties are not responding within standard timescales (to be determined) the claims facilitators will chase them up.

32. In adopting any of these approaches the claims facilitators will have regard to the likely costs (including costs to both parties and their own expenditure). Rather than adopt any approach whose costs would exceed the difference between the parties they should encourage the parties to reconcile their differences. Only if a case is likely to set a precedent for others should this criterion be relaxed.

#### **Provision of further expert evidence**

33. If the claims facilitators believe that expert evidence (further to anything supplied with the claim) or Counsel's advice would assist in resolving an outstanding issue, and that the likely costs would be justified by the scale of the difference between the parties, they can (with the approval of the Panel) commission it using the lists of experts described in paragraph 22 above. In considering proposals for advice from Counsel the panel will take account of the fact that their membership includes a KC. The Panel will also be able to commission advice from Counsel or others as needed.

#### **First assessment by Panel**

34. If the claims facilitators judge that it would assist the parties' progress towards agreement, they can decide to put a case to the Panel for a first assessment, based on their summary of the case.

35. The Panel will apply its independent judgement to individual cases using the principles and guidance developed by BEIS. It will make an assessment of the issues raised, which may recommend a specific award or request further evidence or analysis. The Panel's assessment – including its reasoning – will be recorded in writing and made available to the claimant and their representative.

36. The claims facilitators will commission the provision of any evidence or analysis requested by the Panel. They will then continue to promote agreement between the parties as described at paragraph 29 above.

### **Final assessment by Panel**

37. If the claims facilitators judge that agreement between the parties is unlikely to emerge, despite the recommendations of a first Panel assessment, they can decide to put a case to the Panel for a final assessment. This will again be based on their summary of the claim and offer, taking account of the parties' views of the issues.
38. The Panel's final assessment will include a specific award, together with a written explanation of their reasoning. It will be sent to the claimant and their representative as well as to BEIS and its external legal advisors.

### **Exceptional review**

39. If the claimant and/or BEIS believe that there has been manifest error or irregularity in the Panel's final assessment they can refer it for exceptional review. Any such application must be made within 15 working days of the issue of the Panel's final assessment. The case for the review should set out the alleged error or irregularity and its consequences for the claim.
40. The reviewer will consider the case, alongside any comments on it from the Panel or the other party. S/he may uphold the Panel's decision or (if s/he finds that there has been a manifest error or irregularity) make a revised award of compensation. S/he will also make a decision as to costs, if necessary with the support of costs draftsmen. The reviewer's decision will be sent to the claimant and their representative and to BEIS's external legal advisors, together with a written explanation. The reviewer may not refer the case back to the Panel. There will be no process for any further review of the case.
41. BEIS will have the same right as claimants to seek exceptional review of a case on the grounds of manifest error or irregularity. This power would allow BEIS to challenge if it believed that the Panel had departed from the established framework.

### **Acceptance of all or part of offer**

42. If an unrepresented claimant proposes to accept all or part of an offer, the claims facilitator will refer it to the panel before it is deemed to have been accepted.
43. Once
  - the parties have agreed in writing on an amount of compensation for some or all heads of claim; or
  - the Panel has issued a final assessment and the claimant has not referred it for exceptional review within 15 working days; or
  - the Reviewer has issued a decision,

BEIS's external legal advisors will pay to the claimant any elements which are agreed.

### **Reasonable legal costs**

44. BEIS will meet the reasonable legal costs of claimants participating in the scheme.

45. The amount paid in respect of legal costs for each case will reflect its complexity. The best proxy for that may be the final value of compensation paid, adjusted for whether the case involves specific factors such as a bankrupt claimant.
46. BEIS will establish a number of bands related to case complexity, with a costs allowance for each band. Separate allowances will be set for the costs of acquiring expert evidence where this has been approved (either by BEIS for inclusion with the original claim, or subsequently by the Panel). These allowances will include the costs of instructing them and reporting their findings. These allowances will be based on the work of costs draftsmen. Costs allowances will take account of work which lawyers have already done in preparing claims.
47. Where a case is subject to exceptional review, it will be for the independent senior individual who reviews the case to decide issues of costs.
48. Legal costs will be paid to claimants' solicitors by BEIS's external legal advisors in instalments linked to milestones reached in connection with the progress of the case. Instalments will reflect the lowest band into which the case might fall. The first instalment will be paid on submission of a claim, and so will necessarily be based on the lowest cost band (plus any allowance for expert evidence whose submission is agreed by BEIS). Each time that the parties agree that a case will be in a higher band, previous instalments will be adjusted accordingly. Subsequent instalments may include:
- Attendance at a dialogue meeting with BEIS's external legal advisors and the claims facilitators;
  - Commissioning of expert advice requested by the Panel;
  - First Panel assessment;
  - Agreement of claim.

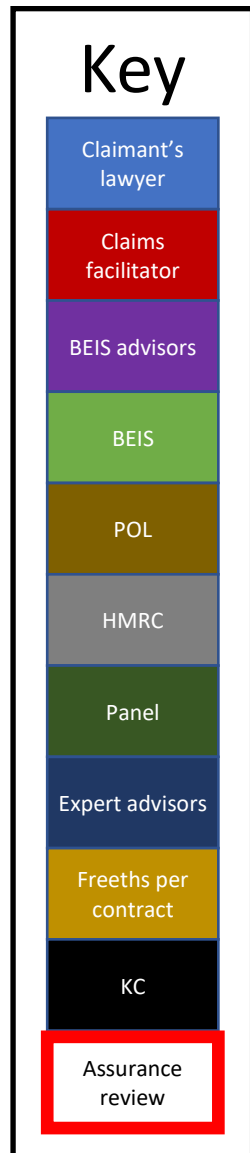
### **Scheme oversight**

49. An independent advisory board will be established to oversee the scheme. It will not have any role in individual cases, but will monitor the overall progress of the scheme, ensuring that the process is working well and identifying any blockages. Its membership will comprise
- Two senior academic experts in the field of alternative dispute resolution and legal ethics.
  - Two Parliamentarians recognised for their past involvement in pursuing the resolution of the Horizon scandal.
50. It will be supported by a BEIS secretariat and officials.

