

Professor Christopher Hodges OBE
Horizon Compensation Advisory Board
Department for Business and Trade
1 Victoria Street
London SW1H 0ET

CW-F-09 v1.0

28 September 2023

Dear Professor Hodges,

Post Office convictions

Thank you for your letter, dated 15 August 2023. Please accept my apologies for the delay in replying.

As you are aware, the CCRC has referred 68 Post Office cases for appeal so far, and 91 convictions in Post Office cases have been overturned by the appeal courts to date. As you note in your letter, we have consistently sought to draw attention to the fact that, in our 26 years of operation, the Post Office Horizon scandal is the most widespread miscarriage of justice we have ever investigated. No one should be in any doubt about the devastating impact this miscarriage of justice has had upon the individuals concerned and upon their families, or about how profoundly important it has been for the 91 people who have had their convictions overturned so far.

In your letter you rightly raise the concern that there may be many further unsafe convictions in Post Office cases that are yet to be overturned. We share that concern and have sought to draw attention to the issue ever since we referred the first tranche of 34 Post Office cases for appeal in June 2020. Since that time, we have remained committed to helping ensure that all former sub-postmasters ('SPMs') who might have been affected by the Horizon scandal are aware of how to challenge their convictions and how to access assistance in doing so. We have made public appeals on a number of occasions, encouraging former SPMs to come forward. Our work in that connection has involved traditional media, social media, stakeholder events and dialogue with Parliamentary committees such as the Justice Committee and BEIS Committee (as it then was).

Following the publication of the BEIS Committee report "Post Office and Horizon – Compensation: interim report" on 17th February 2022 - which expressed deep concern that so few SPMs had come forward by that stage to begin the process of challenging their convictions - the CCRC decided to go a step further in its outreach work on Post Office cases. We undertook to make direct contact with former SPMs who might have been affected – but who had not yet appealed or

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applied to the CCRC – in an effort to ensure that they were aware of how to challenge their convictions. As the CCRC is entirely independent from the agencies which investigated and prosecuted the former SPMs, it was hoped that the individuals would be more likely to respond to our communications.

You might find it helpful to know that between March 2022 and February 2023 we wrote to 358 former SPMs providing information on how to challenge their convictions. The individuals included:

- 277 former SPMs who had been written to by POL but who had not replied.
- 19 people who are the next of kin of former SPM's who had sadly died since they were convicted.
- 8 former SPMs whose contact details had not been traced by POL, but who the CCRC managed to trace by conducting further enquiries.
- 39 former SPMs who were prosecuted by the Crown Prosecution Service.
- 15 former SPMs who were prosecuted by the Public Prosecution Service for Northern Ireland.

You will note that the above mailouts do not include all of those who were prosecuted by POL during the period in question in connection with apparent branch shortfalls (approximately 700 cases). The balance can be accounted for by:

- Individuals who had already appealed.
- Individuals who were in the process of appealing or applying to the CCRC.
- Individuals who were in dialogue with POL as a result of its post-conviction disclosure exercise.
- Individuals who, despite best efforts by POL and then by the CCRC, could not be traced.

Of the 358 individuals who were written to, the CCRC received 51 responses. 30 of those requested and were provided with information on how to challenge their convictions. We recognise that that is a relatively low number, but we consider that any additional future applicants or appellants come forward seeking to challenge their convictions are significant; as each reply represents a potential miscarriage of justice which could be corrected.

However, it is also important to note that 21 of the responses that we received requested no further contact from the CCRC or from POL, and requested that we remove their details from our records. Further, some former SPMs advised us that our contact with them had been unwelcome. This reluctance to pursue an appeal may well be for some of the reasons which you note at point 3 on the second page of your letter. Nevertheless, we consider that it is an important principle that it is the individual choice of each former SPM whether they wish to challenge their conviction or not. Even if the law were to allow it (as to which, see below), it is questionable whether appeal proceedings should take place where the individual in question has made it clear – having been provided with the relevant information - that they do not wish to appeal.

