

Horizon Compensation Advisory Board
Secretariat: Department for Business and Trade
1 Victoria Street
London
SW1H 0ET

Helen Pitcher OBE, Chair
Karen Kneller, Chief Executive
Criminal Cases Review Commission
23 Stephenson Street
Birmingham
B2 4BH

15 August 2023

Dear Ms Pitcher and Ms Kneller,

Post Office Convictions

The Horizon Advisory Board

I am writing on behalf of colleagues and myself who are members of the Advisory Board that was created around the beginning of this year to advise Ministers about the [Group Litigation Order \(GLO\) Compensation Scheme](#) that was established for victims of the Post Office Horizon scandal. Our terms of reference were subsequently expanded to include advice about the Department for Business and Trade's (DBT) oversight of the delivery of other strands of Horizon-related compensation by the Post Office (PO). You will also be aware of the ongoing Public Inquiry into Post Office Horizon being undertaken by Sir Wyn Williams.

My colleagues on the Advisory Board are:

The Rt Hon Lord Arbuthnot of Edrom
The Rt Hon Kevan Jones MP
Professor Richard Moorhead

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).

The Post Office Horizon Scandal

You will be aware of serious public concern, which we share, over the unjust convictions that arose from the Post Office Horizon scandal. You have described your work in overturning the 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 represent only the tip of the iceberg that constitutes an ongoing national scandal in failure of justice.

We have noted the informative article by Amanda Pearce of 25th July which sets out a number of barriers that you perceive.

Our strong belief is that the overwhelming majority of convictions of Sub-Post-Masters and -Mistresses (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. 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. 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 others act on their behalf, serious major injustice will simply not be righted.

The 700 cases prosecuted by the Post Office can be viewed in three broad categories:

- The minority where sufficient evidence remains to demonstrate that a conviction was dependent upon Horizon evidence – ie those defined by the Court of Appeal as "**Horizon cases**". Convictions have already been overturned in 86 such cases, and we know that there are several dozen more in the pipeline, although not all may succeed.
- Another minority where there is **clear third-party evidence of criminal activity**. We have asked the Post Office's external legal advisors whether they can clarify this category.
- The remaining cases – perhaps over half of the total – where **evidence may now be insufficient** for the conviction to be quashed under the Court of Appeal's current approach, which places the burden of proof on the convicted person. We welcome the statement in Ms Pearce's article that "there may be Post Office cases where the conduct of the investigation and prosecution was such that there is a real possibility of a successful appeal even though the case does not depend on evidence generated by Horizon." This may allow some further cases to be treated in

the same way as the first group above. However this group is likely to remain very large. 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 inability to address this injustice – probably affecting over 350 people – 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 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. 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 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).

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?

We note that [s14\(1\) of the Criminal Appeal Act 1995](#) states: "A reference [to the Court of Appeal or Crown Court] of a conviction ... may be made ... either after an application by ... the [convicted] person ... **or without an application being so made**". (emphasis added) That would seem to explicitly authorise the CCRC to make an application by standing in the shoes of a convicted person, without their consent. These points seem to contradict the assertions in Ms Pearce's paper referred to above. We note that s13(1) of that Act requires that an appeal has been determined or leave to appeal has been refused. However, s13(2) of the Act permits the CCRC to make a reference in exceptional circumstances. We also understand that your practice is to advise convicted persons to bring an appeal out of time.

However, if, as here, they are understandably reluctant to take any further steps, for the reasons outlined above, the system seems to fail them. We would appreciate your comments.

If there remains a limitation on your powers 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 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 Court of Appeal. If things need to change, then change they should. As you highlight on your website, you were 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,

Christopher Hodges

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Cc Sir Wyn Williams
Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice