House of Commons

Business and Trade Committee

Oral evidence: Post Office and Horizon – Compensation: follow-up, HC 477

Tuesday 27 February 2024

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Watch the meeting

Members present: Liam Byrne (Chair); Douglas Chapman; Jonathan Gullis; Antony Higginbotham; Ian Lavery; Julie Marson; Andy McDonald; Charlotte Nichols; Mark Pawsey.

Questions 425-451

Witnesses

III: James Hartley, Partner and National Head of Dispute Resolution, Freeths; Dr Neil Hudgell, Executive Chairman, Hudgell Solicitors.

Examination of witnesses

Witnesses: James Hartley and Dr Neil Hudgell.

Chair: Welcome to the third panel of the Department for Business and Trade Committee inquiry into fair and fast redress for sub-postmasters. I am grateful to Dr Neil Hudgell and James Hartley for joining us today to provide their legal expertise to the Committee. We are going to try and move through our questions quite quickly, starting with Julie Marson.

Q425 **Julie Marson:** Thank you, Chair. To both witnesses, could you outline your role in the Horizon compensation process, and describe in broad terms the clients you represent?

Dr Hudgell: Good morning. I look after 80 of the overturned conviction clients, including Tim. It is a moving number, but I now look after over 300 clients in the shortfall scheme, including Tony. We are active lawyers engaged in the statutory inquiry. We are also engaged by a number of other clients, particularly in relation to the pre-Horizon period, which is now commonly called the Capture days.

James Hartley: We at Freeths act for 419 postmasters in the GLO scheme—we are involved only in the GLO scheme, not the other schemes. We were the firm that acted for the 555 in the original High Court proceedings, so we have got to know a lot of these postmasters, as we have known them since 2015 or 2016.

Chair: Thank you. Mr McDonald?

Andy McDonald: Thanks, Chair, but I'm not scheduled to come in here.

Q426 **Chair:** Let me start the bowling, in that case. We have heard about a number of process problems that are slowing the process down and delivering claims redress offers that are basically unfair. We have heard how people are putting in their application forms without knowing what information the Post Office has; they are therefore almost blindfolded when putting the claim in. When the offers come back, we have heard that you have a box with numbers in, but there is no real explanation for how those numbers have been arrived at—it is a bit of a black box.

The third problem is this inequality of arms, where many people simply do not have access to lawyers like yourselves, but are up against the Post Office and some of the biggest lawyers in the country. Can you give us a sense as to whether you recognise those problems, and whether there are other problems that the Committee needs to be concerned about?

James Hartley: I will start with our experience of the GLO scheme. There are definitely problems with the process and the timescales, which I am sure we will come back to. The offers are framed as you have described, with different heads of claims, so x is offered against that head, and y is offered against another head. Usually, we can understand the basis of the offer that comes in the GLO scheme.

Chair: Can you say that again?

James Hartley: We can understand the basis of the offer. However, that is a very different thing from how the clients perceive the offer. I am not suggesting that the offers are fair, because we have a bigger problem than we think, I'm afraid to say, in terms of the complex claims, the size of the offers and how long it is all going to take. There are a lot of heads of loss where we are not seeing fair offers. That is a problem.

Even more significant, though, is the fact that the clients we act for, as we have all heard, are exhausted with and traumatised by the process, and they see too many parallels between this process and scheme and what actually happened in the enormous battle we had in the High Court. That is not to say that the underlying principles in this scheme are wrong; the legal principles are right. We talked about the evidential building blocks that are required to formulate claims. However, it is not working for these claimants.

Q427 **Chair:** It is not working for these claimants.

James Hartley: It is not working for these claimants.

Chair: Why not?

James Hartley: It is too legalistic. It involves them seeing an offer letter, which, for example, will say, "We don't offer anything on personal injury. We don't recognise that you've had any kind of condition as a consequence of this", which is offensive to a lot of postmasters, because they know what they have been through. There are too many parallels with the original legal scheme.

