

Consequential Loss Principles for the Post Office Process Review ("PPR")

The logo consists of a red circle containing the words "POST" and "OFFICE" in white, stacked vertically.

1. Since the Common Issues Judgment in March 2019¹, Post Office Limited ("**Post Office**") has carried out work across its business to identify products, processes or policies that may have caused financial loss to Postmasters because of the way they were designed or delivered, including in relation to whether appropriate materials or training were provided to help Postmasters and their teams carry out the relevant processes.
2. The specific issues covered by the Post Office Process Review ("**PPR issues**"), the dates these could have occurred and the estimated total average financial loss suffered by Postmasters impacted by each issue (excluding interest) are set out on the PPR website at <https://corporate.postoffice.co.uk/remediation> and enclosed with an introductory letter that is being sent to Postmasters who were potentially affected.²
3. Post Office wishes to remediate the PPR issues and is offering to make a payment to Postmasters for losses suffered plus 8% simple interest. This interest amount is included with a view to providing redress to Postmasters for additional losses that they might have suffered as a result of the PPR issues (known as "**Consequential Losses**").
4. In most cases the offer of 8% simple interest will adequately compensate Postmasters for Consequential Losses suffered, given the relatively low estimated financial losses associated with the PPR issues and that the offer of 8% interest may cover long periods. It is anticipated that there will be relatively few claims for Consequential Loss, because most PPR issues are unlikely to have given rise to substantial Consequential Losses.
5. However, Post Office recognises that the payment of 8% interest may not, in every case, fully compensate Postmasters for Consequential Losses suffered as a result of the PPR issues. Post Office is inviting Postmasters who do not consider that the interest payment would be adequate to make a claim for Consequential Losses caused by the PPR issues they experienced.
6. The below guidance is intended to help those Postmasters who wish to make a claim for Consequential Loss to understand the legal principles relevant to such claims and the types of loss that they may wish to consider. This guidance is not exhaustive. The fact that a type of loss is not identified below does not mean that a Postmaster cannot make a Consequential Loss claim in respect of that type of loss. Also, this is not an exhaustive list of the legal principles that may be applicable to any particular claim for Consequential Loss.
7. A claim for Consequential Loss will only be considered where the underlying cause was one or more of the PPR issues.

Key Principles

8. Burden of Proof:

- 8.1. Postmasters should provide sufficient information to demonstrate, on the balance of probabilities (i.e. a greater than 50% likelihood), that: i) Consequential Loss has been suffered; and, ii) such loss was caused by the PPR issues they experienced.

9. Information and evidence to be supplied:

- 9.1. Evidence includes Postmasters' own explanation of the facts, and this does not need to be supplied in any particular format. Postmasters who consider that relevant evidence once existed but is no longer available should explain what that evidence was and the reason it is not available.
- 9.2. Greater weight will be attached to contemporaneous evidence (such as documentation issued at the time of the loss e.g. invoices for fees paid), and factual evidence that is undisputed, verifiable, or consistent with other evidence.

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

2. Postmasters can also raise other issues in the PPR related to products, policies or processes that caused them financial loss. Where a Postmaster has raised such an issue in the PPR and Post Office has investigated the issue and made an offer of redress, this will also be a "PPR issue" for the purposes of these Consequential Loss Principles.

10. Legal Principles:

(a) Causation:

10.1. The PPR issues must have caused the Consequential Loss being claimed (i.e. on the balance of probabilities the Consequential Loss would not have been suffered but for the PPR issues). The Postmaster must show that the PPR issues were the “effective” or “dominant” cause of the loss.

10.2. If the relevant Postmaster would have found themselves in the same position in any event, irrespective of the impact on them of the PPR issues, Post Office will not be able to conclude that the PPR issues caused the Consequential Loss that the relevant Postmaster has claimed.

