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By email

29 August 2023

Dear Sirs and Madams,

## **Post Office Convictions and Compensation**

### **The Horizon Advisory Board**

I am writing on behalf of colleagues and myself who are members of the Advisory Board that advises Ministers about the Department for Business and Trade's (DBT) oversight of the delivery of strands of Horizon-related compensation by the Post Office (PO).<sup>1</sup> My colleagues on the Advisory Board are: The Rt Hon Lord Arbuthnot of Edrom, The Rt Hon Kevan Jones MP, and Professor Richard Moorhead.

Forgive me writing a single letter to you all, but it may help you to be aware that the same request is being made to all recipients, and I understand that you are expecting this letter through the kind facilitation of Peters and Peters, who have told me that you have kindly agreed to pass on your email.

We are concerned that many victims who have suffered injustice as a result of the Horizon system and the Post Office's egregious behaviour have not received compensation. Harm was suffered an increasing number of years ago. Many victims have suffered greatly, some are now elderly and in deteriorating health. Some have died. We fear that too many may never receive compensation.

For a significant number of highly deserving individuals, their access to compensation is blocked until convictions are overturned. Various processes generally seem to operate methodically but slowly. In contrast, many of those who were not convicted have received compensation or are now engaged in a compensation process. Accordingly, we feel it right to make some inquiries of you and others, so as to enable us to fulfil our duty to advise Ministers.

### **The Post Office Horizon Scandal**

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<sup>1</sup> Our remit and notes of meetings are published at [http://www.gov.uk/government/groups/horizon-compensation-advisory-board#:~:text=An%20independent%20advisory%20board%20of,Order%20\(GLO\)%20Compensation%20Scheme](http://www.gov.uk/government/groups/horizon-compensation-advisory-board#:~:text=An%20independent%20advisory%20board%20of,Order%20(GLO)%20Compensation%20Scheme).



You will be aware of serious public concern, which we share, over the unjust convictions that arose from the Post Office Horizon scandal. The CCRC has described its work in overturning an initial 39 cases as “the biggest single series of convictions in British legal history”. However, it is increasingly apparent that the 86 currently overturned cases in England and Wales represent only the tip of the iceberg that constitutes an ongoing national scandal in failure of justice.

Our strong belief is that the overwhelming majority of convictions of Sub-Post-Masters and -Misses (SPMs) related to Horizon, and possibly also a significant number of those not directly related to Horizon, are unjust. We see three reasons why these injustices are not being overturned.

1. It is clear that the **Post Office’s approach to prosecutions, to disclosure and to investigations** contravened the established rules of justice. For example, in Jo Hamilton’s case they prosecuted her for an offence for which they knew they had no evidence, in order to get her to plead guilty to another offence. They persistently refused disclosure in criminal cases, falsely denying that materials existed or making disclosure impossible by setting wholly unaffordable charges. The police, at the request of Mr Justice Fraser, are also considering allegations that individual expert witnesses gave false testimony in court. On investigations, it was standard practice for the Post Office to falsely tell those they were investigating that they were the only person having these problems. It defies common sense to believe that such appalling behaviour could be limited to those prosecutions that involved Horizon. It was an attitude of mind, exemplified by the Helpline comment, “Here’s another Patel scamming”. The finding of the Detica Report that the more services that were available in a Post Office, the more likely it was that that Post Office would have audit problems, suggests that the problems were not limited to Horizon.
2. Unsurprisingly, **evidence is now scarce** in many cases. Many postmasters had their potential evidence confiscated by the Post Office at an early stage in investigations: it was never returned. Postmasters and third parties will also naturally have disposed of evidence progressively over time, especially as it for many years it seemed that there was no prospect of justice being done. The Post Office legitimately disposed of much of their own evidence in pre-2007 cases prior to your imposition of a “stop” order in 2016. Their subsequent record-keeping left much to be desired – even aside from the obvious deficiencies of their accounting records. We are in no doubt that there are many cases – probably hundreds – where injustice has been done but evidence is now irredeemably lost. As well as hampering substantive reconsideration of cases, the absence of records may make it difficult to stand up specific allegations of disclosure failures. In England and Wales, we understand that the Court of Appeal had indicated that the burden of overturning cases should remain with the postmaster, and that the Post Office should not concede in such cases. That approach piles injustice upon injustice.
3. It is entirely predictable that the mass of individual unjustly convicted victims of the Post Office are **unwilling to come forward and pursue appeals**. Many are deeply traumatised by years of appalling treatment, and have no trust in any public process or bodies.<sup>2</sup> Many are elderly. All are vulnerable. By definition, they have low resources, since their assets were unjustly stripped from them and they are unable to access any compensation until their convictions are overturned. Many would not wish to risk further trauma and do not have the emotional resources to invest in seeking justice. They will be further deterred by the barriers described above. This means that unless the state or others act on their behalf, serious major injustice will simply not be righted.

To date, it appears to us that cases prosecuted by or on behalf of the Post Office can be viewed in three broad categories:

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<sup>2</sup> See B Grown, J Kukucka, R Moorhead and RK Helm ‘The Post Office Scandal in the United Kingdom: Mental health and social experiences of wrongly convicted and wrongly accused individuals’ *Legal Criminol Psychol.* 2023;00:1–15, at <https://doi.org/10.1111/lcrp.12247>



- A cohort where sufficient evidence remains to demonstrate that a conviction was dependent upon Horizon evidence.
- Another cohort where there is clear third-party evidence of criminal activity.
- The remaining cases where evidence may now be insufficient for the conviction to be quashed under the current approach and Court rules, which place the burden of proof on the convicted person. This group is likely to remain very large, perhaps over half of the overall total. Bearing in mind that the convicted postmasters were, when appointed, generally recognised as responsible individuals with good records, the likelihood of a crime wave among them seems very remote. It seems highly probable that most of them are innocent and that their convictions were the result of the Post Office's reprehensible behaviour as investigator and prosecutor. The review systems appear to have difficulties in reviewing reliable expert evidence that the computer systems (including those that are not strictly defined as 'Horizon shortfall') were or were not reliable, and were the root cause of subsequent actions by SPMs to try to make things balance. The inability to address this injustice – probably affecting over 350 people across the UK – is increasingly seen as yet another national scandal and matter in which the country and its institutions should feel deep shame and aim to address urgently.

