



SRA General Counsel
The Cube
199 Wharfside Street
Birmingham B1 1RN

12 May 2023

Sent by email: [REDACTED]

Dear Ms Oliver

The Post Office and Herbert Smith: breach of SRA Principles by misleading unrepresented parties

1. I wish to make a formal referral to you of the solicitors working in the in-house legal team at Post Office Limited, and potentially of their external law firm, Herbert Smith Freehills LLP.

The background

2. You will be aware of the Post Office scandal. Between 2000 and 2013, the Post Office [falsely accused thousands of postmasters of theft](#). Some went to prison. Many had their assets seized and their reputations shredded. Marriages and livelihoods were destroyed, and [at least 59 have now died](#), never receiving an apology or recompense.
3. The Post Office is finally paying compensation to its victims. There are several different settlement schemes but the largest is the “Historical Shortfall Scheme” (HSS), which is administered by the Post Office.
4. As of 4 April, 1,924 settlements had been entered into. The Post Office agrees to cover limited legal fees for postmasters receiving offers, but as of that date the Post Office had covered legal fees of only 198 ([see our FOIA correspondence, linked here](#)). Given the age and limited resources of most of the postmasters, this likely means that around 90% of the postmasters had no legal representation.
5. I am aware that there are many postmasters who were unhappy with the compensation offers they received, but were told the offers are confidential and could not be mentioned to anyone. Given the history of the postmasters’ legal dealings with the Post Office, you will understand that their response was to be frightened of the consequences of breaching confidentiality.

The false statement

6. I have been able to obtain several HSS settlement offers, and have identified why the postmasters believed the offers were confidential. The offers all contain this paragraph:

“You will see that we have marked this letter "without prejudice". This means that the terms and details of the Offer are confidential and, unless we both agree, cannot be shown to a court or to others unless for a legitimate reason and on confidential terms - for example, you can take advice from a solicitor about this Offer and we can share it with our Associates.”
7. I am very troubled by this. The statement as to the law in this paragraph is false and misleading.
8. As you and your team are aware, “without prejudice” is a common law doctrine that prevents statements made in settlement discussions from being adduced as evidence in court. It is a form of legal privilege, and not a rule of confidentiality. There is nothing to stop recipients of these offers from sharing them with other postmasters, friends, or journalists, and nothing to stop the journalists then publishing the terms (although it would be advisable to redact identifying details, to prevent any future court from seeing publication as an attempt to circumvent the “without prejudice” rule).
9. The paragraph was therefore a breach of the SRA Principles – something that is particularly serious when the Post Office knew that most of those receiving the offers would be unrepresented.
10. The breach has done considerable harm. It limited unrepresented postmasters’ ability to compare offers with each other, and therefore improve their position. It stopped postmasters discussing the matter with friends and family, who might have prompted them to obtain legal advice. It also shielded the Post Office from public criticism, by preventing postmasters going public with the poor terms they were being offered.
11. I should add that this is quite different from the (sometimes controversial) practice of negotiating NDAs with claimants as part of an overall settlement. Here there is no settlement, merely an offer, and the Post Office is purporting to unilaterally impose confidentiality on unrepresented claimants.

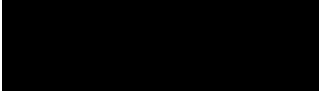
The lawyers responsible

12. The offer letters are sent on Post Office Limited headed paper. You of course do not regulate the Post Office, but there are [36 SRA-regulated solicitors working there](#). I would therefore ask you to investigate which of those solicitors were involved in the drafting of the above paragraph, and the decision to send it to unrepresented individuals, and to consider taking enforcement action against them.
13. It is a matter of public record that Herbert Smith Freehills LLP has advised the Post Office on the HSS scheme ([see, for example, here](#)), and that they review the terms of each HSS offer. It

therefore may be the case that HSF were involved in the decision to include this paragraph in HSS offers. I would therefore ask you to investigate whether HSF were in fact involved and, if so, to consider taking enforcement action against HSF.

14. Do please let me know if I can be of any further assistance. I would ask that you contact me by email rather than by post.
15. I should add that I am likely to make further referrals to you of the Post Office's lawyers in relation to their dealings with unrepresented postmasters, but for the moment I am focussing on the false assertion of confidentiality.

Yours sincerely



Dan Neidle