Horizon Shortfall Scheme Appeals Assessment Framework

Introduction

This Assessment Framework sets out the underlying principles that govern the assessment of any claims under the Horizon Shortfall Scheme Appeals process (thereinafter referred to as the "Process") and provides guidance in relation to such claims. It is intended to be read alongside the already published HSSA Process Guidance and Principles and HSS Consequential Loss Principles and Guidance. It provides further detail on the established principles governing Shortfall Losses and Consequential Losses, as those terms are defined in those documents, and their application on the Process.

Each case will be looked at in the round and decided on its merits, guided by the overarching goal of 'full and fair' redress. Case advisers will consider the nature, severity, frequency, duration and other relevant matters relating to the impact of Horizon Shortfalls and Consequential Losses, assessing the facts and circumstances for each person as described in their application and all accompanying supporting documents or information, before making any determination.

1 Definitions

1.1 **Consequential Loss** means financial or non-financial loss that is not a Shortfall Loss but which flows from and was caused by the Horizon Shortfall, for example loss of earnings or damage to reputation.

1.2 **Eligible Claim** means an application that has been determined to be eligible for the Process in line with the Process' eligibility criteria.[1]

1.3 **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 (sometimes referred to as Legacy Horizon, Horizon Online or HNG-X) or a breach of duty related to such a shortfall by Post Office.

A shortfall will be presumed to have been a Horizon Shortfall where:

- there is evidence that the shortfall in question existed and was paid
- there is no evidence that the shortfall was caused by something other than a potential issue with Horizon

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

1.5 **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)

1.6 **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).

[1] https://www.gov.uk/guidance/horizon-shortfall-scheme-appeals-process-guidance-and-principles

2 Key Principles

2.1 Fairness

The central goal of the Process is to deliver compensation to eligible postmasters that is full and fair, restoring postmasters back into the position they would have been in had it not been for the Horizon-related actions of the Post Office[2].

DBT and the Post Office have published a joint statement setting out what “full and fair” means in terms of Horizon redress. DBT will always look to apply the definition set out in that statement when assessing appeals and making HSSA offers.

2.2 Burden of proof in relation to proof of Consequential Loss

2.2.1 The Process will decide on the balance of probabilities whether:

- the loss was incurred
- the cause of the loss was due to a Horizon shortfall

2.2.2 Balance of probabilities means a greater than 50% likelihood. It is therefore important that the postmaster provides as much relevant evidence as possible to support their claim. If the postmaster is unable to provide supporting evidence, their claim will still be considered and could be accepted if the Scheme considers it to be fair in the circumstances.

2.2.3 Claims which are supported by evidence are more likely to be successful. Guidance on how best to evidence any potential claims for consequential loss follows. Greater weight will be attached to:

- contemporaneous evidence (documents created at or near the time of the loss)
- factual evidence that is undisputed or verifiable

2.2.4 Where the postmaster cannot provide full evidence due to the passage of time, weight will be given to clear, plausible and detailed accounts provided by the Applicant.

2.2.5 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 Process considers it to be fair in all the circumstances.

2.3 Evidence

2.3.1 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.

2.3.2 Greater weight will be attached to;

a) contemporaneous evidence; and

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

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2 https://www.gov.uk/government/publications/post-office-horizon-it-inquiry-statement-on-full-and-fair-financial-redress/post-office-horizon-it-inquiry-statement-on-full-and-fair-financial-redress

2.3.3 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 Process will also consider any relevant evidence Post Office holds (as well as any publicly available evidence) 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.

2.3.4 All assessments are made based on all the available evidence and relevant circumstances, including giving the applicant the benefit of the doubt. Although it is in the postmaster's interests that their claim is well evidenced and quantified in respect of each head of loss, the Process recognises that this may not always be possible given the circumstances and the length of time which has passed, and that there will be an absence of evidence. As such, DBT will take a proportionate and considerate approach to the availability of evidence although there will be some claims in which expert evidence may be required.

2.4 Established Legal Principles

2.4.1 In considering a claim for Consequential Loss, the Process 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 Process 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 Process 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 Process 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.

e) **Double Recovery**

The Process will assess claims and take care to ensure that the same loss is not compensated more than once (i.e. to avoid double recovery). This includes situations where losses under different heads may overlap, such as distress and inconvenience, personal injury, stigma or reputation, bankruptcy, pecuniary losses, and costs of financing. Where losses are found to overlap, awards will be adjusted to ensure that compensation is not duplicated. Account will also be taken of any payments received under the Initial Complaint Review and Mediation Scheme, the HSS, the HSSA Process (for example, interim payments), or prior settlement agreements. The assessment of double recovery will be fact-specific and may involve a detailed analysis of the different losses claimed and the evidence provided. In some cases, exceptions may apply, where the approach may differ.

f) **Third Party Losses**

Any losses suffered by a third party in relation to a Horizon Shortfall are, generally, not recoverable under the Process. Any claims for partnership losses (e.g. where a postmaster operated the Post Office and/or associated retail business in a partnership and claims losses to the partnership) will be assessed on a case-by-case basis, including all relevant evidence and mitigations taken by each partner.