At present, we understand that it is only the cases in the first group that are being referred to the Courts and overturned. In our view, a rational observer would conclude – as we do – that *no* Post Office prosecution is safe unless there is the clearest of evidence that the person convicted has committed a crime. All of the Post Office's convictions need to be reviewed with the presumption of innocence at the forefront of those reviews. That should lead to the convictions of the third group described above being quashed.

This needs to be done promptly. As noted above, many postmasters took up their roles in middle age: two decades on, large numbers are elderly and some have, sadly, already passed away without receiving justice.

It is possible to distinguish members of the second and third groups described above on the basis of the available evidence. Whilst there will be some who – for lack of evidence – are treated as part of the third group and wrongly benefit from quashed convictions. We believe that would be a price eminently worth paying to secure belated justice to hundreds of genuinely innocent people. Indeed we would support overturning *all* Post Office convictions rather than letting innocent people remain tainted. In a responsible democratic state, the imperative of rectifying palpable injustice to several hundred innocent people fairly clearly outweighs the risk of inadvertently quashing the convictions of a small number of the guilty. We note that the England and Wales Law Commission's recent Issues Paper on Criminal Appeals note prominently that "It is a longstanding core principle of criminal justice in England and Wales to favour the acquittal of the guilty over the conviction of the innocent" (para 2.8), and there are various references (including by Lord Dyson) to preferring the principle of justice over finality (eg para 1.4, fn 3).

We are aware that bodies other than POL were involved in investigating or prosecuting cases. In particular:

- In England and Wales, we are aware that some cases were reported to the police and taken forward by the CPS without being led by POL, even though POL may have provided some input.
- We have been told that the Horizon programme was developed on behalf of POL in conjunction with DHSS. We are also aware that some prosecutions were taken forward by DWP prior to 2012, for example relating to benefit fraud, although POL may have provided some evidence or input. A number of consequential questions may arise over the behaviour of those involved and the reliability of computer evidence relied on.



- We are aware that the processes for prosecuting and for examining convictions in Scotland is governed by Scottish law (with which we are unfamiliar), involve the Crown Office and Procurator Fiscal, and the Scottish CCRC and that the Court is playing a central management role.
- In Northern Ireland, the Public Prosecution Service for Northern Ireland and the CCRC are involved, operating under distinct law.

Accordingly, we would welcome your assistance in understanding where POL Horizon cases currently are in your system, the relevant procedures and rules, and whether fresh approaches, including radical change, might be called for. In particular, and in order to enable us to review the situation on delivering compensation, we would appreciate your kind assistance on the following factual issues:

- (a) How many prosecutions and convictions related to *any* Post Office issue has your organisation been involved in investigating, prosecuting, reviewing, or overturning? How many cases are there in each of those categories? How many are at what stage in a review process? How many have been overturned? Is a lack of evidence hampering progress, and why? How long may current processes be expected to take?
- (b) What legislation and other legal rules apply to review and overturn? What is your approach to review, seeking overturns, collecting evidence and delivering rectification of injustice? To what extent have you been proactive in taking steps, and what initiatives cannot be taken without the initiation or involvement of SPMs? What barriers exist? How long do you expect that current processes will take?

If it is helpful to discuss issues in a meeting, we would be happy to do so.

## Delivering Justice

We believe that the justice system itself is called into question in the current circumstances.

We are sure that you, like us, are committed to righting injustice. Accordingly, we are confident that you will be keeping under this situation serious ongoing review. We note your powers of investigation and would like to hear how you are deploying them here. We would be interested to know whether you feel that you have adequate access to the mounting evidence emerging from the Post Office, the Inquiry, the media and other sources, or whether some new mechanism might assist in your being fed this, or collecting or investigating it? We are aware that Phase 4 of the Williams Inquiry is looking at prosecutions, and may well reveal new evidence. (However, we are concerned at the continuous passing of time: that phase is due to last until the end of this year.) We would appreciate discussing with you the extent to which you may have come across evidence of systemic approach. How many cases have you investigated but decided not to refer to the Court of Appeal?

Does a case in your jurisdiction need the consent or active involvement of a convicted person to be brought? If there remains a limitation on your powers and ability to respond to a mass case of injustice such as the current one, we also assume that you would support a change in the law. We have seen that the England and Wales Law Commission's recent issues paper on Criminal Appeals raises a similar prospect. We recognise that you operate within an existing legal framework set by Parliament, and that criteria are also set by the Courts. If things need to change, then change they should. As the CCRC highlights on its website, it was created out of 'high public profile and the pressure to ... restore public confidence'. Does this not apply with great force in the current situation?

It seems to us that the current system has difficulty responding to the current situation where the Post Office's behaviour has consistently been systemically outrageous. Individual SPMs should not have to initiate appeals, especially when there are compelling reasons that explain why they may not feel that they have the energy, ability, willpower or confidence to do so. In simple terms, the state should be able to initiate reviews of all cases, in which the burden of proof as to safety is reversed.

We would be interested in your views on the above and would be happy to discuss matters further.

Yours sincerely,



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Chair, Horizon Compensation Advisory Board

cc Sir Wyn Williams

Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice

