



Department for
Business & Trade

Horizon Compensation Advisory Board

Report of eighth meeting held on 25 October 2023

Members present: Prof. Christopher Hodges (Chair); Lord Arbuthnot; Kevan Jones MP; Prof. Richard Moorhead.

Also present: Rob Brightwell; Eleri Wones (both DBT).

Role of GLO Scheme Reviewer

1. Sir Ross Cranston, who has been appointed the Reviewer for the GLO scheme, joined the meeting for this item and the next.
2. The Reviewer's role was set out in draft Terms of Reference which had been shared with him and with Board members. Sir Ross recommended some amendments to this document, which the Board endorsed. The Department agreed to **circulate a revised draft to Sir Ross and Board members** prior to publication.

Assuring fairness and consistency between schemes

3. The Board's aim was to ensure fair and prompt compensation for postmasters, including consistency between the HSS, GLO and overturned convictions arrangements. It was concerned that the schemes should not only be fair but be seen to be fair. It had discussed at its June meeting some recommendations to this end, which the Department had agreed to consider.
4. Since becoming Reviewer for the GLO scheme, Sir Ross had conducted a short review of the scheme's principles, which largely echoed those of the HSS. In the light of that review he set out some recommendations which he had made to the Department. These included enhanced arrangements for transparency and to ensure consistency within the scheme.
5. The Williams Inquiry's interim report on compensation had recommended in July that:

... It must be one of the core duties of the Board that it monitors whether compensation payments are full and fair.

The Horizon Compensation Advisory Board shall, as part of its advisory role, consider whether, in its view, full and fair compensation is being paid out to applicants under the three schemes and shall advise the Minister and the Post Office accordingly at three monthly intervals.
6. Sir Ross noted that he had undertaken a full assurance review of compensation following criminal misconduct at HBOS. His review had involved sampling of a statistically valid stratified sample of cases. It had taken a year with a large team of consultants and had been very costly. He strongly recommended that a similar approach was not followed in respect of the Horizon schemes. Board members commented that it was essential to give postmasters closure in respect of Horizon as quickly as possible. A lengthy review would prevent that.
7. Board members asked whether a less comprehensive – and hence quicker and cheaper – approach to sampling would be viable. Sir Ross advised that a smaller sample would not produce reliable results, and hence was not worth doing. In particular it was less likely to identify any problem unless it was widespread. It could therefore provide false assurance.
8. The Board accepted Sir Ross's advice but noted that it needed to find alternative routes to assure itself of the fairness of the three compensation arrangements. They noted that any scheme run by the Post Office or its appointees would be distrusted by many because of the organisation's past behaviour. Particular concerns arose in respect of the HSS because most claims had been made without legal help.

9. The Board noted that the Post Office had told their September meeting that it was consulting claimants' lawyers on a new process for overturned convictions compensation. An independent assessor – likely to have judicial experience – was to be appointed in discussion with claimants' lawyers to provide an independent appeal route should claimants disagree with an offer made by Post Office.
10. The Board noted that in the GLO scheme, where compensation could not be agreed between the postmaster and the Department decisions would be made by an independent panel and, if necessary, subjected to review by Sir Ross. Claimants had Government-funded legal representation.
11. An alternative way to test the fairness of the scheme would be to establish the views of claimants' lawyers. The Board already received via the Department regular reports on those views. The Department invited the Board or Sir Ross to speak to those lawyers directly if they wished.
12. The Board wanted to hear regularly from Sir Ross about his views of the scheme. If his work gave rise to systemic issues the Board would recommend remedial action. All of these arrangements were independent of the Post Office.
13. In conclusion, the Board
 - Appreciated and supported the recommendations made by Sir Ross;
 - Took the view that it was essential that compensation was settled quickly, delivering closure to individuals who had suffered from the scandal for many years;
 - Noted the Inquiry's recommendation that the Board should regularly advise the Minister as to whether full and fair compensation was being paid to applicants under the three schemes; but accepted Sir Ross's advice that a full review of the HSS, including sampling of a representative number of cases, would take too long and require substantial amounts of money to be spent on lawyers and consultants which would be better directed to postmasters themselves;
 - **Recommended the appointment by Government of a Reviewer for the HSS to follow the GLO model.** The HSS Reviewer would consider cases which met similar criteria to those which will apply to the GLO Reviewer.
 - **Recommended that the GLO and proposed HSS Reviewers and the OC Assessor should regularly report to the Department and the Board any systematic concerns about the fairness of the schemes,** and believed that such reports represented the most effective way of securing the assurance which the Inquiry had recommended;
 - Agreed to keep this mechanism under review as it was developed and operated.