2.4.2 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.

2.5 Limitation

2.5.1 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 Process will not apply the laws of limitation or time bar in its assessment of the Shortfall Losses or Consequential Losses.

2.5.2 See the HSS Consequential Loss Principles and Guidance for further detail on Post Office's rights to rely on the laws of limitation.

2.6 Interest

2.6.1 Compound interest will be applied in relation to shortfall claims at a standard rate of 3.45%, consistent with the approach taken on the Horizon Shortfall Scheme. The postmaster does not need to calculate the interest in their application form. DBT will apply interest to every offer made.

For Horizon Shortfalls, interest will be applied from the date of payment, where the postmaster or the Post Office records are able to identify a single repayment date. Where Horizon Shortfalls have been repaid over time, interest will run from the mid-point of repayment.

2.6.2 Compound interest at 3.45% will be applied in respect of most consequential losses where the losses are pecuniary. There may be certain cases where the facts of the case mean that it is not appropriate for compound interest to be applied, in particular for non-pecuniary losses or where a pecuniary loss has been awarded based on being valued at present day. For the following heads of loss, it is less likely that the postmaster will have been denied the use of money. Therefore, for the following heads of loss, it is less likely that any interest would be recoverable:

- reduction in capital value
- stigma or damage to reputation
- malicious prosecution (civil and criminal)
- harassment
- distress and inconvenience
- bankruptcy general damages
- loss of congenial employment
- time spent investigating shortfalls
- treatment costs
- future losses or losses valued at present day (for example, loss of capital appreciation of an asset to date)

2.6.3 Personal Injury is awarded at 3.45% simple interest.

2.7 Presentation of the Consequential Loss outcome

2.7.1 The Process 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 Process in respect of each type of loss comprising the Consequential Loss claim.

3 Types of Loss

3.1 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, if available.

3.2 All losses should be quantified net of the tax which would have been payable at the time as outlined in ‘’Loss of earnings’ section.

3.3 Loss of earnings

3.3.1 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 or the postmaster was forced to resign terminated because of a Horizon Shortfall.

3.3.2 This will require evidence, preferably contemporaneous, that the postmaster was suspended or had their contract terminated without sufficient notice or was forced to resign because of a Horizon Shortfall. The Department will ask the Post Office to take reasonable steps to identify any relevant information from its own records through disclosure 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) forced resignation correspondence;

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

f) contemporaneous correspondence between the postmaster and Post Office;

g) 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;

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

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

j) 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, for example tax returns obtained from HMRC, and

k) if the postmaster subsequently received employment benefits following their suspension or termination or forced resignation, confirmation of the dates and details of payments received. Further information on the impact of the Process on benefits can be found on the HSSA Process Guidance and Principles page[3].

3.3.3 The postmaster should demonstrate what they consider most likely to have happened to their earnings but for the alleged wrongful termination by the Post Office of their contract or their forced resignation.

3.3.4 Cases will be considered on a case-by-case basis, taking into account the extent of evidence presented by the postmaster and having regard to what would have happened to their earnings if the Post Office had exercised any right to terminate the contract lawfully at the earliest possible opportunity in a manner which would be least burdensome to it (the 'minimum performance rule').

3.3.5 That will involve consideration of the amount that would have been paid to the postmaster had they left under the Network Transformation Programme and received a 'Leaver's Payment'. In the context of Network Transformation Programme, this payment was the equivalent to 26 months' Post Office remuneration plus the Post Office remuneration that would have been received in the minimum notice period for the contract (typically 3 or 6 months depending on a contract.)

3.3.6 In the context of the Process, the calculation will not be applied mechanically. It is neither a cap nor a minimum. In the interest of fairness and consistency, DBT may make offers that are higher or lower than the 26 months' Post Office remuneration should the facts of the postmaster's case warrant a variation. For example, a lower offer might be appropriate if the postmaster had only been in post a short amount of

3 https://www.gov.uk/guidance/horizon-shortfall-scheme-appeals-process-guidance-and-principles

time or were close to retiring. Offers may also depend on their personal circumstances following the contract termination or forced resignation – for example, if they sought and found alternative employment

3.4 Loss of profits

3.4.1 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.