Q428 **Chair:** Dr Hudgell, would you like to comment on the process issues?

Dr Hudgell: In keeping with what Mr Hartley is saying and some of the comments that came from the panel this morning, there is too much lawyering going on. Everything is over-engineered. I equally think that one of the keys to resolving all this is to think creatively in a way that the Minister did with the £600,000 proposal, because at the heart of all this are the victims and what they want. What the victims want is closure, which means something that is fair to them and does not involve a micro-analysis of every item that the claimant has advanced.

One of the real problems we have is that we are being asked to prove things that are self-evident. I will give you a tangible example of that. Over the last three years, we have submitted to the Post Office 100 medical reports that have a common theme of people being traumatised, damaged and suffering from all sorts of psychiatric diagnoses. It is self-evident that if you have lost your job and your home, you will have those losses, yet we find, particularly in the HSS, that panels say, "There is a bit of distress and inconvenience, but there is nothing in your medical records. There is therefore no medical injury." Anyone who knows anything about personal injury knows that in about half the cases people do not go to the GP when they have some psychiatric diagnosis: they keep it to themselves. It is an over-simplistic analysis of things.

The other problem with the HSS, which is not something that can be fixed today, is that the damage is done. More than 2,000 cases have been settled without legal advice, in many instances where the application has not captured anything like the heads of loss that these people have, and in many instances where a broadbrush approach is adopted to cover financial and capital losses that go nowhere near the true picture. We act for probably the biggest cohort of any HSS claimants, and at the minute in that cohort I cannot find an offer that I can sign off without further investigation and interrogation—not one offer.

Q429 **Chair:** How many?

Dr Hudgell: At the minute, we have 176 offers in play.

Q430 **Chair:** And you cannot sign off one.

Dr Hudgell: I would love to sign off as many as I can and tell people, "Look: this is a decent outcome. Try to get on with the rest of your life", but I cannot find them. In every case something is missing. One of the real, common issues in the HSS is that a mechanism is in place where there is a calculation based on what is called a network transformation scheme. That is where the Post Office offers something in the order of 27 months' loss of salary, which is supposed to compensate for the entire loss of a claimant and capital losses on top of that. There is a real big issue there that will carry on playing out in not only the cases that have been progressed, but those that have already been settled off.

Q431 **Chair:** Do you think that these 2,000 cases need to be reopened?

Dr Hudgell: On the analysis of the cases that I have, a very significant number of those cases appear to me to be at least deserving of a proper review.

Q432 **Chair:** So the cases that we think are closed are not in fact closed.

Dr Hudgell: Very probably not.

Q433 **Andy McDonald:** It is really quite staggering to think that cases have been settled. I have been at this for some time about under-settlement, and we are at risk of doing this at every single stage. There is just one thing from me. On the "self-evident" point, I want to explore what representations you have made in the context of the schemes about that very point. Everybody here and everybody watching at home knows that if you have been accused of something and your reputation has been damaged, the loss that that will cause you will be immense; there is your standing within your own family and community. It may not be recorded in a medical record, but surely to goodness the powers that be can recognise that that is a proper head of claim that ought to be addressed. How far have you got with trying to make that point to people and getting the Post Office to recognise it and the compensation systems to reflect it?

Dr Hudgell: The issue is not necessarily in this room. I listened to Carl Creswell earlier and I will listen to Simon Recaldin shortly, and we have positive, collegiate dialogue to try to revise things as we go along. I think that the process stymies any form of fundamental change. On individual cases, where we can establish acute need, the system accelerates. I had a person who had thoughts of self-harm, and we expedited the medical report that enabled him to receive a six-figure interim payment, but that is an extreme example.

There is compassion in people within the organisation of Post Office and Government, but the bigger problem is trying to unlock the process as a whole. As Tim and Alan pointed out, the GLO were the trailblazers here, who got the judgment and enabled the convictions to be overturned; the irony is that the GLO are the clients who are having to prove to the last penny each aspect of the case. It is the same with overturned conviction cases.