Upfront settlement offer for postmasters with overturned convictions

14. The Department noted that the Minister had announced on 18 September a £600,000 upfront settlement offer to postmasters whose convictions reliant on Horizon evidence had been overturned by the Courts. This was not a further interim payment: the aim was to speed up delivering full and final compensation for those with smaller claims. The figure was reached based on data from claims and offers to date. There was now a good understanding of common losses from data held by Post Office, submitted claims, and Lord Dyson's Early Neutral Evaluation into non-pecuniary losses. An amount for compensatory interest was also incorporated. Postmasters would still be able to claim higher amounts if they wished: these would be settled through the streamlined arrangements now being developed by the Post Office. They would continue to have their reasonable legal costs met. The Department sought the Board's view about whether this offer should be subject to any time limit.
15. The Board saw this offer as a well-motivated attempt to speed the compensation process for this group of postmasters. Whilst some postmasters might feel they had a difficult decision to make, and feel the need to accept, conversely they were being advised and this should provide some

protection against inappropriate acceptance of offers. The plan might encourage some people to apply who would otherwise have gone uncompensated. Whilst the Board understood privacy concerns being raised, and that some claimants felt exposed as a result of the offer, the fact that some postmasters would receive substantial compensation was already public and not significantly changed by the offer. The Board greatly sympathised with claimants feeling exposed not least given that such payments were simply designed to restore them to the position they would have been in pre-Horizon and would often be used to pay off debt or provide previously-struggling older postmasters with adequate pensions.

16. Board members took the view that postmasters in this situation should be offered a free choice of whether to take the offer, supported by legal advice. The Post Office and the Department should not promote either option above the other. The offer should not be subject to a time limit to reduce concerns about unfair pressure.

Overturning convictions

17. Board members had met the Law Commission on 23 October to discuss the Commission's project on appeals. A report of that meeting is attached. The timing of the Commission's project meant that it was unlikely to have any positive impact on Horizon cases, but it should help avoid similar difficulties in future.
18. The Board discussed the recent Times leading article "Atoning for the Post Office scandal: justice denied". It also discussed its correspondence with the CCRC and its Scottish counterparts, and with those bodies apart from the Post Office which had prosecuted for Horizon offences. These letters are being published on the Board's web page. **The Board agreed to take up the CCRC's offer of a meeting.**
19. The Chair had prepared a paper about the process for overturning convictions, drawing from the Board's previous discussions. He would work with the Secretariat to **revise this before sending it to the Crown Office in Scotland.** It would be published.
20. Board members noted that there was mounting evidence in Horizon-related cases which had not been available to the Court of Appeal when it had set its criteria for overturning cases as miscarriages of justice. That evidence included material recently heard by the Williams Inquiry in respect of the Post Office's approach to prosecutions.
21. **Board members agreed that as long as unjust convictions were maintained, which clearly involved several hundred people, means of delivering any compensation to them were seemingly blocked. This is itself a major affront to a civilised State. The Board resolved to continue to consider the issue as a matter of urgency.**
22. **The Board asked DBT to provide a view as to whether it would be possible to pay compensation to postmasters with extant convictions.**

Any other business

23. The Department confirmed that it would not be possible to provide Board members with individual details of cases where convictions had been overturned because the Post Office had decided that it would not be in the public interest to seek a retrial. Even if these cases were anonymised, there were so few of them that it would be easy to identify individual victims. The disclosure would therefore be contrary to data protection law.
24. The Early Neutral Evaluation conducted by Lord Dyson had set out ranges for compensation for various heads of loss for postmasters with overturned convictions. The exercise had been conducted jointly for the Post Office and claimants' legal representatives, and the consent of both was required to disclose its findings. Claimants' lawyers had previously offered disclosure to members on condition that they signed non-disclosure agreements, which they had declined to do on the grounds that it would compromise the Board's responsibilities. **Board members agreed to approach claimants' lawyers direct to try to secure access to the document.**

25. The Chair had developed a draft summary paper of relevant arrangements. **The Board agreed that this should be developed further before publication.**
26. The Board asked for an update on the awaited response to their recommendations on public interest cases made in their last meeting.

