

# Consequential Loss Principles for the Suspension Remuneration Review ("SRR")

1. As notified on the Post Office Limited website <https://corporate.postoffice.co.uk> the Common Issues Judgment found that clauses in Postmasters' contracts allowing Post Office Limited to withhold remuneration during any period of suspension were unreasonable under the Unfair Contract Terms Act 1977. Prior to March 2019, Postmasters did not receive remuneration during the period of any contract suspension. Post Office Limited has subsequently changed this policy, resulting in Postmasters being remunerated during a period of suspension. A decision has been taken by the directors of Post Office Limited to provide redress to those Postmasters historically impacted.
2. Post Office Limited is currently in the process of contacting affected Postmasters with a view to paying to those Postmasters the remuneration which was not paid to them during any period of suspension. Post Office Limited is also offering to make an interest payment of 8% simple interest with a view to compensating Postmasters for losses that they might have suffered as a result of their remuneration being withheld during the period of suspension ("Consequential Loss").
3. However, Post Office Limited recognises that the payment of 8% interest may not, in every case, fully compensate Postmasters for Consequential Losses suffered. In those circumstances, Post Office Limited is inviting those Postmasters who do not consider that the interest payment would provide adequate compensation to make a claim for Consequential Loss.
4. The below guidance is intended to assist Postmasters who wish to make a claim for Consequential Loss to understand the legal principles relevant to such claims and also the types of loss that Postmasters may wish to consider when deciding whether to advance a claim. However, 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.
5. A claim for Consequential Loss will only be considered where the underlying cause is a failure to pay remuneration during suspension.
6. In the interests of ensuring that the process operates as swiftly as possible and is accessible for Postmasters, the process will be of a summary nature. This means that, while the process will involve the consideration of documentary evidence held by Post Office Limited and provided by the Postmaster, there will be no requirement for oral evidence.

## Key Principles

### 7. Burden of Proof:

- 7.1. The burden of proof is on the relevant Postmaster to provide sufficient evidence in support of their claim to demonstrate, on the balance of probabilities (i.e. a greater than 50% likelihood), that: i) any Consequential Loss claimed has been suffered; and, ii) that such loss is a consequence of Post Office Limited's failure to pay remuneration to the Postmaster during any period of suspension.

### 8. Evidence:

- 8.1. Evidence includes Postmasters' own explanation of the facts, and that evidence does not need to be supplied in any particular format. Postmasters who consider that relevant evidence once existed but is no longer in their possession should explain what that evidence was and the reason it is not available.
- 8.2. 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.

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

## **9. Legal Principles:**

### (a) Causation:

- 9.1.** The failure of Post Office Limited to pay remuneration to the relevant Postmaster during any period of suspension must have caused the Consequential Loss being claimed by the relevant Postmaster (i.e. on the balance of probabilities the Consequential Loss would not have been suffered but for Post Office Limited's failure to pay remuneration during any period of suspension). The Postmaster must also show that Post Office Limited's failure to pay remuneration was the "effective" or "dominant" cause of the loss.
- 9.2.** If the relevant Postmaster would have found themselves in the same position in any event, irrespective of the impact on them of the failure by Post Office Limited to pay remuneration during any period of suspension, Post Office Limited will not be able to conclude that the failure to pay remuneration caused the Consequential Loss that the relevant Postmaster has claimed.

### (b) Remoteness:

- 9.3.** The Consequential Loss must not be too remote. This means that the loss must be of a kind or type that, if Post Office Limited and the Postmaster had thought about it at the time they entered into the contract between Post Office Limited and the Postmaster, they would have concluded it was not an unlikely result of a failure by Post Office Limited to pay remuneration.

### (c) Mitigation:

- 9.4.** Assuming that causation is established (and the Consequential Loss is not too remote), Post Office Limited 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 reasonable attempts by the relevant Postmaster to avoid or reduce Consequential Loss.

### (d) Quantum:

- 9.5.** 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 Limited had paid remuneration during the period of suspension.
- 9.6.** 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.

## **10. Limitation:**

- 10.1.** Certain claims arising from Post Office Limited's failure to pay remuneration during any period of suspension (including in relation to Consequential Loss) may relate to loss suffered a number of years ago. The law of limitation will generally apply to limit any claims brought after six years from the date of Post Office Limited's breach of contract. However, in the interest of fairness Post Office Limited has decided not to take any limitation defence until 14 March 2025 at the earliest. This is six years from 15 March 2019, the date of the Common Issues Judgment.