The other thing we heard this morning—there is so much to go at—and commented on at the back there, is that we are not sure where the resources are to do this. The numbers of lawyers that were being quoted to us seemed very light. I have individual cases in the HSS and I have been waiting for one to come back from panel since last July.

Chair: Last July?

Dr Hudgell: Last July. The problem with the scheme is that when someone signs up to it, they sign up to the rules of a scheme that has no deadlines established within it, so that once they are in it, they are in it and stuck with it.

Tony's case is actually much longer than he set out this morning, because he tried to apply in 2020, but was told that the scheme was closed, although it was then reopened. I have other clients who are in Tony's position and waited two and a half years for an offer. These were people with bankruptcy, at the most complex end of things and probably in the greatest need.

Q434 **Andy McDonald:** Is it your view then that a scheme, however well constructed, especially for the early participants and those not represented, runs the very severe risk of people under-settling the true value of their claim, because of developing knowledge and increased competencies as the schemes progress? If that is the case, surely all those need to be looked at again.

Dr Hudgell: It is difficult, because of course we are so far down the line that starting to unpick things will build further delay into things, and ultimately what these people want is resolution.

Q435 **Andy McDonald:** Absolutely, but full and final settlement—full and fair settlement is what we are being told constantly. How is it consistent if people are in receipt of a settlement figure that is far short of what they are truly entitled to receive? Compensation is to put people back into the position that they would have been in had the incident not occurred, but that is not happening here.

Dr Hudgell: You know as a lawyer of 30 years that we have schedule of loss, counter-schedule and discussion—it can happen quickly, but it just does not happen quickly here.

Q436 **Charlotte Nichols:** Mr Hartley, the Government have argued that the main constraint on pace for the GLO scheme is the speed at which claimants' lawyers can produce claims. We have heard in earlier evidence that it has taken three years in some cases to get to the point of being able to submit a claim. Following Alan Bates's evidence earlier, do you have a view on why the Post Office waited to start the process of disclosure until such time as claims have been made, given that it knew exactly who the claimants were likely to be?

James Hartley: Absolutely. If I may, before I answer that question, I will clarify to make sure that there is no misunderstanding. Certainly in the GLO scheme, there is no risk of under-settlement, because the clients are getting full advice. I think it is the same with the overturned convictions. I think that that point was limited to the HSS, just in case there was any misunderstanding.

On Post Office disclosure, I am not in the business of playing a blame game here, because that does not help my clients, but it is inescapable that there is probably a degree of incompetence there and inefficiency. Deep incompetence and inefficiency I think is the explanation for delays on the Post Office side on disclosure.

Q437 **Charlotte Nichols:** How long are claimants having to wait for those Post Office disclosure stage obligations to be met in the cases you are responsible for?

James Hartley: Weeks and weeks. Our estimate, based on rate of process so far, is that it will probably take six months or more, for the Post Office to disclose records, to enable us to finalise claims, to put claims in. Therein lies one of the big problems on timing.

Q438 **Charlotte Nichols:** From your point of view, would it be beneficial if the Post Office was not waiting for the claims to come forward, to start that process of disclosure, which could take weeks and weeks, or months potentially, so that this could be sped up?

James Hartley: It would be beneficial for us to have no contact at all with the Post Office; beneficial for the clients—the first point—because they have had enough contact with the Post Office. The other point is that to take Post Office disclosure as far as we can out of the equation is part of what I think needs to happen going forward in the GLO scheme. That is one of the things we need to take out of the equation.

Q439 **Charlotte Nichols:** How do you think that would happen in practice, in terms of the recommendations that we will make as a Committee? Is it that the Post Office is required to make all the obligations to a third party of disclosures ahead of time, and then that would be the body the claimants would speak to? How would removing the Post Office function in practice?