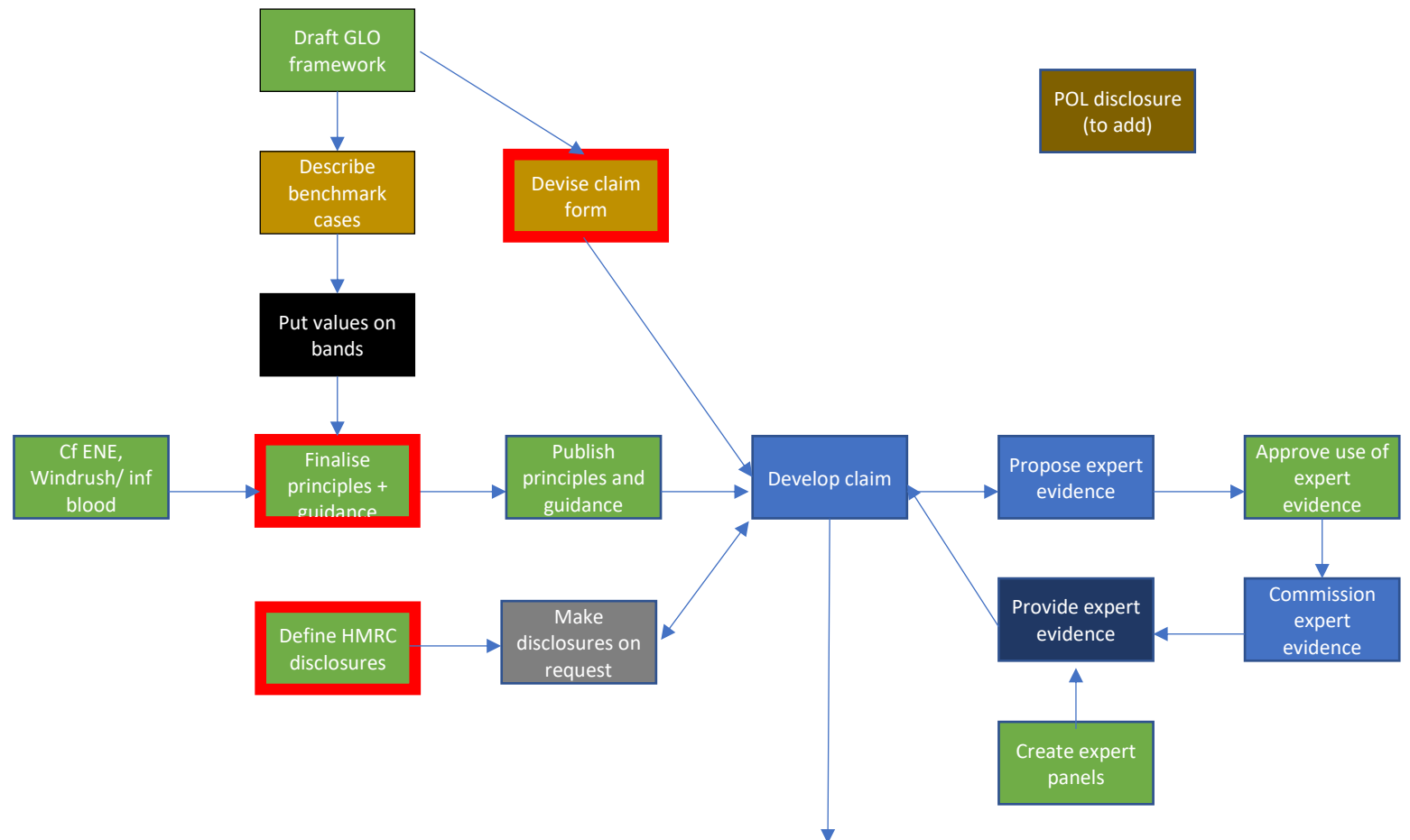
### **Transparency of progress of the scheme**

51. Information about the progress of the scheme will be published each month on the gov.uk website. It will include statistics about the claims submitted, offers made and acceptances, as well as the total amounts paid.
52. BEIS will ask the claims facilitators to convene regular meetings involving the legal advisors to claimants and BEIS, to identify and resolve any common issues relating to the process.