(b) Remoteness:

10.3. The Consequential Loss must not be too remote. This means that the loss must be of a kind or type that, if Post Office and the Postmaster had thought about it at the time they entered into the contract between the two parties, they would have concluded it was not an unlikely result of the PPR issues.

(c) Mitigation:

10.4. Assuming that causation is established (and the Consequential Loss is not too remote), Post Office will consider the extent to which the Consequential Loss was or could have been reasonably reduced or avoided by the relevant Postmaster, or conversely was aggravated by attempts by the relevant Postmaster to avoid or reduce Consequential Loss.

(d) Quantum:

10.5. The object of any assessment of the Consequential Loss will be, so far as the award of a sum of money can do so, to put the relevant Postmaster into the position they would have been in if Post Office had not caused the PPR issues.

11. Limitation:

11.1. Certain claims arising from the PPR issues may relate to loss suffered a number of years ago. The law of limitation will generally apply to limit any claims brought after 6 years from the date of Post Office’s breach of contract. However, in the interest of fairness Post Office has decided not to take any limitation defence in respect of the PPR issues at this stage. Post Office will provide as much notice as possible of any change in its approach to limitation.

12. Interest:

12.1. Apart from losses in respect of personal injury and distress and inconvenience, Post Office will apply compound interest on the amounts offered in relation to Consequential Losses at a rate of 3.45%, consistent with the approach taken in the Horizon Shortfall Scheme. Interest will be calculated on an individual basis depending on the period during which the Consequential Loss was suffered. 3.45% compound interest is used rather than 8% simple interest because Consequential Losses have been assessed and sums awarded based on evidence submitted.

Claims Process

13. It is for the Postmaster to present any Consequential Loss claim to Post Office, alongside all relevant information and evidence. Post Office may request further information in relation to the loss claimed.

14. What is capable of being claimed as a Consequential Loss, along with the level of information required to meet the applicable legal tests, will depend on the facts of each case. The Postmaster should explain as far as possible: a) the amount being claimed; b) how this loss was caused by the PPR issues; and c) any steps the Postmaster took to reduce this loss, and the impact these steps had. Postmasters will receive redress only in respect of Consequential Losses for PPR issues that they suffered.

15. Once received, Consequential Loss claims will be assessed against the key principles set out at paragraphs 8 to 10 above. In making its offer to a Postmaster, Post Office will be guided by broad considerations of fairness, and will take into account all matters relevant to each case to produce a fair result. That may entail determining that, in a particular case, and only so that this helps the particular Postmaster, Post Office requires less evidence than may ordinarily be required to prove their claim. This discretion will not be confined solely to the specific Consequential Losses claimed by the Postmaster but may be generally applied to take into account any facts and matters which Post Office considers will produce a fair result.
16. Post Office 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 in respect of each type of loss. Post Office will also provide copies of the key supporting documentation relied upon.
17. Post Office will review and consider any and all evidence, expert or otherwise, provided by Postmasters. Should Post Office determine that a claim would fail, or that the offer to a Postmaster would be less than the amount claimed, because only non-expert evidence has been supplied by the Postmaster, Post Office will offer to pay for and instruct a suitable expert. Should a Postmaster wish to recover the cost of their instruction of any professional, they must not incur any fees without prior written approval from Post Office.

Types of Loss (also known as “heads” of loss)