James Hartley: The solution to unlocking the delay in the GLO scheme goes deeper than the Post Office issue. I am not suggesting that the GLO scheme needs ripping up and starting again. What we at Freeths have proposed to the Department for Business and Trade, and have discussed with the advisory board, is an accelerated process.

That involves us, Freeths, as the lawyers, assessing carefully each claim, as we do already; collating the evidence we already have, including the original mini witness statements done by the 555 and the GLO; using the documentation we already have and the recollections of the postmasters and postmistresses; bringing all that together in a detailed claim form that goes into the GLO scheme; and managing client expectations by giving advice on what we think is recoverable legally—what is full and fair and what isn't. We have to manage the clients' expectations, as well.

If we were then able to submit that claim, without having to obtain accountants' input on many occasions, and in some cases without having to obtain medical reports, if we think what has been experienced by the postmaster is self-evident. We have already then taken Post Office disclosure out of the process, along with potentially obtaining accountants' reports in many cases—not all—and potentially medical reports, as well.

For that to work, it would need a change in mindset on DBT's side, whereby their starting point is not, "Let's have a look at all the evidential building blocks that traditionally need to be put together," which will take months, if not years, and will come back to the August deadline, which is not achievable.

The starting point for DBT would be, "Let's take a step back and look at what this person has been through. Let us look at what Freeths are saying, in terms of the actual quantification in their view and the client's view should be, and let's use that as our starting point to decide whatever we think is full and fair."

That is a very different approach from the traditional forensic legal analysis. That is not to suggest that the traditional legal building-blocks evidential approach is wrong. That is the right way to do it from a legal perspective, but this is a very different situation.

Q440 **Chair:** The Government have said that there is not a cap on this budget. They have allocated just over £1 billion, but the promise to the House is that there is not a hard cap. Presumably, the kind of process you suggest, could therefore be afforded, inside the spending commitments that Ministers have made.

James Hartley: Yes, and that is not to say that that approach would actually cost the taxpayer more money. It might do in some cases, but in others, a client may say, "No. I accept that Freeths think my claim is valued at X," which is what we have valued it at in the old mainstream approach, so it might not cost more. It is important to say that this approach would not necessarily work for all cases. There will some exceptionally complex cases—where there are very significant property losses, loss of earnings, bankruptcy—where we do need input from an accountant. We would give the clients the option; if they want to stay on the main track, and have all that of traditional, evidential, building-block work, then that absolutely should be their right. It will take longer, but that would be their right.

Q441 **Douglas Chapman:** Dr Hudgell, you have talked before about the ongoing trauma for victims caught up in the political infighting and the crossfire, and the snail's pace of compensation that has been offered to some of your clients. Given the pain and sacrifice that many postmasters have experienced, what difference does the ministerial statement that was made yesterday make? What confidence can that give you that there is maybe a change of direction? Is there a change of direction?

In the last month or so, there has been a huge number of column inches written about this crisis—this situation. Given that we have had all that, are you seeing any serious changes in the way that things are being handled? Can you and Mr Hartley pass any confidence on to your clients that you can see light at the end of this tunnel, or is it just a continued process of wait and see, and delay and complication?

Dr Hudgell: I think the announcement yesterday was welcome. It essentially followed discussion with claimant lawyers, so the Minister listens. Interim payments will help. But you heard Tim. Tim is having a baby in June and wants closure. All these things help to mitigate the bigger problem, which is the over-engineering, the layers of bureaucracy and the lack of resource to tackle this.

To touch on one other issue, certainly in the overturned conviction cases, the speed of that is way too slow, but Post Office has indicated an inability to deal with bigger numbers at this stage. Again, for me, to be able to crack these nuts, we need a combination of more creative thinking, some self-certification and some more resource applied to that, before we get the next tranche of acquittals that will come over the hill in a few months' time.

James Hartley: From our perspective on the GLO scheme, we welcome the interim payment announcement, albeit that there is some detail in there that we want the opportunity to discuss with DBT, not least the timing of interim payments. The announcement was of an interim payment to be triggered upon offer, which for many of our clients is a long way down the line.