## ANNEX A: SLIDES SUMMARISING PROCESS



## Process to claim development





## Key

Claimant's  
lawyer

Claims  
facilitator

BEIS  
advisors

BEIS

POL

HMRC

Panel

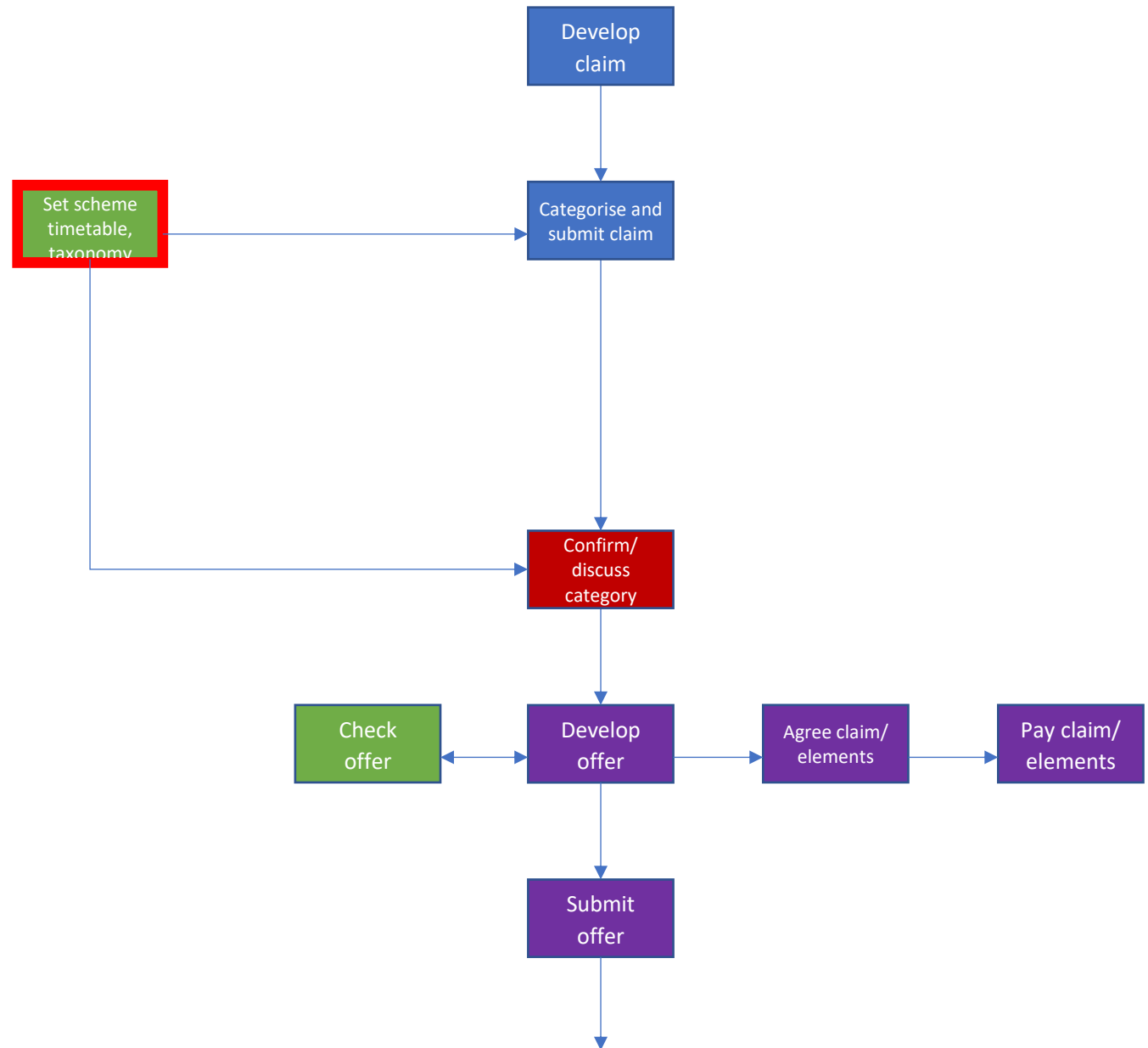
Expert  
advisors

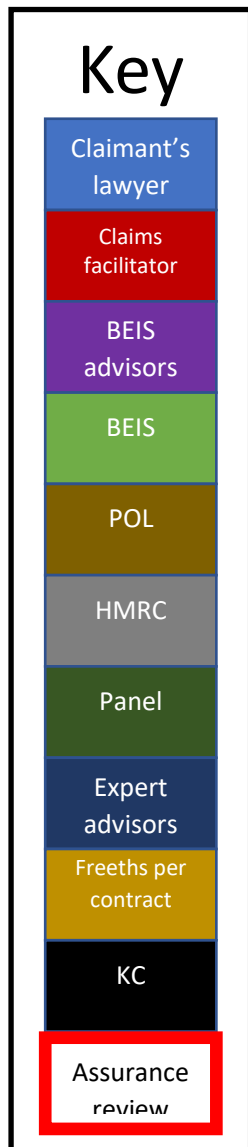
Freeths per  
contract

KC

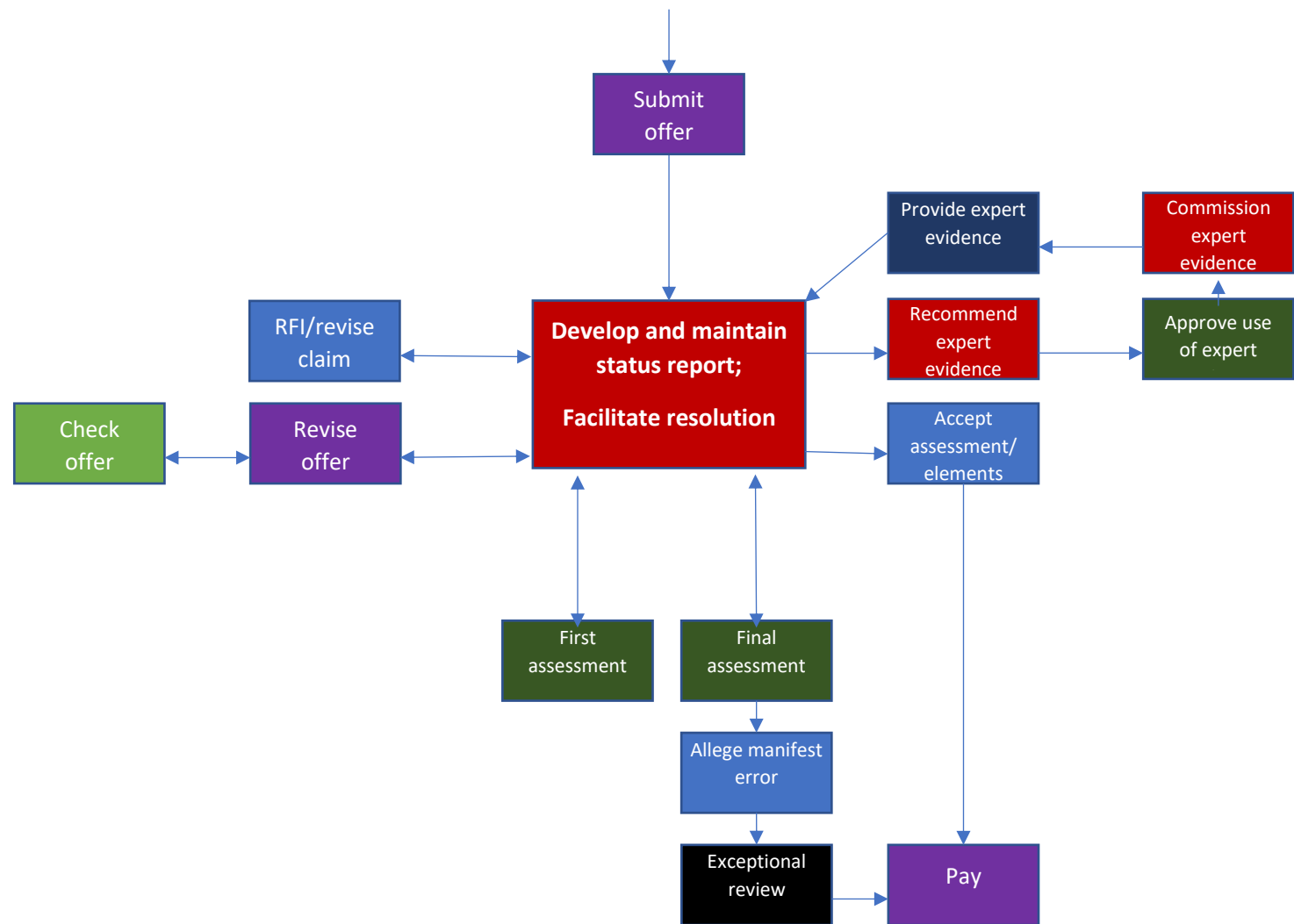
Assurance  
review

## Process from claim development to offer





## Process from offer to resolution



## **Annex B – extracts from documents setting out Historical Shortfall (HSS) principles**

Whilst the process of the GLO compensation scheme will differ in some respects from those used for Post Office's Historical Shortfall Scheme (HSS), the substance of the scheme will follow the same principles. Below are the texts of the HSS scheme principles and the Consequential Loss Principles and Guidance. To demonstrate the consistency between the schemes, the HSS principles which are to apply to the GLO scheme (where necessary with minor amendments – e.g. to correct references to the Panel or to update the figure for interest rate in paragraph 32 of the Terms of Reference) are highlighted in yellow. Those principles will also be set out separately in due course.

### **Historical Shortfall Scheme**

#### **Terms of Reference of the Historical Shortfall Scheme Independent Advisory Panel**

The Historical Shortfall Scheme ("the Scheme") has been constituted to address past issues regarding Post Office's point-of-sale accounting system, Horizon. The Historical Shortfall Scheme Independent Advisory Panel ("the Panel") is a panel set up by Post Office to assess eligible claims.

##### **A. Overriding Objective**

1. The task of the Panel is to assess and recommend to Post Office a fair outcome for Eligible Claims made to the Scheme for Shortfall Losses and Consequential Losses.
2. The Panel's objective is to assess Eligible Claims by applying the principles and standards set out in Section E below.
3. The Panel will aim to assess and recommend outcomes on Eligible Claims in a timely manner having regard to the need to ensure sufficient care and consideration is given to each claim to provide a fair recommendation.

##### **B. Definitions**

4. The following definitions shall have the following meanings:

- a. Consequential Loss means financial or non-financial loss that is not a Shortfall Loss.
- b. Eligible Claim means an application that has been determined to be eligible for the Scheme in line with the Scheme's eligibility criteria and is identified to the postmaster as such in an eligibility letter.
- c. Horizon Shortfall means a shortfall in stock or cash at a postmaster's branch compared with the amount of stock or cash indicated on Horizon for that branch, where the shortfall may have been caused by previous versions of Horizon or a breach of duty related to such a shortfall on the part of Post Office.