## **11. Interest:**

- 11.1.** Save in respect of personal injury and distress and inconvenience claims, Post Office Limited will apply compound interest on the amounts offered at a standard rate of 3.45% (being the weighted average Bank of England interest rate for the period between 1999 and 14 August 2020 (2.45%) plus 1%).

## **Claims Process**

- 12.** It is for the Postmaster to present any Consequential Loss claim, which will involve the provision of all relevant information and evidence to Post Office Limited at the time that the claim for Consequential Loss is made or, subsequently, following a request from Post Office Limited seeking further detail or information in relation to the loss claimed.
- 13.** 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 the failure to pay remuneration during any period of suspension; and d) the reasonable steps the Postmaster took to reduce this loss, and the impact these steps had.

14. Once received, Consequential Loss claims will be assessed against the key principles set out at paragraphs 7 to 11 above. In making its offer to a Postmaster, Post Office Limited 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 Post Office Limited determining that, in a particular case, and only so that this helps the particular Postmaster, it requires less evidence than may ordinarily be required to prove their claim. That discretion will not be confined solely to the specific heads of Consequential Losses claimed by the Postmaster but may be generally applied to take into account any facts and matters which Post Office Limited considers will produce a fair result.
15. Post Office Limited 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 Post Office Limited in respect of each type of loss comprising the Consequential Loss claim. Post Office Limited will also provide copies of the key supporting documentation relied upon.
16. Post Office Limited will review and consider any and all evidence, expert or otherwise, provided by Postmasters. Should Post Office Limited 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, it will offer to pay for and instruct a suitable expert. Should a Postmaster wish to recover from Post Office Limited the cost of their instruction of any professional, they must not incur any fees without Post Office Limited's prior written approval.

## Types of Loss

17. As set out above, eligible claims under the SRR will relate to losses caused by Post Office Limited's failure to pay a Postmaster's remuneration during any period of suspension.
18. There is no exhaustive list of the types of loss that can be claimed as a Consequential Loss under the SRR. However, certain examples of the types of Consequential Loss that may be relevant are detailed below along with the type of evidence that a Postmaster should provide to support their claims for Consequential Loss.
19. **Penalties/Cost of Finance**
20. Penalties or general increased costs of financing, as a result of having remuneration withheld during a Postmaster's period of suspension, may be recoverable (e.g. additional interest costs or loan arrangement fees).
21. Proving this head of loss will require evidence, preferably contemporaneous, of the reason that the financing was taken out and what the Postmaster's financial position would have been had they received their remuneration during any period of suspension.
22. If the Postmaster alleges that the finance was taken out at a less advantageous rate than it would otherwise have been as a result of their withheld remuneration, they will need to provide evidence of when the finance was taken out and that they had been turned down for other financial products at more favourable rates.
23. The Postmaster will also need to provide a calculation showing how the amount being claimed has been quantified.
24. **Loss of Property**
25. If, as a result of having their Post Office Limited remuneration withheld during their period of suspension, 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.
26. In order for such a claim to be successful, the Postmaster will need to provide evidence, preferably contemporaneous, that their withheld remuneration during their suspension 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.
27. The Postmaster will also need to provide a calculation showing how the amount being claimed has been quantified.
28. **Loss of Opportunity/Chance**
29. 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 their withheld Post Office Limited remuneration during their suspension, may be claimed as a Consequential Loss.

30. For these claims, it will be necessary to submit evidence 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 a failure by Post Office Limited to pay remuneration to the Postmaster during a period of suspension.
31. This will require evidence, preferably contemporaneous, that the Postmaster was aware of the opportunity at the time it arose, and that they intended to pursue it. Claims that speculate, without supporting evidence, about how their withheld remuneration could have been invested or what they may have done but for the lack of their remuneration are unlikely to succeed. A Postmaster should therefore 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 Postmaster's lack of Post Office Limited remuneration during their suspension period (rather than any other intervening events or the fact that, regardless of their withheld remuneration, 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 their withheld remuneration during their suspension;
  - (e) Expected costs and timeframe of the investment; and
  - (f) Evidence of progress (if any) on the investment.
32. The Postmaster will need to provide a calculation showing how the amount being claimed has been quantified.
- 33. Legal and Professional Fees**
34. Fees incurred in relation to dealing with their withheld remuneration during their period of suspension (e.g. the cost of obtaining a solicitor's and/or an accountant's advice as a result of their withheld remuneration) 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 SRR.
35. In order to claim any fees, a Postmaster should provide evidence, preferably contemporaneous, 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).
- 36. Personal Injury**
37. A Postmaster who themselves held a direct contract with Post Office Limited (rather than through a company) may be able to claim Consequential Losses for personal injuries they have suffered as a result of their remuneration being withheld during any suspension period. Personal injuries can include physical injuries as well as psychiatric harm.
38. A Postmaster will need to provide evidence, preferably contemporaneous, that any personal injury was caused by having their Post Office Limited remuneration withheld during their suspension period. 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) 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 relevant matters including the nature and potential cause(s) of the injury;
  - (c) 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;
  - (d) Any other relevant information, for example where the Postmaster is seeking to recover for 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.