Paradoxically, we are talking about GLO claimants; all the cases are serious, but these are the most acute cases, and they are going to have to wait and wait and wait until the evidence building blocks are together before the claim goes in and they get an offer. That is months and months and months. So it is welcome but too slow.

The other point I would make is that there is a need for something radical in the GLO scheme, along the lines that I have described, for us to make a difference here, because the timing, through the process complexity, is going to get worse. We heard in evidence earlier the number of claims that have been settled, which is 107. That includes the £75,000 acceptances, which are the more straightforward ones. I am quite sad to have to say that, of the more complex claims, we only have two that have settled, from the 12 offers that we have had. I stress that that is not a criticism of all those involved in the scheme, including DBT; it is a function of the process. Again, I stress that it is going to get worse, which is why we need a radical change of approach.

Q442 **Douglas Chapman:** What would a radical change of approach look like? What steps can the Government take to speed things along?

James Hartley: I come back to the suggestion that I was outlining earlier on. I wouldn't quite call it self-certification, but that is the point—DBT giving the evidential benefit of the doubt to claimants when the claim is put in, so they are not coming back and saying to the postmaster, "Right, you need an accountant's report and a medical report, and you need to trawl back and get all the documents." Resource is not the issue from our perspective. At Freeths, we have 23 lawyers working on this. Resource is not the issue.

Chair: It sounds like you have three times more lawyers than the Government.

Q443 **Ian Lavery:** Briefly, Mr Hartley, you mentioned complex cases—they have been mentioned by virtually everyone this morning. Generally speaking, is a complex case, or a complex application for compensation, a higher-value case rather than a complex one?

James Hartley: It tends to be. As you rightly said earlier, complex cases are where the impact has been the most severe financially, personally and so on. But yes, the most complex ones tend to be the higher-value ones, because they have a broader range of impact factors.

Q444 **Ian Lavery:** Thanks. We heard from Tim Brentnall about how his conviction was overturned in 2021, three years ago. He did say that his application was ready to be submitted, so I understand that that might not be the same as the rest, but with the overturned convictions process, how long do you think that clients should be expected to wait at each stage in the process before they can get compensation, or at least an offer of compensation?

Dr Hudgell: If you were following a normal litigation path of disclosure, medical evidence, accountancy evidence and negotiation, at most two years, possibly 18 months. There is quite a bit of lead-in time to front-load the work that is needed. Here, we had an agreement with Post Office to run a number of trial cases that would then input to a set of principles to be rolled out to the rest of the claimant group with a view to making the process much simpler, but it has been a very painful journey to get from April 2001 to February 2024.

Q445 **Ian Lavery:** What are the blockages, Dr Hudgell? What are the main blockages to simply getting compensation into the pockets or bank accounts of the sub-postmasters?

Dr Hudgell: It has been on the drip, drip. There is an initial interim payment and then the non-pecuniary losses are typically sorted, following an early neutral evaluation with Lord Dyson. Most people have had two or three interim payments, but the real blocker is the amount of time it takes to nudge any significant progress along the line. Correspondence routinely takes a number of months to elicit a reply.

Ultimately, the claimants return to the nuclear button of issuing High Court proceedings, but these are not people who want to issue High Court proceedings, for very obvious reasons. With some of the things that we have heard this morning, I think Tim, Tony and other people in the room will be a little annoyed and a little amazed, and all those wounds and scars that have not yet healed reopened more and more. It all makes the process incredibly difficult and one that we have to try to manage sensitively to get to the end. Three years sounds like an inordinate length of time—it is, and it is unacceptable—but it is a product of a system that is bureaucratic and over-slow.

Q446 **Ian Lavery:** Of the people you represent who have actually received compensation and accepted the final settlement of financial redress, are the majority of them happy with that?