3.4.2 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.

3.4.3 The postmaster needs to provide a calculation showing how the amount being claimed has been quantified. The postmaster should demonstrate and evidence how long they would have continued to operate the business profitably had their contract been lawfully terminated by the Post Office giving appropriate notice. Where the postmaster is unable to show that they could have operated the business profitably beyond expiry of the appropriate notice period, damages will usually be confined to the loss of profits suffered during the relevant notice period.

Inflation will be applied to loss of retail profits using the consumer price index (CPI).

3.5 Loss of property

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

3.5.2 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 and any financing arrangements;

c) evidence of the value of the asset (historic and current); and

d) any relevant accounting documentation.

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

3.5.4 For residential property valuations, the Nationwide House Price Index can be used for simple valuations to estimate the current value of a residential property and HM Land Registry can be used for historical sales prices and ownership details, where available.

3.5.5 For commercial property valuations, Green Street's Commercial Property Pricing index can be used for simple valuations to estimate the current or past value of a commercial property and HM Land Registry can be used for historical sales prices and ownership details, where available. Similar valuations may be available online for other assets, either historical or by way of current comparator sale prices. Appropriate adjustments should be made for inflation. Assessors will consider any other potential sources of reliable and relevant valuation evidence which are available in a particular case.

3.5.6 For valuations of a Post Office and/or retail business, a multiple of the business's turnover can be used to estimate the potential sale value of the business. If data is available relating to the acquisition, this can be used to indicate a relevant multiple. In the absence of such data, relevant multiples for businesses of this type range from 0.2x to 1x turnover. In the absence of any turnover data, a multiple could be taken of another earnings basis such as profits. These are indicative measures to help the postmaster formulate their claim. Where a forensic accountant expert report is relied upon, claimants should refer to the checklist published online and linked here. Each case will be decided on its merits.

3.6 Loss of opportunity/loss of chance

3.6.1 The postmaster may be able to claim a consequential loss for the loss of an opportunity to pursue a course of action that, but for the Horizon Shortfall, could have resulted in financial gain. For example, expanding the business or making other investments.

3.6.2 Following Sir Gary Hickinbottom's report on loss of opportunity[4], loss of opportunity will be assessed in a 2-step process:

a) DBT will assess the percentage probability that there was a chance or opportunity that the postmaster would have exploited but for POL's misconduct and that they suffered financial loss as a result.

b) DBT will then assess the percentage probability of the postmaster profitably exploiting that chance or opportunity.

3.6.3 At step 1, DBT will not require the postmaster to prove on the balance of probabilities (meaning a greater than 50% chance) that they would have pursued a chance or opportunity but for the POL's misconduct and suffered a financial loss as a result.

3.6.4 Instead, the postmaster's claim will be assessed by the percentage probability of them pursuing that chance or opportunity. For example:

- a claim assessed at a percentage probability of 10% or less at this stage will be considered speculative and will not result in an award

[4] https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fmedia%2F6859619af05cab1603ade635%2Floss-of-opportunity-guidance-doc.odt&wdOrigin=BROWSELINK

- a claimed assessed at a percentage probability between 10% and 50% will be assessed and discounted in accordance with that percentage probability

- a claim assessed at a percentage probability of over 50% meets the legal threshold for causation (the balance of probabilities) and is assessed at 100%

3.6.5 At step 2, DBT will ascertain quantum in accordance with the percentage probability of profitably exploiting the relevant chance or opportunity.

The following example is provided to illustrate the steps outlined previously. It is illustrative only.

Scenario

The claim may be that the postmaster intending to open up a sandwich shop business alongside the Post Office. They didn't because of POL's conduct, and they have suffered a financial loss as a result. The claim may be that if they had pursued this sandwich shop, they would have generated £10,000 in profit. This claim would be assessed in a number of ways, depending on the level of evidence and the percentage probability at each step.

Assessment 1

If it is found the postmaster had a 25% chance of opening the sandwich shop but for POL's misconduct (step 1), and the shop had 100% chance of generating £10,000 if opened (step 2), they may be awarded £2,500. This applies a 25% discount at step 1 and no discount at step 2.

Assessment 2

If it is found they had a 25% chance of opening the sandwich shop but for POL's misconduct (step 1), and the shop had a 50% chance of generating £10,000 if opened (step 2), they may be awarded £1,125. This applies a 25% discount at step 1 and a further 50% discount at step 2.