- d. Shortfall Loss means the amount of a Horizon Shortfall that the postmaster has repaid or is regarded by Post Office as still owing.
- e. Common Issues Judgment means the judgment handed down by Fraser J in *Bates v Post Office Ltd* (No.3: Common Issues) [2019] EWHC 606 (QB).
- f. Horizon Issues Judgment means the judgment handed down by Fraser J in *Bates v Post Office Ltd* (No.6: Horizon Issues) [2019] EWHC 3408 (QB).

##### **C. Composition and Governance**

###### **Membership**

5. The Panel's members shall comprise representatives who are:

- i. legal specialists;
- ii. forensic accounting specialists; and
- iii. retail specialists.

### **Quorum & Voting**

6. A Panel meeting will only be quorate when three Panel members comprising one legal specialist; one forensic accounting specialist; and one retail specialist are present (in person or remotely). For clarity this may include a delegate Panel member (as referenced at paragraph 8 below). For the purposes of this document, references to the "Panel" should be construed accordingly. If more than three Panel members are present, the three sitting Panel members that comprise the Panel for the purposes of that meeting will be declared and recorded at the outset of the meeting.

7. Each sitting Panel member shall have one vote each. Decisions as to the recommended outcome will be taken by a majority of two.

8. Post Office may appoint replacement Panel members with a similar level of qualifications and experience to sit on the Panel as a delegate Panel member.

### **Meetings**

9. Panel meetings will be convened by the Panel members. Herbert Smith Freehills LLP ("HSF") shall have responsibility for the administrative arrangements for convening Panel meetings, including sending meeting invitations and providing meeting room facilities as required.

10. In respect of each Eligible Claim for consideration by the Panel, the Panel will be provided with the supporting materials necessary to consider the claim and determine a recommended outcome, a minimum of five working days prior to the Panel meeting at which it is to be considered.

11. Notice of each Panel meeting will be given to all those entitled to attend at least five working days before the meeting.

12. Meetings may be held in person or by telephone or other electronic means, so long as all participants can contribute to the meeting simultaneously.

13. The Panel will aim to convene on a weekly basis following the commencement of the Scheme, with ad hoc or additional standing meetings to take place as required and subject to the agreement of the Panel members.

14. One or more case assessors will attend each Panel meeting to present on the Eligible Claim they have reviewed, answer any questions from the Panel and share an initial recommendation. One or more representatives from HSF's London office shall, if the Panel so requests, attend particular Panel meetings to answer any more general questions the Panel may have about the Scheme.