18. As set out above, eligible claims under the Post Office Process Review will relate to losses caused by the PPR issues.
19. Certain examples of the types of Consequential Loss that may be relevant are detailed below, along with examples of evidence that a Postmaster should try to provide to support their claims if possible. There may be other types of loss that were caused by the PPR issues that are not listed below – the fact they are not listed does not mean a Postmaster cannot claim for them. As explained in paragraph 6 above, the list below and the guidance in this document more generally are not exhaustive.
20. **Penalties/Cost of Finance**
21. Penalties or increased costs of financing, as a result of the PPR issues, may be recoverable (e.g. additional interest costs or loan arrangement fees).
22. Proving this head of loss will require evidence of the reason that the financing was taken out, the penalties or increased finance costs incurred, and what the Postmaster’s financial position would have been had the PPR issues not occurred.
23. **Loss of Opportunity/Chance**
24. The loss of an opportunity to pursue a course of action that could have resulted in financial gain, such as opening a retail business or expanding an existing one, which the Postmaster would have pursued if not for the PPR issues, may be claimed as a Consequential Loss.
25. For these claims, it will be necessary to demonstrate the specified 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 PPR issues. A Postmaster should seek to provide evidence such as the following:
 - (a) Evidence of the opportunity to invest;
 - (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 PPR issues (rather than any other intervening events or the fact that, regardless of the PPR issues, they still 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 PPR issues;
 - (e) Expected costs and timeframe of the investment; and
 - (f) Evidence of progress (if any) on the investment.
26. **Legal and Professional Fees**
27. Fees incurred in relation to dealing with the PPR issues (e.g. the cost of obtaining a solicitor’s and/or an accountant’s advice as a result of the PPR issues) may be recoverable. Please note that this is separate to any legal and other professional fees incurred by a Postmaster in bringing a request to the Post Office Process Review.

- 28.** To claim any fees, a Postmaster should provide evidence of the following:
- (a) Why and when the professional was engaged (noting that a Postmaster 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 fees being incurred and paid by the Postmaster (e.g. invoices and/or receipts).
- 29. Loss of Property**
- 30.** If, as a result of the PPR issues, the Postmaster was forced to dispose of any asset (e.g. a property) at a loss which they otherwise would have retained, a claim for Consequential Loss may be available.
- 31.** For such a claim to be successful, the Postmaster will need to provide evidence that the PPR issues caused the disposal, as well as evidence of the value of the loss suffered. For example, the Postmaster should seek to provide:
- (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.
- 32. Unpaid remuneration during a period of suspension (“Suspension Remuneration”)**
- 33.** Following the establishment of the Suspension Remuneration Review it is anticipated that compensation in respect of Suspension Remuneration will be addressed through the Suspension Remuneration Review. You can find details of the Suspension Remuneration Review on the website at <https://corporate.postoffice.co.uk/remediation>. An explanation of potential consequential losses arising in the context of the Suspension Remuneration Review can be found within the Consequential Loss Principles for the Suspension Remuneration Review (available on the website).
- 34. Personal Injury**
- 35.** A Postmaster who holds or held a direct contract with Post Office (rather than through a company) may be able to claim Consequential Losses for personal injuries they have suffered as a result of the PPR issues. Personal injuries can include physical injuries as well as psychiatric harm.
- 36.** A Postmaster will need to provide evidence that any personal injury was caused by the PPR issues. A Postmaster should seek to provide the following information when making a claim for personal injury:
- (a) A detailed description of their injury including (i) symptoms experienced; (ii) medical treatment received; (iii) any expenses/financial losses suffered; and (iv) the effect of the injury;
 - (b) Any 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/or 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; and
 - (c) Any other relevant information, for example where the Postmaster is seeking to recover financial losses (e.g. medical expenses and/or loss of earnings caused by their inability to obtain employment), the Postmaster should seek to provide documents in support of those claims.
- 37. Distress and Inconvenience**
- 38.** Postmasters may feel that the PPR issues caused them to suffer upset, injury to feelings, distress and/or inconvenience, including inconvenience associated with spending significant time dealing with matters arising from the PPR issues.
- 39.** As a matter of law, a claim arising from those circumstances might not be recoverable, but Post Office has decided that irrespective of the strict legal position, where such a claim is indicated by the information provided by the Postmaster in the Post Office Process Review, it will always conclude that the claim can be brought in principle. Post Office will consider whether the upset, injury to feelings, distress and/or inconvenience was caused by the PPR issues and will take a fair and reasonable approach when considering the losses, and the extent to which the Postmaster suffered upset, injury to feelings, distress and/or inconvenience.