Assessment 3

If it is found they had a 70% chance of opening the sandwich shop but for POL's misconduct (step 1), and the shop had 100% chance of generating £10,000 if opened (step 2), they may be awarded £10,000. This applies no discount at either stage, to reflect the fact that a claim assessed at a percentage probability of over 50% meets the legal threshold for causation and is assessed at 100%.

Assessment 4

If it is found they had a 70% chance of opening the sandwich shop but for POL's misconduct (step 1), and the shop had a 50% chance of generating £10,000 if opened (step 2), they may be awarded £5,000. This applies no discount at step 1 and a 50% discount at step 2.

The postmaster should provide as much evidence as possible, including their own (or third party) statement. The postmaster's evidence should demonstrate a specific opportunity or course of action that they were aware of at the time and had intended to pursue but were prevented from doing so due to the Horizon Shortfall. This might include evidence demonstrating:

- the existence of the opportunity

- their knowledge of the opportunity and any plans they had made to exploit the opportunity prior to the Post Office's conduct

- how they would have exploited and carried out the opportunity and obtained a profit from it

- their financial ability to exploit the opportunity

- their knowledge, skills and experience that would have assisted them in exploiting the opportunity and obtaining a profit from it

- their drive, ambition and resourcefulness which would have assisted them in exploiting the opportunity and obtaining a profit from it

- profits which would have been made from the exploitation of the opportunity – this may require expert evidence

- the time over which the exploitation of the opportunity would have been profitable

- the risks to the profitability ceasing or being reduced early and whether the income would have been replaced, for example by a new venture

What evidence is required will depend on the nature of the specific opportunity said to have been lost, and may include:

- evidence that the postmaster was actively considering the investment opportunity and that it was likely to be pursued (for example, correspondence with banks concerning financial arrangements)

- evidence demonstrating that their inability to invest or pursue the opportunity 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)

- evidence of what their financial position would have been but for the Horizon Shortfall

- expected costs and timeframe for investment or opportunity

- evidence of progress (if any) on the investment or opportunity

As outlined previously, DBT will assess the percentage probability of both the chance or opportunity being pursued but for POL's misconduct and resulting in financial loss (step 1) and that chance or opportunity being profitably exploited by reference to the evidence the postmaster is able to provide (step 2).

It is in the postmaster's interests to provide as much information as possible. However, we recognise that there will be challenges and therefore our assessment will take into account that evidence may be limited due to:

- the passage of time since Horizon Shortfalls

- the fact that evidence may be unavailable due to the actions of the Post Office, for example exclusion from the Post Office premises

- the fact that evidence availability may be compounded by an unstable life, for example due to loss of a stable home

- the fact that difficulties in recollection may be compounded by psychological effects of the Post Office's wrongdoing

The calculation of the award will also take into account general life events which may impact the profitability of the opportunity so will be dependent on the specific circumstances of the individual case.

3.7 Penalties/general or increased costs of financing

3.7.1 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.

3.7.2 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.

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

3.7.4 Where loans have been taken to cover another pecuniary loss and an award with interest has been offered for that pecuniary loss, consideration will be given as to whether an award under penalties/general or increased cost of financing will constitute double recovery with the interest awarded on the other pecuniary loss.

3.8 Bankruptcy/insolvency

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

3.8.2 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).

3.8.3 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.

3.8.4 If the postmaster was made bankrupt as a result of the Horizon Shortfall, they may be able to claim for:

- diminution in value to their estate or assets because of the bankruptcy
- other consequential pecuniary loss – for example, if they suffered a financial loss as a result of harm to their credit and reputation by reason of bankruptcy
- general damages (anticipated to be in the range of £20,000 to £60,000) - any award for general damages under this head of loss will consider any overlap with damages for harm to reputation and distress and inconvenience.
- the expenses of the bankruptcy (including annulment costs already incurred)
- the statutory interest payable to their creditors

3.8.5 Where the Post Office was the original petitioning creditor in the postmaster's bankruptcy, aggravated damages may also be claimed. These are anticipated to be in the range of £10,000 to £25,000.

3.8.6 These ranges are not limits for what can be claimed under the Process, but can be used as an indicative guide to help the postmaster formulate their claim. Each case will be decided on its merits.

The postmaster should provide a calculation showing how the amount being claimed has been quantified.

If the postmaster would like to seek an annulment, the Process will cover the reasonable legal fees associated with them doing so, for example court fees. This request should be facilitated by their legal adviser. The postmaster can provide an estimate of the costs in their application form, or if after the submission of their application form, by emailing hssappeals@businessandtrade.gov.uk.