15. In reviewing the claim, the Panel will follow the Assessment of Claims process as set out at paragraphs 23 to 27 below.

16. The case assessor will record for their respective claim:

- a. the Panel's recommended outcome;
- b. the brief reasons behind the recommendation as decided by the Panel at the meeting; and
- c. a proposed draft letter to the applicant communicating the Panel's recommended outcome, the reasons for that outcome and the key documentation on which it was based, and provide this to the Panel for review within five working days of the meeting.

17. If the Panel is satisfied that the recommended outcome and associated reasons and documentation have been correctly recorded, the Panel will provide this recommended outcome and associated reasons to Post Office.

18. Upon receipt of the recommended outcome from the Panel, Post Office, acting through the Historical Shortfall Scheme Approvals Committee, will review the Panel's recommendation and accompanying reasons, and communicate the outcome of the application to the applicant who can either accept it or reject it.

19. Postmasters who would like to take independent legal advice to enable them to consider the terms of the offers made to them will have a period of four weeks to do so. Post Office will contribute a sum of £1,200 inclusive of VAT towards the cost of such independent advice save that, in cases where Post Office offers to pay the applicant's claim in full (or largely in full), Post Office will contribute a sum of £400 inclusive of VAT towards such independent advice.

20. If a postmaster rejects the offer made to him or her, they have the option to trigger the Dispute Resolution Process.

21. Postmasters who trigger the Dispute Resolution Process will be asked to write to the Scheme setting out why they consider the decision reached in their case was wrong.

22. Post Office will engage with those representations in good faith following which it will either (a) affirm the original offer made; (b) make an alternative offer; or (c) refer the matter back to the Panel for a further decision, to reconsider the decision in light of the further representations made.

#### **D. Assessment of Claims**

23. The Panel will assess claims that:

- a. are Eligible Claims;
- b. have been investigated through the Scheme by Post Office; and
- c. are presented to the Panel by a case assessor from HSF with an initial recommendation or recommended options based on legal principles alone.

24. The Panel will apply the principles and standards set out in Section E below when assessing Eligible Claims.

25. The Panel will independently assess and discuss each Eligible Claim presented to them and, at the Panel meeting, recommend an outcome to be given to Post Office. The Panel is not obliged to reach consensus on each claim; in case of disagreement, the majority view will prevail.

26. If the Panel considers that an Eligible Claim requires further investigation in order to allow the Panel to recommend an outcome, the Panel can refer the claim back to the investigation stage to undergo further investigation by Post Office with the assistance of the relevant case assessor. Where this is the case, the Panel will defer making a recommendation until such time as the case assessor has undertaken the further work and brought the Eligible Claim back to a later Panel meeting for assessment. Where this occurs, HSF and the Panel will use best endeavours for the same three members of the Panel to review the Eligible Claim when it returns.

27. If the Panel considers that it requires expert assistance in order to make a recommendation, the Panel may recommend to Post Office that such expert assistance be obtained at Post Office's cost. The Panel shall nominate three potential experts for consideration, of which the postmaster shall pick one.

#### **E. Basis of Assessment**

##### **General Principles**

28. The case assessor will compile the information gathered as a result of the investigation process, present it in a user-friendly format (accompanied with the relevant underlying documents) and provide an initial assessment and recommendation (or recommended options) based on legal principles (including the findings in the Common Issues Judgment and the Horizon Issues Judgment).

29. The role of the Panel is to consider the initial recommendation and to review it against their understanding of the application of the findings in the Common Issues Judgment and the Horizon Issues Judgment and the

legal principles they consider relevant and arrive at a recommended offer to be made to a claimant in respect of their claim.

30. In formulating its recommended offer, the Panel may recommend the making of an offer to the postmaster if, guided by broad considerations of fairness, the Panel considers that doing so would produce a fair result in all the circumstances of the particular case. For the avoidance of doubt, in doing so, the Panel's discretion will not be confined solely to the specific heads of Consequential Loss claimed by the postmaster but will take into account any facts and matters which the Panel considers will produce a fair result on the facts of a particular case.

31. Many Eligible Claims will relate to Shortfall Losses and Consequential Losses suffered a significant number of years ago. In order to draw a line under the issues caused by previous versions of Horizon and treat postmasters who have been affected fairly, the Scheme (including the Panel) will not apply the laws of limitation in its assessment of Shortfall Losses or Consequential Losses but shall deal with each claim on the basis that it is not barred by the expiry of any relevant limitation period. Post Office's rights to rely on limitation defences outside the Scheme (including in any subsequent litigation or arbitration proceedings commenced under the Dispute Resolution Process) are strictly reserved. Given the large number of applicants to the Scheme, claims may take some time to investigate and assess. Post Office is therefore willing to agree, in respect of each applicant, that time will not run for limitation purposes from the date the applicant joined the Scheme to the date on which the applicant receives their offer letter.

32. For all Shortfall Loss claims and Consequential Loss claims which the Panel recommends be paid, either in full or in part, the Panel is authorised to recommend that interest be paid on the amounts in question at a standard rate of 3.45% (being the weighted average Bank of England interest rate for the period between 11 April 1999 and 14 August 2020 (2.45%) plus 1%), on such basis (simple or compound) and on such claim(s) and for such period(s) as the Panel thinks fit.

#### **Horizon Shortfalls**

33. Where:

a. there is evidence that the shortfall in question existed and was paid; and

b. there is no evidence that the shortfall was caused by something other than a potential issue with Horizon, for the purposes of the Scheme the presumption is that the shortfall is a Horizon Shortfall.

#### **Consequential Loss claims**

34. The Panel should apply the Scheme Consequential Loss Principles and Guidance which are included at Appendix 1.

35. In relation to personal injury claims where insufficient evidence has been provided for a claim to succeed without further medical and/or expert evidence, the Panel may recommend the making of an offer to the postmaster which the Panel considers fair. The postmaster will then have the option of either accepting that offer or obtaining such further evidence and pursuing a personal injury claim in accordance with the ordinary legal standards relevant to such claims, including as to proof of causation and assessment of damages.

