

Three fronts to meet in relation to convicted claimants and convicted non-claimants

- 1) Seek permission out of time to the CoA
- 2) CCRC – make a reference
- 3) DPP

In relation to 1 or 2, three basic arguments:

- 1) Material non-disclosure – relates to the time of trial in the case of each. PO had a duty to disclose at the time and trial and it was material to the issues.
- 2) In fact by reason of some bug, error or other defect my conviction is safe.
- 3) Somebody remotely access the branch accounts and manufactured a deficit deliberately or negligently.

In relation to 3

Inviting the DPP to review and if satisfied prosecute cases where it is alleged Fujitsu witnesses committed perjury etc. – any successful prosecution could be used to cast doubt over convictions.

Possible appeals by individuals – wouldn't go to the Court of Appeal directly. Would advise them to see what the CCRC do – hypothetically.

Common Issues judgment does not take anybody very far in relation to convictions. Knock on would be where PO consisted during prosecutions that pay back. Could see potentially unravelling confiscation orders etc.. ancillary – would have to deal with in the future.

Horizon Issues judgment – has limitations. Not only recognised in the judgment but repeated in the hand down. Misra is the only conviction he refers to. He did not make any findings in relation to her. Just used case to make some points about the prosecution process. Proceedings have not ended before any unfavourable findings made by him in relation to any convicted claimants – very important. (i.e. hasn't said that PO was at fault or made specific findings in relation to specific claimants' deficits). In the judgment he just dealt in generalities.

Fail to see how anyone can make any arguments on the basis of his convictions. There is no hook that anybody can hang a specific conviction on at the moment. No bug was linked to a specific bug in relation to a claimant. If Misra said that the receipts and payments bug affected me, would need to look at the dates and assess whether or not there was any proof that the bug was fixed before the deficit arose.

CCRC under resourced and overworked. CCRC has to do the work with PO cooperation. Cannot make a reference to the Court of Appeal unless they come to a view that there is a reasonable prospect of success. A year / 18 month project, assuming that they place all resources on this.

At the time at the trial at hand there was material non-disclosure of a bug / error, their potential / actual impact on branch account, robustness, or access to a branch account remotely. Looking at the time of trial. Not necessarily looking at fault but to the extent that there is a tension between Fujitsu's commercial secretively/what they were prepared to tell PO. But not enough to say that all these bugs were not disclosed at the time of the trial without understanding which bugs we are talking about. No point stating that PO did not disclose bug 29 if the case is impacted before bug 29 or after bug 29. May be stupid about it but expect that they should take care on it. The court of

appeal will not be happy if referred to. Should engage with the CCRC on this and need to understand how they want to proceed.

Difficult to see that any material has come to light which effects the safety of convictions. The question is though whether or not it might cast doubt on the prosecutions.

In principle, the materials have already been disclosed.

Ref 429 / 430 of Horizon Issues

Material non-disclosure – second sight – july 2013 – alive to issue – para 6.5 of report.

Para 38 Of BAQC of review

Considered in the Cartwright King sift review.

Rang alarm bells at initial reading – can't look at it superficially – if BAQC is right then there may be no cases where the bugs had an impact if second sight were right that it caused no loss. But will require more thinking and research.

Peak – CK now investigating – a worry – need to look into it.

Highlight two examples where not clear that has failed / the impact of a failure.

With there being a wholesale review of each conviction without reference to each of the 29 bugs / remote access we cannot know that the material that has come to light might cast doubt on the safety of a conviction. Have identified four options for possible actions:

- 1) Get ahead of the issue – begin a review exercise to gage to the extent the 62 were affected by the bugs / remote access – identification exercise.
- 2) Identify those subpostmasters not involved in GLO to see if their convictions might be adversely affected
- 3) Wait and see if anyone appeals/the CCRC proceeds – but wasting time if we allow this to happen
- 4) Approach the CCRC

BAQC view:

Engage with the CCRC to show that we are being responsible and that we with to cooperate and that we are willing to cooperate but seek their guidance and want to avoid any missteps. Might at the same time get an idea where they are / where they are not. Would avoid the risk of Post Office being criticised for being self-serving / uncooperative. If didn't engage, and we had done x when they wanted us to do y – back to the drawing board.

An auditable, sensible attitude to take – shows PO in a good light. Anything that we do do has the stamp of approval – can't go own way – would in my view be pain daft. CCRC may never make a reference.

DPP – usual here that he has taken a view that certain witnesses in history – civil or criminal – have questionable veracity. Interesting. Jenkins is one individual who he may have had in sights. Dunks potentially another. Took against Dunks para 282 and onwards – seem to have appeared in a witness statement Dunks had provided 8 years before Jenkins. The witness statement

Judge highly suspenscious that there is some collusive culture in

S 69 of PACE repealed in April 2000 – likely just the PACE wording. The Fujitsu party line.

Letter to DPP – want to be on front foot?

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