If the postmaster is still subject to a Bankruptcy Order, or an Individual Voluntary Arrangement, then part of the award may still vest with the relevant Trustee in Bankruptcy/insolvency practitioner. Please see the 'Bankruptcy and liquidation' section of the HSSA process guidance and principles - https://www.gov.uk/guidance/horizon-shortfall-scheme-appeals-process-guidance-and-principles#bankruptcy-and-liquidation

3.9 Legal and Professional Fees

3.9.1 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 HSS and the HSSA Process.

3.9.2 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).

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

3.10 Stigma or reputation damages

3.10.1 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.

3.10.2 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.

3.10.3 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.

3.10.4 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.

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

3.11 Personal Injury

3.11.1 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 they have suffered as a result of a Horizon Shortfall. Personal injury can include physical injuries as well as psychiatric harm.

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

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 and details of the factors listed at 3.11.5.

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 which they attended. Postmasters should only provide the records that are relevant to the injury for which they are bringing a claim; and

d) 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.

3.11.3 Amounts will be awarded in line with the Judicial College Guidelines for personal injury. Legal representatives will be able to access these guidelines. The postmaster should set out the amounts being claimed with reference to these guidelines.

3.11.4 For substantial claims a postmaster may require expert medical evidence. The Department has published Guidance for Expert Reports and a Medical Expert Guidance Checklist,[5] which may be updated from time to time.

3.11.5 The factors to be taken into account in valuing claims of this nature are:

- their ability to cope with life, education and work
- the effect on the postmaster's relationships with family, friends and those with who they come into contact with
- the extent to which treatment would be successful
- future vulnerability
- prognosis
- whether medical help has been sought

The Judicial College Guidelines sets out various categories of severity, which are reproduced below with the value ranges specified in the 18th edition. The Process will apply values from the most recent edition of the document at the time the Assessor makes an offer. Awards for personal injury will be adjusted for inflation in line with the Retail Prices Index at the time of an offer, unless the personal injury award made previously is maintained.

The below table relates to Chapter 4(A) of the Judicial College Guidelines, which relates to psychiatric damage generally. Depending on the facts of the postmaster's case, other chapters or sections of the Judicial College Guidelines may be relevant and recoverable in addition to or instead of, Chapter 4(A). Where established that another chapter or section of the Judicial College Guidelines is applicable and where an award is made under this head of loss, the valuation bandings in the latest edition of the Judicial College Guidelines will be applied.

Categories of severity	Description	Value ranges
Less severe	The level of the award will take into consideration the length of the period of disability and the extent to which daily activities and sleep were affected. Cases falling short of a specific phobia or disorder such as travel anxiety when associated with minor physical symptoms may be found in the Minor Injuries chapter.	£2,040 to £7,740

5 https://www.gov.uk/government/publications/expert-report-guidance-and-checklists-horizon-convictions-redress-scheme-and-horizon-shortfall-scheme-appeals/expert-report-guidance-horizon-convictions-redress-scheme-and-horizon-shortfall-scheme-appeals

https://www.gov.uk/government/publications/expert-report-guidance-and-checklists-horizon-convictions-redress-scheme-and-horizon-shortfall-scheme-appeals/expert-report-guidance-horizon-convictions-redress-scheme-and-horizon-shortfall-scheme-appeals

Categories of severity	Description	Value ranges
Moderate	While there may have been the sort of problems associated with the factors listed directly before this table, there will have been marked improvement as at the date of submission of the claim and the prognosis will be good. Cases of work-related stress may fall within this category if symptoms are not prolonged.	£7,740 to £25,190
Moderately severe	In these cases, there will be significant problems associated with the factors listed directly before this table, but the prognosis will be much more optimistic than in severe cases. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases of work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment would appear to come within this category.	£25,190 to £72,440
Severe	In these cases, the injured person will have marked problems with respect to the factors listed directly before this table and the prognosis will be very poor	£72,440 to £152,900

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

3.12 **Harassment**

3.12.1 The postmaster may be able to claim consequential losses for the harassment they have suffered as a result of a Horizon Shortfall.

Harassment, as defined in the Protection from Harassment Act 1997, means that the conduct of the Post Office towards the postmaster was ‘unreasonable and oppressive’, meaning it was beyond the boundaries of acceptable and reasonable conduct.

This will require evidence that the harassment was caused by the Horizon Shortfall. The postmaster should provide evidence of:

- what constituted the harassment
- how often it occurred

Offers for harassment will generally be within the range of £2,500 to £30,000 (in respect of non-pecuniary harm for alarm, fear, anxiety and distress). Any offers will be determined according to the relevant facts on a case-by-case basis. The Process will look to assess offers by reference to the set of bands.