#### **F. Review and Approval**

36. This version of the Terms of Reference was approved by the Historical Remediation Committee on 20 June 2022. Any further amendments to the Terms of Reference shall be approved by the Historical Remediation Committee.

# Historical Shortfall Scheme

## Consequential Loss Principles and Guidance

### 1. Scope and Background

1.1. Post Office launched the Historical Shortfall Scheme (the “**Scheme**”) on 1 May 2020 with the objective of resolving past issues for current and former postmasters who believe they have experienced shortfalls related to previous versions of Horizon.

1.2. The application form for the Scheme asks postmasters to identify any alleged Shortfall Losses as well as any other losses that are caused by a Horizon Shortfall, namely Consequential Losses. This document sets out the underlying principles that will govern the assessment of any claims for Consequential Loss under the Scheme.

1.3. A claim for Consequential Loss will only be considered for Eligible Claims where the shortfall underlying the Consequential Loss is found by the Scheme to be a Horizon Shortfall. Where several shortfalls are alleged and not all of these are found to be Horizon Shortfalls, claims for Consequential Loss will only be considered if they are caused by a Horizon Shortfall.

1.4. In the interests of ensuring that the process operates as swiftly as possible and is accessible for all postmasters, the Scheme process will be of a summary nature. This means that, while the process will involve the consideration of documentary evidence held by Post Office and provided by the postmaster, there will be no requirement for detailed written arguments from postmasters or oral evidence.

### 2. Definitions

2.1. **Consequential Loss** means financial or non-financial loss that is not a Shortfall Loss.

2.2. **Eligible Claim** means an application that has been determined to be eligible for the Scheme in line with the Scheme’s eligibility criteria<sup>1</sup> and is identified to the postmaster as such in an eligibility letter.

2.3. **Horizon Shortfall** means a shortfall in stock or cash at a postmaster’s branch compared with the amount of stock or cash indicated on Horizon for that branch, where the shortfall may have been caused by previous versions of Horizon or a breach of duty related to such a shortfall by Post Office.

2.4. **Shortfall Loss** means the amount of a Horizon Shortfall that the postmaster has repaid or is regarded by Post Office as still owing.

2.5. **Common Issues Judgment** means the judgment handed down by Fraser J in *Bates v Post Office Ltd* (No.3: Common Issues) [2019] EWHC 606 (QB).

2.6. **Horizon Issues Judgment** means the judgment handed down by Fraser J in *Bates v Post Office Ltd* (No.6: Horizon Issues) [2019] EWHC 3408 (QB).

### 3. Key Principles

#### 3.1. Burden of proof in relation to proof of Consequential Loss

3.1.1. The burden of proof is on the postmaster to provide sufficient evidence in support of their claim to demonstrate that on the balance of probabilities (i.e. a greater than 50% likelihood) (a) such losses have been suffered and (b) as a consequence of a Horizon Shortfall (as such are found in the Common Issues Judgment or the Horizon Issues Judgment). This means evidencing the fact that a

loss was incurred, the amount of that loss and that the cause of the loss was due to a Horizon Shortfall.

3.1.2. Where the postmaster is unable to satisfy the burden of proof in relation to their claim, their claim may nonetheless be accepted in whole or in part if the Scheme considers it to be fair in all the circumstances.

### **3.2. Evidence**

3.2.1. Claims which are supported by evidence are more likely to be successful. Guidance on how best to evidence any potential claims for Consequential Loss is set out further below.

3.2.2. Greater weight will be attached to;

a) contemporaneous evidence; and

b) factual evidence that is undisputed and/or verifiable.

3.2.3. The need to provide evidence is particularly important where a postmaster's claim relates to matters which are known only to the postmaster. While the burden is on postmasters to provide sufficient evidence to demonstrate their claim for Consequential Loss, the Scheme will also consider any relevant evidence Post Office holds when assessing the claim. Any key supporting documentation relied upon will be shared with postmasters when they receive the outcome of their claims to enable them to consider whether they wish to accept the offers made to them.

### **3.3. Established legal principles**

3.3.1. In considering a claim for Consequential Loss, the Scheme will apply the findings in the Common Issues Judgment and the Horizon Issues Judgment relevant to the claim and any relevant legal and accounting principles applicable to the assessment of damages for breach of a legal duty when determining whether, on a balance of probabilities, the loss claimed is attributable to a Horizon Shortfall. In making that assessment the Scheme will consider:

#### **a) Causation**

The Horizon Shortfall must have caused the Consequential Loss (i.e. the Consequential Loss would not have happened but for the Horizon Shortfall). If the postmaster would have found themselves in the same position in any event, irrespective of the Horizon Shortfall, the Scheme will not be able to conclude that the Horizon Shortfall caused the Consequential Losses the postmaster may have suffered.

#### **b) Remoteness**

The Consequential Loss must not be too remote (i.e. the Consequential Loss must have been reasonably foreseeable at the time of the Horizon Shortfall).

#### **c) Mitigation**

Assuming that causation is established (and the Consequential Loss is not too remote), the Scheme will consider the extent to which the Consequential Loss was or could reasonably have been mitigated by the postmaster, or conversely was aggravated by reasonable attempts by the postmaster to avoid or reduce the Consequential Loss.

#### **d) Quantum**

The object of the assessment will be, so far as the award of a sum of money can do so, to put the postmaster into the position that the postmaster would have been in but for the Horizon Shortfall.

3.3.2. Please note that the above is intended as a guide only; it is not an exhaustive list of the legal principles that may be applicable to any particular claim for Consequential Loss. The application of



the above principles will be fact-specific and will depend on the circumstances of the postmaster bringing the Consequential Loss claim.

### **3.4. Limitation**

3.4.1. Many Eligible Claims will relate to Shortfall Losses and Consequential Losses suffered a significant number of years ago. In order to draw a line under the issues caused by previous versions of Horizon and treat postmasters who have been affected fairly, the Scheme will not apply the laws of limitation or time bar in its assessment of the Shortfall Losses or Consequential Losses.