Dr Hudgell: You have to look at it in the context that these are badly scarred people and nothing is ever enough, but adopting established legal principles for some £600,000 is worth more than the amount that they would get if they went through a court process. And for some, it is closure. This is where we get to the whole idea about trying to suck the last penny out, against what is actually the number for somebody to be able to walk away and get on with their life. The sooner we get an offer on the table for the people who are still waiting in the overturned convictions scheme, the sooner we can start to bring closure to some of those people.

Q447 **Ian Lavery:** How do you compensate for a family member who has taken their own life? How do you even start trying to compensate for that?

Dr Hudgell: It is horrific. It is horrific to hear it, and we hear it so many times, because those people are as proximate to what has gone on as the sub-postmaster. Every case is unique, but I had a chap who went to prison who said, "Oh, actually, I had it a bit easier, because my wife had to go out in the community and face the tittle-tattle." The problem with that, of course, is that, at the minute, there is no mechanism for family members to be compensated. The nearest you can get to it is the psychiatric effect of their suffering and how it impacts on the sub-postmaster. In the same way that there are victims from pre-2000—the Capture period, which will no doubt come under the torch of scrutiny at some point—who will need to be looked at, there are very many other victims who sit outside those who are currently compensable, and who perhaps in due course ought to come within focus.

Q448 **Ian Lavery:** A final question from me. There is a whole number—I bet there are hundreds—of individuals who were not employed by the Post Office or by the sub-postmasters, but were employed by, for example, the newsagent where the post office was situated. Their contract with the newsagent, for example, stated that they were to meet any shortfall in the accounting procedures for Horizon themselves. I have met a number of people who were in that position. What compensation scheme, if any, covers those people?

Dr Hudgell: I have a tangible example of that myself. I have someone who was employed on that basis and obligated to pay the shortfalls, and the scheme has turned down the application, even though it is supported by an authority signed by the sub-postmaster. That is another sub-class of victims who have no redress.

James Hartley: May I add to the family members point briefly? We have the same challenge, in the GLO scheme, with this absolute lack of clarity over family members. That is a perfect example of something that we think needs to be approached from a different starting point—not a legalistic starting point, where we have to scrabble around finding case law to justify a third-party claim, but a fairness and common sense starting point, which is where you were on that.

Q449 **Ian Lavery:** It is a huge anomaly, isn't it? You would think that the Government and the Minister in the room at this moment in time, who have done a fair and decent job on this, would be aware of cases like that. That has to be put right, hasn't it?

James Hartley: Fundamentally, it is not just a monetary issue, because the clients need to see an acknowledgement, a recognition, of that in the way an offer is formulated, rather than, "Oh, sorry, there's no legal basis for that."

Q450 **Chair:** On current pace, how long do you think it is going to take to see full and final redress for the victims?

James Hartley: Unacceptably long for us and our clients and for everybody else—

Chair: Give us a ballpark figure.

James Hartley: —but I would say between one and two years.

Chair: One and two years! Dr Hudgell?

Dr Hudgell: I am not going to disagree with my learned friend. I am in the same ballpark of between one and two years.

James Hartley: Which is wholly unacceptable.

Q451 **Chair:** Right. So when the Bill comes to the House, we are going to have to amend it in order to make sure that there are some hard, legally binding deadlines for redress.

James Hartley: Yes, but also the radical change of the type I was referring to before, because with the current process, however many deadlines are put in place, it won't be achievable—because of the process.

Chair: Dr Hudgell, do you have anything to add?

Dr Hudgell: Just on the fundamental rethinking of it, it is fine to put a fining system in place, but if all that does is generate offers that are on time but not good enough, it does not solve the problem.

Chair: You have told us that there is a strong case that many of the cases that have been settled may need to be reopened. You have told us that many of the claims you are working on are so problematic that you can't accept them. You have told us that there are significant process delays, that you appear to be employing three times more lawyers than the Government on some of these schemes, and that is it going to take one to two years at the current pace to finally bring justice. Thank you very much indeed for laying that out with such clarity. That concludes this panel.