Band	Impact	Range	Description
Band 1	Moderate impact or loss	£2,500 to £5,000	Sustained and persistent communication from POL through letters and calls regarding repayment of the alleged shortfalls over a period of time, by means of which it was intended to cause the postmaster distress.
Band 2	Serious impact or loss	£5,001 to £10,000	Oppressive and unacceptable conduct by the POL in the investigation of the shortfalls, by means of which it was intended to cause the postmaster distress. This may include, for example, oppressive or multiple interviews, house searches or threats of further action including arrest and searches, threats of colleagues being interviewed or threats of court action.
Band 3	Severe impact or loss	£10,001 to £30,000	Invasive or very oppressive conduct by POL in the investigation of the shortfalls, by means of which it was intended to cause the postmaster distress and alarm. This may include, for example, multiple or very oppressive interviews, multiple house searches or house searches with seizure of personal items, Proceeds of Crime Act 2002 ('POCA') proceedings or threats of prosecution and prison.

These bands are not limits for what can be claimed under the Process but can be used as an indicative guide to help the postmaster formulate their claim. Each case will be decided on its merits in the round, guided by considerations of fairness.

The postmaster should provide a calculation showing how the amount being claimed has been quantified.

In cases where the conduct described does not constitute 'unreasonable and oppressive' conduct but it is accepted that it would have caused the postmaster to suffer distress and/or inconvenience, said conduct may be considered as part of the award made the Distress & Inconvenience head of loss.

3.13 Distress and Inconvenience

3.13.1 The Process may offer discretionary awards for the distress and inconvenience caused to the postmaster as a result of the Horizon Shortfall.

3.13.2 Distress and inconvenience offers are expected to be within the range of £500 to £10,000, although any offers will be determined according to the relevant facts on a case-by-case basis. The Process will look to assess offers by reference to the set of bands:

- band 1 – £0 to £2,500
- band 2 – £2,501 to £5,000
- band 3 – £5,001 to £7,500
- band 4 – £7,501 to £10,000
- band 5 – in excess of £10,000, in exceptional cases

3.13.3 Relevant factors to determining where along that scale the postmaster's case will fall may include:

- the amount of money at stake
- the duration of the period this was an issue
- wasted time or effort and inconvenience to the postmaster or their branch in dealing with Horizon Shortfalls
- other factors, such as allegations of dishonesty made against them or any public humiliation they suffered

3.13.4 Offers for distress and inconvenience will take into account any potential double recovery with offers made to the postmasters under other heads of loss, for example stigma and personal injury.

3.13.5 These bands are not limits for what can be awarded under the Process, and each case will be decided on its merits.

3.13.6 A postmaster may also claim for the non-financial loss they have suffered as a result of damage to their reputation. However, claims for non-financial loss they have suffered as a result of damage to their reputation will be considered under 'Distress and Inconvenience'. Offers for non-financial losses for stigma or damage to reputation will generally be within the range of £1,000 to £10,000. Any offers will be determined according to the relevant facts on a case-by-case basis. Postmaster should endeavour to provide specific examples of how their reputation was tarnished by POL's misconduct. The Process will look to assess offers by reference to the set of bands.

Band	Impact	Range	Description
Band 1	Moderate impact or loss	£1,000 to £2,500	Distress and humiliation or damage to their self-esteem and confidence caused by general loss of reputation in a wider or local community.
Band 2	Serious impact or loss	£2,501 to £7,500	Distress caused by loss of reputation in a local community, which may include being subject of gossip or rumours and situations where direct comments were made to them or their family (short of verbal abuse).
Band 3	Severe impact or loss	£7,501 to £10,000	Distress caused by significant loss of reputation in a local community, which may include adverse media reports, loss of community positions (for example, Councillor, local charity or sports club leader), being subject of verbal abuse (or verbal abuse directed at family members), feeling of being forced to move out of a local area and being subject of gossip which took years to be forgotten, being unable to explain the position to the community as a result of the Post Office's reliance on confidentiality duties.
Band 4	Very severe	more than £10,000	Exceptionally distressing circumstances – for instance covering an exceptionally prolonged period or an exceptional range of causes.

Band	Impact	Range	Description
	impact or loss		

These bands are not limits for what can be claimed under the Process but can be used as an indicative guide to help the postmaster formulate their claim. Each case will be decided on its merits in the round, guided by considerations of fairness. The Process expects there will be some cases where the facts of the case demand awards significantly higher than the upper figure for the top band.

