



By email: christopher.hodges@csls.ox.ac.uk

3 October 2023

Dear Professor Hodges

Re: Post Office Convictions and Compensation

I write further to your letter dated 29 August 2023 on behalf of the Horizon Advisory Board. Please accept my apologies for the delayed response. From the outset may I say that the Crown Prosecution Service (CPS) recognises the strength of feeling about this issue and the devastating impact of these miscarriages of justice.

Legal Position

You have asked about the actions of the CPS and the procedures and rules which apply to the process of overturning wrongful convictions.

As you may be aware, prosecutors are required to disclose to the defence anything which might reasonably be considered capable of undermining the prosecution case or assisting that of the accused. That is known as the duty of disclosure and is governed by the Criminal Procedure and Investigations Act (CPIA) 1996. Even when a case has concluded, the prosecution still has disclosure duties post-conviction though the test is different - the leading case is Nunn v Chief Constable of Suffolk Constabulary [2012] EWHC 1186. Where, after conviction, the prosecutor becomes aware of information which might reasonably cast doubt upon the safety of the conviction they are required to disclose that material. It will then be for the defendant to consider whether or not they wish to appeal the conviction. The prosecution has no power to instigate appeals on behalf of defendants. The prosecutor's duty is therefore one of disclosure.

CPS Action

In order to identify potentially affected cases Peters and Peters, acting on behalf of the Post Office, has provided to the CPS details of 99 cases which they think *may* have been prosecuted by the CPS and *may* have involved evidence from the Horizon system. These cases involve a range of offending, from robbery and burglary to theft and fraud offences. Not all of these cases are necessarily 'horizon cases'.

As you have noted, in many cases the evidence is now scarce. The CPS operates a file retention policy which requires that cases are destroyed after certain periods of time (in general, that period is one year for Magistrates' Court cases and five years for Crown Court cases – or the period of imprisonment if that would be longer). Where a case has been destroyed, we have no information or evidence by which to assess whether post-conviction disclosure is required. The CPS has no investigatory powers.

Of the 99 cases, we have identified 32 cases where a file has been retained. Those cases were returned to the CPS Area that conducted the original prosecution to review their records and consider whether or not post-conviction disclosure was required.

To ensure that the CCRC was aware of the potentially affected cases and the actions we have taken, we have also shared the details of all cases (those we did find, as well as those we did not) with the

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CCRC to consider whether or not further enquiries could be made. At the time of writing, I understand that the CCRC has written to 39 sub-postmasters believed to have been prosecuted by the CPS with information on how to challenge their convictions.

In summary, the CPS is under a duty to disclose information about the reliability of the Horizon system where that may undermine the safety of the conviction. Where we have identified such a case, steps have been taken to make that disclosure. Where we have been unable to identify a case, the CCRC have nonetheless been informed. We hope that the media coverage of this scandal and the actions of the CCRC will have assisted in ensuring that as wide a range of people as possible are aware of the Horizon defects so that parties who want to appeal are able to do so.

Support and Reform

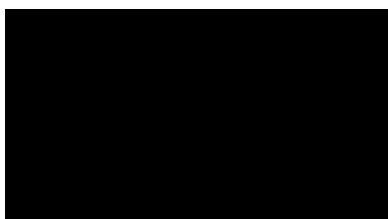
Your suggestion that any post office conviction should be quashed is contrary to our appeal system and is not a step which the CPS is able to take.

Where an Appeal is lodged, the CPS will consider whether that appeal should be opposed – for example, where we consider that there is further evidence which suggests that the conviction was not unsafe. We have handled a small number of appeal cases which were based on Horizon but which we considered played little or no part in the case. In two cases the appeal was abandoned by the applicants following our response to their grounds of appeal and in a third case the Court of Appeal agreed that the conviction was not unsafe - [Allen & Ors v Post Office Ltd & Anor \[2021\] EWCA Crim 1874 \(10 December 2021\) \(bailii.org\)](#).

The CPS will assess every case on its merits but cannot take a blanket approach or not oppose an appeal where evidence suggests that the conviction was not unsafe.

I hope that the above is helpful in explaining the approach that we have taken to these matters.

Yours sincerely,



Laura Tams
Head of Legal Services
Crown Prosecution Service