I hope it will be helpful if I also comment on some other issues which are raised in your letter:

1. The current legal framework

You recognise in your letter (on page 4) that the CCRC must operate within the existing legal framework, both legislative and by reference to Court of Appeal case law. That is an important observation, when considering the CCRC's ongoing review of Post Office cases. The legislation which governs our work, the Criminal Appeal Act 1995 ('CAA 1995'), requires us to assess each individual conviction or sentence which comes before us to determine whether there is a 'real possibility' that new evidence or argument will lead to a successful appeal (section 13(1)(a)). An important part of our assessment of whether there is a real possibility of a successful appeal, is whether the former SPM in question (or a surviving close relative if they have died) is willing to pursue an appeal. If there is no participating appellant, then there is no possibility of the appeal court agreeing to hear the appeal. Therefore, although you are correct to state in your letter that section 14(1) CAA 1995 empowers the CCRC to refer a case without an application being made to us by the individual in question, it is difficult to see how the 'real possibility test' in section 13(1)(a) – which must be satisfied before a case can be referred for appeal – can be passed in a case where that individual does not wish to participate in the appeal process.

2. Whether the law needs to change in order to secure justice for former SPMs who have been affected by the Horizon scandal, for example, by legislating to allow appeals to be heard without the need for a participating appellant, or legislating to reverse the normal burden of proof which operates on criminal appeals.

You ask whether the CCRC would support change in the law if it might help secure justice for affected former SPMs. We of course remain committed to helping ensure that all affected SPMs are able to secure justice. I can confirm that the CCRC supports the Law Commission's review of the criminal appeal framework (and indeed has called for such a review for a number of years) and is assisting the Law Commission in its work as far as we properly can and will respond to the consultation in due course.

3. The fact that surviving evidence is scarce in many Post Office cases.

This has been a challenge in many of our Post Office case reviews. Many of the cases involved guilty pleas in Magistrates' Courts over fifteen years ago, so it is perhaps no surprise that the surviving material is limited. Despite using our statutory powers to obtain public body material, we often have little case information to work with, and so have had to find creative ways to learn about the facts of the case, for example by checking

for local media reporting from the time. However, we would stress that having limited case information is not necessarily a barrier to the CCRC referring the case to the relevant appeal court. Where the applicant has put forward a coherent and credible account of unexplained branch shortfalls, and where there is nothing to indicate that the prosecution relied on other corroborating evidence aside from Horizon data, the CCRC will give 'the benefit of the doubt' to the applicant and will refer the case for appeal (the 'real possibility' hurdle is, of course, a relatively low one; there does not need to be "a probability or a likelihood or a racing certainty" of the conviction being overturned on appeal, to quote Bingham LCJ at paragraph 12 of *R v CCRC ex parte Pearson* [1999] 3 All ER 498). Although you correctly state in your letter that it would then be for the appellant to put forward an arguable basis for the appeal court finding that theirs is 'a Horizon case', the Court of Appeal has made clear that the appellant may be able to make that case on the basis of their own evidence of what happened to them (see *White and Cameron v POL* [2022] EWCA Crim 435] at paragraph 14).

4. CCRC access to surviving evidence.

On page 3 of your letter, under the heading 'Delivering Justice', you ask whether the CCRC has adequate access to information from POL, the independent Post Office Horizon IT Inquiry, and other sources. Under section 17 of the CAA 1995 the CCRC can require – where it is reasonable to do so – any public body to provide us with materials. We typically use this power a number of times on every Post Office case that we review, and we consider that it provides us with the necessary access to surviving material on Post Office cases; though on occasion it has taken longer than we would wish for POL to locate material.

5. Number of Post Office cases turned down by the CCRC.

You ask how many Post Office cases the CCRC has decided not to refer to the appeal courts to date. As of today's date, there have been 33 such cases, out of a total of 101 completed CCRC Post Office reviews. Decisions not to refer have been reached for a variety of reasons, but a consistent feature is that there was cogent prosecution evidence in the case – extraneous to Horizon – that money was stolen by the SPM in question (for example: evidence of Post Office money having been transferred to the SPM's personal bank account; or evidence from an eye witness who saw the SPM taking money). A number of the cases which have been turned down have also featured detailed and compelling confessions by the SPM, wherein they explained to investigators how they took the Post Office money and how they then used it. However, it is important to stress that where there is any credible evidence that Horizon data might have been essential to the prosecution case, including cases where there was a potentially unreliable confession, the CCRC would

consider that this gives rise to a real possibility of a successful appeal and would refer the case.

You mention in your letter that you would be interested in discussing matters further. I would be very happy to meet with you and your colleagues on the Advisory Board. If it sounds like that might be useful, we can liaise about a mutually convenient date.

Thank you once again for taking the time to write to us.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Helen Pitcher', with a horizontal line underneath.

**Helen Pitcher OBE
Chairman
Criminal Cases Review Commission**