3.13.7 Where Post Office initiated civil proceedings against the postmaster, the following indicative and cumulative figures for compensation will be taken into account:

(i) In respect of the commencement of civil proceedings to recover Horizon Shortfalls – £5,000;

(ii) In respect of an unsatisfied judgment obtained by POL (e.g. to reflect damage to credit rating and standing for matters such as insurance, property rental, and employment) – £5,000; and

(iii) In respect of steps taken to enforce a judgment, e.g. (i) placing a charge on property; or (ii) obtaining an attachment of earnings order – £5,000.

(iv) In respect of steps taken to instruct or actually instructing bailiffs to enforce a money judgment and/or taking additional steps to obtain and/or obtaining an order for sale and/or appointing a receiver - £5,000.

3.14 Malicious Prosecution (criminal)

If the postmaster was prosecuted but not convicted for a Horizon Shortfall, they may be able to claim for malicious prosecution. This includes where they received a caution as a result of the Horizon Shortfall.

If a postmaster was prosecuted but not convicted, they should provide as much evidence and information as possible to show that:

- they were ‘prosecuted’ by the Post Office
- the prosecution was determined in the postmaster’s favour
- the prosecution was ‘without reasonable and proper cause’
- the prosecution was ‘malicious,’ – this means it was actuated by ‘malice’ on the part of Post Office
- the prosecution has resulted in actionable damage

If the postmaster was prosecuted but not convicted or received a caution, they may be able to claim for:

- pecuniary losses (such as loss of earnings or legal costs)
- mental distress and damage to reputation (anticipated to be in the range of £10,000 to £40,000)

- loss of liberty (anticipated to be in the range of £3,000 to £5,000 where they were held for more than a day, or less where they were held for a matter of hours)
- personal injury (see the ‘consequential loss’ section)
- loss of congenial employment (anticipated to be in the range of £5,000 to £10,000)
- aggravated damages (anticipated to be in the range of £10,000 to £35,000)
- exemplary damages of £75,000

Each case will be considered on its own facts. With the exception of exemplary damages, these ranges are not a minimum or maximum to what offer the Process may conclude it is fair to recommend in any particular case. Each case will be decided on its merits and will involve a consideration as to whether there is double recovery with any other heads of loss.

Where Post Office initiated *civil* proceedings, the impact of these civil proceedings will be considered under ‘Distress and Inconvenience’.

3.15 Pension Losses

3.15.1 If the postmaster suffered a loss of pension investments as a result of the Horizon Shortfall, they may be able to make a claim for the loss of the tax break they would have received.

3.15.2 For example, if they paid £80 into their pension, being £100 with pension relief, losses will be awarded for the £20 tax relief they would have received.

3.15.3 The postmaster should provide a calculation showing how the amount being claimed has been quantified and provide evidence to support their claim.

3.15.4 The types of documents that the postmaster should provide with their claim (if they can) include the following:

- other employer contributory pension scheme documents, such as membership documents (showing their chosen investment profile), quarterly investment reports and annual statements, both pre-dating and post-dating their termination and prosecution
- private pension scheme documents such as membership documents (showing their chosen investment profile), quarterly investment reports and annual, statements, both pre-dating and post-dating their termination and prosecution
- wage and salary slips, and tax documents, both pre-dating and post-dating their termination and prosecution, which contain information such as deductions from salary and matching employer contributions paid to a pension scheme
- any other documentary evidence of pension scheme participation and contributions, such as correspondence with a financial adviser, or a pensions and investment adviser
- any documents that evidence their entitlement to auto-enrolment in a mandatory workplace pension scheme, and details of any opt-out

- any documents that evidence their intention to subsequently join and contribute to a pension scheme in the counterfactual scenario – for example retirement planning documents.

3.16 Loss of Congenial Employment

The postmaster may be able to claim for loss of congenial employment in situations where the postmaster is able to, on the balance of probabilities, prove that they:

- obtained personal satisfaction and/or enjoyment and/or status by their employment in the particular job;

- lost that job as a consequence of the Post Office's malicious prosecution, or as a result of injury or injuries caused by such prosecution; and

- would have remained in the particular job but for the malicious prosecution or the injury or injuries it caused.

Where the postmaster is unable to prove the above, but can establish that they:

- obtained personal satisfaction and/or enjoyment and/or status from their employment in the particular job; and

- lost that job as a consequence of termination or forced resignation due to Horizon Shortfalls,

such factors will be considered under 'Distress and Inconvenience'.

3.17 Time Spent Investigating Shortfalls

The postmaster may be able to claim for time spent investigating shortfalls where they can demonstrate a pecuniary loss as a result of the time spent investigating Horizon Shortfalls and can quantify and evidence this loss.

The postmaster must be able to demonstrate that the time spent investigating Horizon Shortfalls caused significant disruption to the business; in other words, that the staff have been significantly diverted from their usual activities.

