

Where the Post Office Horizon issue stands

CCRC Cases in the Court of Appeal

Six convictions quashed in Southwark Crown Court last week

The first 47 cases referred by Criminal Cases Review Commission to the Court of Appeal will be heard in March 2021, with the Post Office not contesting that 44 of those appeals should be allowed. Tomorrow there is a hearing in the Court of Appeal to determine whether (as the Post Office concedes) the cases should proceed on the basis that the convictions were unsafe because Horizon evidence used by the Post Office was potentially unreliable OR whether they should proceed also on the basis that the Post Office knew it was not possible for Subpostmasters to have a fair trial but proceeded anyway, so that the whole approach to prosecuting subpostmasters was an “affront to the public conscience”. The latter point is argued only by counsel representing three of the 47.

This has been complicated by the retirement from the case of Paul Marshall, one of the counsel who was arguing that latter point. On 18th November 2020, he ran into real hostility from the Court to his having sent to the Police a copy of the Clarke Advice of 2013. That advice established that the Post Office had known, in 2013, that there were bugs in Horizon which they decided not to reveal to subpostmasters who had been convicted. His junior counsel, Flora Page, also gave a copy to her brother, a Daily Mail journalist, in the belief that the document was going to be public knowledge as soon as it was referred to in court. Over recent days following these disclosures of that advice, much discussion has ensued over potential contempt of court proceedings. Paul Marshall found, understandably, that the hostility of the court meant that he would be unable to represent his clients properly, and was risking GRO GRO Both he and Flora Page retired from the case, and their place has been taken by Lisa Busch QC and Dr Sam Fowles. In view of that hostility, they will have their work cut out to win on the second ground tomorrow, in which case it may make it easier for ministers and civil servants to argue that injustices happened largely because of a technicality: that sub-postmasters were prosecuted on the basis of incomplete computer evidence.

Ombudsman Inquiry

Justice for Sub Postmasters Alliance submission. By email of 30/10/20 Alan Bates and JFSA submitted (as is a requisite first step) their complaint first to the relevant Department, BEIS. This complaint was, as expected, rejected, on 30/11/20. Kevan Jones MP then submitted the complaint to the Ombudsman on 1/12/20.

The complaint stated (in part) that:

“1.7 HMG is guilty of maladministration in not overseeing and regulating POL properly in such manner as to prevent POL from running amok as described in the Judgments and, in doing so, destroying the lives of the Complainants

1.10 ...one particular consequence of POL's maladministration of which we complain is the outcome of the Proceedings and fact that the Complainants were forced by a POL litigation strategy designed to spend them to oblivion into settling a mediation commenced prior to release of the Horizon Issues judgment, which resulted in the Complainants (despite winning their cases on almost all counts) each recovering a very low percentage of actual losses incurred as a result of POL's heinous actions”.

Alan Bates expects the following to happen (though the timing is uncertain):

- (a) The Ombudsman agrees to do a report, which turns out damning of the Government and of the Post Office, perhaps making compensation recommendations;
- (b) The Government rejects the report;
- (c) The Ombudsman manages to get the report onto the floor of the House of Commons for a vote;

- (d) If sufficient work has been done in advance, the Government either loses the vote or makes concessions.

Wyn Williams Inquiry

Sir Wyn's heart is in the right place, but his Terms of Reference in the wrong one. The ToR (see <https://www.gov.uk/government/publications/post-office-horizon-it-inquiry-2020/terms-of-reference>) expressly prevent him from considering the important issues: "The Inquiry will consider only those matters set out in the preceding sections A-F. Post Office Ltd's prosecution function, matters of criminal law, the Horizon group damages settlement, the conduct of current or future litigation relating to Horizon and/or the engagement or findings of any other supervisory or complaints mechanisms, including in the public sector, are outside the Inquiry's scope."

BEIS Select Committee

On 14th December I wrote to Paul Scully and said,

"It is now more than three weeks since I drew to your attention that the Post Office, which your department owns and for which you are responsible, lied to Parliament on 3rd February 2015. The lie went to the heart of the BIS Committee's inquiry, and the effect of it must have been to deny to the subpostmasters evidence and an argument about a lack of safety of their convictions which might have helped them in their defence. The Post Office then went on to perpetuate the lie in the evidence they adduced and the arguments they made in the High Court, costing the taxpayer well over £100 million.

"I am disappointed that, despite the importance of the matter and the fact that you are responsible for the Post Office, you have given me no response whatever. I am therefore writing to the Chair of the BEIS Select Committee to see what the Committee might be able to do in the matter."

My request to the BEIS Select Committee to consider the fact that the Post Office lied to their predecessor Committee in 2015 has been turned down. They will consider the findings of the Wyn Williams inquiry when it reports.

Media

Nick Wallis told me this afternoon that the media are becoming genuinely interested in the Clarke Advice. About time too. He tells me there might be another Panorama on it.

Other fronts

Alan Bates of JFSA has, as well as pursuing the Ombudsman Inquiry, asked an FOI about the Post Office's rules on Clawback of Executor Remuneration (Paula Vennells was making about £750K a year).

Most Parliamentary activity is inhibited by the Speaker's and Lord Speaker's ruling that the matter is sub judice. Both are distinctly sympathetic, but both will receive strong advice from civil servants that they would be unwise to stick their heads in this hornets' nest. And the Chief Operating Officer of the Civil Service and Permanent Secretary for the Cabinet Office is Alex Chisholm, who was until April 2020 the Permanent Secretary at BEIS with responsibilities as Accounting Officer for the Post Office, so in the frame for criticism or worse.

James Arbuthnot
16th December 2020