3.4.2. Post Office's rights to rely on the laws of limitation or time bar outside the Scheme (including in any subsequent court or arbitration proceedings under the Scheme's Dispute Resolution Process) are, however, strictly reserved.

3.4.3. Given the large number of applicants to the Scheme, claims may take some time to investigate and assess. Post Office is therefore willing to agree, in respect of each applicant, that time will not run for limitation purposes from the date the applicant joined the Scheme to the date on which the applicant receives their offer letter.

### **3.5. Presentation of the Consequential Loss outcome**

3.5.1. The Scheme will present its Consequential Loss outcome to the postmaster in a clear, succinct manner, setting out information sufficient to allow the postmaster to understand the basis for the conclusion reached by the Scheme in respect of each type of loss comprising the Consequential Loss claim. It will also provide copies of the key supporting documentation relied upon.

## **4. The High Level Process**

### **4.1. Submission of a Consequential Loss claim**

4.1.1. It is for the postmaster to present any Consequential Loss claim, which involves sending all relevant information and evidence to the Scheme either at the same time as submitting their application form or following a request from Post Office setting out in detail, the evidence required for each head of loss.

4.1.2. What is capable of being claimed as a Consequential Loss, along with the level of evidence required to meet the applicable legal tests, will depend on the facts of each case. The postmaster should explain in as much detail as possible:

- a) the particular loss being claimed;
- b) the specific amount of loss being claimed;
- c) how this loss was caused by a Horizon Shortfall; and
- d) the reasonable steps the postmaster took to reduce this loss, and the impact these steps had.

### **4.2. Assessment of a Consequential Loss claim**

4.2.1. Consequential Loss claims will be assessed against the established legal principles set out at paragraph 3.3.

4.2.2. In addition to the application of these principles the Panel will also consider what is fair in all the circumstances.

4.2.3. If the Scheme considers that information may be available to the postmaster which would help the assessment of their claim for Consequential Loss, the Scheme will proactively contact the postmaster and request that this information be provided within 28 days.

4.2.4. Where new documentation relevant to a claim cannot be obtained without a fee, for example where current property valuations or forensic accountancy analysis is required, the postmaster may request that Post Office reimburse the reasonable costs of the postmaster obtaining that new documentation. Post Office will not reimburse costs that are not pre-approved.

4.2.5. Where the Panel considers that it requires expert assistance in order to make a recommendation, the Panel may recommend to Post Office that an expert be appointed as contemplated by the Panel Terms of Reference.

#### 4.3. Dispute Resolution Process

4.3.1. If postmasters are dissatisfied with the outcome of their claims following the assessment process, the Scheme's Dispute Resolution Process shall apply, as set out in the Scheme's Terms of Reference.

### 5. Types of Loss

5.1. There is no exhaustive list of the types of loss that can be claimed as Consequential Loss (assuming they meet the applicable legal tests and noting that additional losses claimed must be clearly linked back to a Horizon Shortfall); however, certain examples are detailed below along with examples of the types of evidence that postmasters should provide to support their claims for Consequential Loss.

#### 5.2. Loss of earnings

5.2.1. This may relate to loss of earnings during a period when the postmaster was suspended or where the postmaster's contract with Post Office was wrongfully terminated because of a Horizon Shortfall.

5.2.2. This will require evidence, preferably contemporaneous, that the postmaster was suspended or had their contract terminated without sufficient notice because of a Horizon Shortfall. Post Office will take reasonable steps to identify any relevant information from its own records but the postmaster should provide any documentation they hold evidencing their suspension or termination related losses, for example:

a) suspension letter;

b) reinstatement letter;

c) termination letter;

d) remuneration information for the period of suspension and the period before/after the suspension;

e) contemporaneous correspondence between the postmaster and Post Office;

f) an explanation or other evidence as to why the postmaster's contract was wrongfully terminated and that otherwise they would have continued as a postmaster;

g) in respect of termination, an explanation as to why the notice given to the postmaster by Post Office was insufficient;

h) average monthly expenses in running the Post Office branch for the period before the suspension or termination; and

i) if the postmaster was subsequently re-engaged or obtained employment or otherwise earned an income following their suspension and/or termination, confirmation of the date on which the postmaster was so re-engaged or obtained employment and details of the remuneration received or income earned thereafter.

### **5.3. Loss of profits**

5.3.1. This may relate to loss of profits from the Post Office branch or any retail shop owned by the postmaster associated with the Post Office branch.

5.3.2. This will require evidence, preferably contemporaneous, to show how the profits of the business were impacted by the Horizon Shortfall. The postmaster should provide all documentation they hold demonstrating the profits made by the business prior to and following the Horizon Shortfall, taking into account the cost of any additional measures that had to be put in place because of the Horizon Shortfall, for example:

- a) bank statements;
- b) accounts;
- c) tax returns;
- d) cash flows (historical and forecast);
- e) business plans (historical and forecast);
- f) management information (historical and forecast); and
- g) relevant correspondence.

5.3.3. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

### **5.4. Loss of property**

5.4.1. If, as the result of a Horizon Shortfall, the postmaster is forced to dispose of an asset (e.g. a property) at a loss which they otherwise would have retained, a claim for Consequential Loss may be available.

5.4.2. In order for such a claim to be successful, the postmaster will need to provide evidence, preferably contemporaneous, that the Horizon Shortfall (as opposed to other factors) caused the disposal, as well as evidence of the value of the loss suffered as a result, for example:

- a) an explanation as to why the asset was sold;
- b) relevant correspondence and documents relating to the purchase and sale of the asset;
- c) evidence of the value of the asset (historic and current); and
- d) any relevant accounting documentation.

5.4.3. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

### **5.5. Loss of opportunity/loss of chance**

5.5.1. The loss of an opportunity to pursue a course of action that could have resulted in financial gain, such as expanding the business, which the postmaster would have pursued if not for the Horizon Shortfall may be claimed as a Consequential Loss.