Report of Advisory Board members' meeting with Law Commission on 23 October 2023

Present:

Advisory Board: Prof. Christopher Hodges; Lord Arbutnot; Prof. Richard Moorhead

Law Commission: Prof. Penney Lewis, Commissioner for Criminal Law; Dr Robert Kaye,
Jocelyn Ormond, Roseanna Peck

DBT: Rob Brightwell

Law Commission review of appeals system

1. Prof Lewis described the Commission's current review of the appeals system, which had a broad scope and was taking a holistic approach. One of the questions which the review would consider was whether existing law allowed miscarriages of justice to be corrected.
2. The review had published an issues paper in July 2023. Consultation on that paper ended on 31 October. The Commission would then produce further proposals for reform, which would go out to consultation in summer or autumn 2024. A final report to Parliament was expected in summer 2025. It could not lead to legislation until at least 2026.
3. The Commission was well aware of the Horizon scandal and the issues which it had raised. It was meeting some victims of the scandal to understand their perspectives. It was also meeting the Williams Inquiry.
4. Board members noted that the review timetable was too slow to have a timely influence on Horizon convictions. They nonetheless hoped that in any interim report the Commission would consider making provisional recommendations and say that Government should not feel obliged to defer until its final report any action to deal with the injustices arising from Horizon.

Advisory Board view of the problems illustrated by Horizon scandal

5. Board members
 - emphasised the distinction between one-off miscarriages and systemic issues such as Horizon prosecutions. It was wrong that the organisation which had perpetrated a systematic injustice should be involved in reviewing cases to be overturned. Prof Lewis said that the Commission would look at whether there should in future be some means of addressing systemic failures. Board members suggested that overturning of convictions in such circumstances might, at least in part, become more of an administrative rather than a judicial process.
 - observed that some victims of the Horizon scandal were not prepared to apply to have appeals overturned because of ongoing psychological harm and the distrust of authority which the scandal had taught them and their desire to avoid still more stress. They argued that in such circumstances the onus should be on the state, rather than the individual, to ensure justice was done.
 - noted that ensuring that convictions were overturned was an aim in itself – but it was also a gateway to financial justice as the law ruled out compensation where a related conviction was extant.

6. Overturning a Crown Court decision required the Court of Appeal to be satisfied that the conviction was unsafe. This was impossible for some appellants because the passage of time meant that evidence was no longer available. The Court had insisted that the Post Office should present its evidence and should not concede unless the Court's test for a "Horizon case" had been met. This prevented the Post Office from making block concessions.
7. In the first Court of Appeal hearing in Horizon cases, the appellants had had to decide whether to apply solely on the grounds of unfair process or also to claim that the prosecutions were "an affront to the public conscience". This had been a difficult tactical decision: there had been a perception that applying for the second ground might reduce the chances of getting convictions overturned at all. This set bad incentives.
8. Overturning a Magistrates' Court decision required a fresh trial in the Crown Court. Unless the case was clear-cut, the prosecutor had to decide whether a retrial was in the public interest. In three cases the Post Office had concluded that the public interest did not justify a retrial. Whilst this had led to the overturning of convictions, this administrative decision by the culpable organisation had left the appellants ineligible for compensation for malicious prosecution without a realistic opportunity to challenge the decision before an independent party.
9. The Commission was not currently looking at computer evidence. It had produced a report on hearsay evidence in 1997 which had recommended that the requirement in section 69 of Police and Criminal Evidence Act 1984 on evidence from computer records should be repealed. This was implemented by the Youth Justice and Criminal Evidence Act 1998. A new Commission programme would be discussed with Government at the start of the next Parliament.