Where the postmaster is able to quantify and evidence a pecuniary loss and can demonstrate that the loss caused significant disruption to the business, then an award may be made under this head of loss.

If the postmaster claims for their own time spent investigating shortfalls but cannot demonstrate a pecuniary loss, these factors will be considered under 'Distress and Inconvenience'.

3.18 Royal Mail Colleague Share Plan ("RMCSP")

3.18.1 This loss relates to stakeholder dividends which were paid via the Royal Mail Colleague Share Plan. These payments were paid to postmasters who held a contract with the Post Office – branch managers and assistants were not eligible. Postmasters will be eligible to apply for redress if they were a member of the Royal Mail Colleague Share Plan or would have been eligible to join the Royal Mail Colleague Share Plan but for the fact that they were removed from post on or before 30 June 2011. The application will be for the loss of dividends and/or cash bonuses that they would likely have received but for the Horizon Shortfalls. The actual dividends paid per eligible individual are set out in the table below.

Date	Dividend paid	Multiplier for part-time workers
30 May 2008	£800	Hours/42
29 May 2009	£400	Hours/46
28 May 2010	£400	Hours/46
30 June 2011	£600	Hours/46

If the postmaster had continued to be a full-time postmaster for the full qualifying year before the dates in that table, they would have received the full amount of dividend (hence the maximum claim is £2,200 before adjustments). The dividends were pro-rated for full months in tenure in the qualifying year and pro-rated for part-time postmasters. The dividends were paid via payroll and so tax and National Insurance Contributions were deducted. The redress payment will pay the postmaster the actual amount they would have received had they not been terminated or resigned as a result of Horizon Shortfalls:

- the payments they qualify for based on the dates they would have been in role
- pro-rated for partial tenure in qualifying years and pro-rated for part-time employment (if relevant)
- included in any earnings that they would have received as postmaster but for the Horizon scandal
- tax and national insurance contributions deducted from the gross ‘but for’ earnings

The postmaster does not need to provide any evidence to support this claim. DBT will confirm their eligibility for the scheme and that they did not opt out with the Post Office.

3.19 Estate and Fatality Claims

Where an applicant claims that the death of a postmaster was caused, or was contributed to, by Horizon Shortfalls then a claim on behalf of the estate of the deceased postmaster may be considered. Probate will need to be obtained before a claim can be considered or payment made under this section.

Additionally, claims arising out of the Fatal Accidents Act 1976, which relate to defined categories of individuals who relied on financial or practical support from a postmaster who died as a result of wrongdoing, will also be considered. Each case will be considered on a case by case basis according to ordinary legal standards, including causation and the assessment of damages. The Process will determine whether Horizon Shortfalls caused, or materially contributed to, the postmaster’s death.

Where causation is established, Assessors will consider the following:

(i) Bereavement damages

This consists of one lump sum. The quantum of damages recoverable is set by statutory instrument. For the purposes of the Process, if an offer for bereavement damages is to be made, this will be based on the most recent rate (£15,120).

(ii) Dependency claims may comprise of loss of financial dependency, loss of services and/or loss of intangible benefits.

When assessing such claims, consideration will be given to (i) whether an applicant qualifies as a dependent as defined in the FAA (ii) whether there was an actual dependency on the deceased or a reasonable likelihood that the applicant would have become/continue to be dependent on the deceased after the death; and (iii) whether that dependency was of a personal, rather than a commercial or professional, nature. Dependency losses are assessed broadly and fairly, taking into account the hypothetical life expectancy of the postmaster and the likely period of dependency. Claims for loss of financial dependency can include (a) salary, wages and other income the deceased would have received during the period in which they would have continued to work (b) pension entitlements; and (c) interest, dividends or any other financial support that would have been provided by the deceased.

Where appropriate, offers may be made for the value of services (such as care or household tasks) and for intangible benefits lost by close family members. Claims for loss of services will be considered on a case-by-case basis and Assessors will have regard to the particular circumstances of both the late postmaster and each dependant.

(iii) Funeral expenses may also be recoverable. Reasonable costs, such as the cost of the funeral and tombstone, can be recovered. Evidence (such as receipts) should be provided. Where evidence is not available, a discretionary award may be made.

Glossary

The following are explanations of the legal principles referred to throughout this HSSA Assessment Framework:

- Balance of probabilities – something is more likely than not to have happened.
- Mitigation – means steps the postmaster took to reduce their loss.
- Remoteness – losses must be reasonably foreseeable (not too far removed from the original event).
- Quantum – the amount of money the postmaster is claiming