5.5.2. For these claims, it will be necessary to submit evidence to demonstrate a specific opportunity or course of action that the postmaster was aware of at the time and had intended to pursue but was prevented from doing so due to the Horizon Shortfall.

5.5.3. This will require evidence, preferably contemporaneous, that the postmaster was aware of the opportunity at the time it arose, and intended to pursue it. Claims that speculate (without supporting evidence) how money put towards repaying a Horizon Shortfall could have been invested

or what may have been done but for the Horizon Shortfall are unlikely to succeed. Any claims should therefore be accompanied by evidence such as the following:

- a) evidence that an opportunity to invest existed;
- b) evidence that the investment opportunity was being actively considered and was likely to be pursued;
- c) evidence demonstrating that the inability to invest was caused by the Horizon Shortfall (rather than by other intervening events or the fact that they would not have had the funds to avail themselves of the opportunity);
- d) evidence of what the postmaster's financial position would have been but for the Horizon Shortfall;
- e) expected costs and timeframe for investment; and
- f) evidence of progress (if any) on the investment.

5.5.4. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

#### **5.6. Penalties/general or increased costs of financing**

5.6.1. Penalties or general/increased costs of financing, as a result of the Horizon Shortfall, may be recoverable (e.g. additional interest or loan arrangement fees) if the postmaster can provide evidence to show that the Horizon Shortfall caused the penalty or increased cost of financing.

5.6.2. This will require evidence, preferably contemporaneous, of the purpose of the financing and what the postmaster's financial position would have been but for the Horizon Shortfall. If the postmaster alleges that the finance was taken out at less advantageous rates than it would otherwise have been as a result of the Horizon Shortfall they will need to provide evidence of when the finance was taken out and that they had been turned down for other products at more favourable rates.

5.6.3. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

#### **5.7. Bankruptcy/insolvency**

5.7.1. Losses suffered if the postmaster underwent bankruptcy or insolvency proceedings as a result of a Horizon Shortfall may be claimed as a Consequential Loss.

5.7.2. For such a claim to be successful the postmaster will have to provide evidence, preferably contemporaneous, that they were bankrupted/declared insolvent (as appropriate), the value of the loss claimed and that the bankruptcy/insolvency was due to the Horizon Shortfall (rather than other intervening events/general financial hardship/other factors).

5.7.3. The types of document that the postmaster should provide with their claim is as follows:

- a) copy of bankruptcy order or IVA documentation;
- b) copy of notice of bankruptcy in appropriate newspaper;
- c) financial/accounting evidence to demonstrate that the Horizon Shortfall was the reason for the bankruptcy/insolvency e.g.:
  - i. bank statements;
  - ii. accounts;

iii. cash flows (historical and forecast);

iv. business plans (historical and forecast);

v. management information (historical and forecast); and

vi. details of all creditors at the time of bankruptcy/insolvency; and

d) if the bankruptcy/insolvency process has concluded, details of payments made to creditors.

5.7.4. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

## **5.8. Legal and professional fees**

5.8.1. Fees incurred in relation to dealing with a Horizon Shortfall at the time (e.g. the cost of defending legal proceedings or professional advice about restructuring the postmaster's business) may be recoverable. Please note that this is separate to any legal and professional fees incurred by a postmaster in bringing an application to the Scheme.

5.8.2. In order to claim these fees postmasters should provide evidence, preferably contemporaneous, of the following:

a) why and when the professional was engaged (noting that postmasters should avoid providing any legal advice they have received unless they confirm they are happy to waive privilege over that legal advice);

b) details of the engagement (including whether the engagement was by the postmaster or a third party); and

c) the professional's fees being incurred and paid by the postmaster (e.g. invoice/receipt).

5.8.3. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

## **5.9. Stigma/damage to reputation**

5.9.1. Where a postmaster has incurred a financial loss as a result of damage to their reputation as a result of a Horizon Shortfall, they may be able to claim Consequential Loss.

5.9.2. The postmaster would need to explain what action taken by Post Office in light of the Horizon Shortfall damaged their reputation, how those matters became known to others and why the damage to the postmaster's reputation caused financial loss.

5.9.3. The types of financial loss caused by damage to reputation could include:

a) evidence that prospective employers would not hire the postmaster as a result of the Horizon Shortfall; and

b) evidence that customers stopped supporting the postmaster's business as a result of the Horizon Shortfall.

5.9.4. If the postmaster claims that their business suffered a downturn in revenue as a result of the damage to their reputation, they should provide copies of business accounts before and after the Horizon Shortfall became known to others in the community.

5.9.5. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.

## **5.10. Personal injury/harassment**

5.10.1. Postmasters who themselves held a direct contract with Post Office (rather than through a company) may be able to claim Consequential Losses for personal injury or harassment they have suffered as a result of a Horizon Shortfall. Personal injury can include physical injuries as well as psychiatric harm.

5.10.2. This will require evidence, preferably contemporaneous, that the personal injury/harassment was caused by the Horizon Shortfall. Postmasters should provide the following information when making a claim for personal injury/harassment:

a) a detailed description of their injury including (i) the symptoms they have experienced; (ii) medical treatment they have received; (iii) any expenses/financial losses they have suffered; and (iv) the effect of their injury;

b) a letter from their GP (or from another medical professional who has treated them) setting out details of matters including the nature and potential cause(s) of the injury;

c) medical notes and records including copies of the notes and records kept by the postmaster's GP, any other medical professional who has treated them and any hospital to which they have been admitted. Postmasters should only provide the records that are relevant to the injury for which they are bringing a claim;

d) evidence of the harassment, how often it occurred and what constituted the harassment; and

e) other relevant information, for example where the postmaster is seeking to recover for financial losses (e.g. medical expenses and/or loss of earnings) the postmaster should include documents in support of those claims.

5.10.3. The postmaster needs to provide a calculation showing how the amount being claimed has been quantified.