39. The Postmaster will also need to provide a calculation showing how the amount being claimed has been quantified, both in relation to the personal injury and any resulting additional losses.

**40. Stigma/damage to reputation**

41. Where a Postmaster has incurred a financial loss as a result of damage to their reputation caused by having their Post Office Limited remuneration withheld during their suspension period, they may be able to claim for Consequential Loss.

42. The Postmaster would need to explain how Post Office Limited withholding their remuneration during their period of suspension damaged their reputation, how matters became known to others and why the damage to their reputation caused them financial loss.

43. The types of financial loss caused by damage to reputation must relate to their withheld remuneration. Any losses caused by other factors, such as the fact of their suspension, will not be eligible for consideration under the SRR.

44. The Postmaster will need to provide a calculation showing how the amount being claimed has been quantified.

**45. Bankruptcy/Insolvency Related Losses**

46. If the Postmaster underwent bankruptcy or insolvency proceedings as a result of their Post Office Limited remuneration being withheld during their suspension, they may be able to claim losses suffered as a result of the bankruptcy/insolvency as a Consequential Loss, e.g. loss of earnings due to their insolvent status, loss of property and/or professional fees.

47. For such a claim to be successful the Postmaster will have to provide evidence, preferably contemporaneous, that they were bankrupted/declared insolvent (as appropriate), of the value of the loss claimed and that the bankruptcy/insolvency was due to having their Post Office Limited remuneration withheld during their suspension period (rather than other intervening events, general financial hardship and/or other factors).

48. The types of documentary evidence that the Postmaster should seek to provide in support of their claim is as follows:

(a) A copy of the bankruptcy order or Individual Voluntary Agreement (IVA) documentation;

(b) A copy of the notice of bankruptcy in an appropriate newspaper;

(c) Financial/accounting evidence to demonstrate that their withheld Post Office Limited remuneration during their suspension was the reason for the bankruptcy/insolvency. These documents can include:

i. Bank statements and accounts;

ii. Cash flow statements (historical and forecast);

iii. Business plans (historical and forecast);

iv. Management information (historical and forecast);

v. Details of all creditors at the time of bankruptcy/insolvency.

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

(e) Description of the bankruptcy-related losses claimed and any documentary evidence of such losses (e.g. in relation to loss of property, evidence of the type set out in paragraphs 26(a)-(d) above, invoices for fees paid to an insolvency practitioner etc.).

49. The Postmaster will need to provide a calculation showing how the amount being claimed has been quantified.

**50. Distress and Inconvenience**

51. Postmasters may feel that having their remuneration withheld by Post Office Limited during a period of suspension caused them to suffer upset, injury to feelings, distress and/or inconvenience.

52. As a matter of law, a claim arising from those circumstances might not be recoverable, but Post Office Limited has decided that irrespective of the strict legal position, where such a claim is indicated in the Postmaster's submission to the SRR, it will always conclude that the claim can be brought in principle. Post Office Limited will consider whether the upset, injury to feelings, distress and/or inconvenience was caused by Post Office Limited withholding the Postmaster's remuneration. Post Office Limited will take a fair and reasonable approach when considering the losses, and the extent to which the relevant Postmaster suffered upset, injury to feelings, distress and/or inconvenience.

**53.** Factors relevant in determining the level of any such loss may include:

- (a) the amount of remuneration withheld;
- (b) the duration of the suspension period in question;
- (c) any explanation of mental anguish by the Postmaster; and
- (d) any other factors, such as public humiliation suffered by the Postmaster.

**54. Legal Advice**

**55.** Post Office Limited recognises that, in some cases, the application of the above legal principles to the relevant Postmaster's situation and circumstances may be complicated. In such cases, Post Office Limited will agree to make a contribution to the relevant Postmaster's legal costs. Please contact us at [supportteam@postoffice.co.uk](mailto:supportteam@postoffice.co.uk) if you consider that this applies to you. Should you wish to recover from Post Office Limited a contribution to the cost of your instruction of a legal professional, you must not incur any fees without Post Office Limited's prior written approval.