

Business and Trade Committee

Oral evidence: Post Office Horizon scandal: fast and fair redress, HC 341

Tuesday 5 November 2024

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Members present: Liam Byrne (Chair); Antonia Bance; John Cooper; Sarah Edwards; Alison Griffiths; Sonia Kumar; Charlie Maynard; Gregor Poynton; Mr Joshua Reynolds; Matt Western; Rosie Wrighting.

Questions 86 - 95

Witnesses

[III](#): Sir Gary Hickinbottom PC, Chair, Post Office Overturned Convictions Independent Pecuniary Losses Assessment Panel.

Examination of witness

Witness: Sir Gary Hickinbottom.

Q86 **Chair:** Welcome to the third and final panel in today's session of the Business and Trade Committee on how to accelerate justice for the sub-postmasters affected by the Horizon shortfall scandal. I am really grateful to you, Sir Gary, for joining us. You have a particular role in a particular scheme, but you also have the experience to be able to see across the schemes. The Committee is hoping to draw on that experience today as we draw up recommendations to make the scheme as a whole go a lot faster.

Can I kick off by asking why it was important to establish this independent panel to accelerate redress for claimants who had their convictions overturned?

Sir Gary Hickinbottom: As you said, my role is in one scheme, and it is a fairly focused role in that scheme. The scheme is very different from the other schemes. To begin with, it applies only to those claimants who have had convictions overturned by the courts. As you will see from the draft report, which sets out the figures for the end of September, there are 111 of these cases. Because the Act overturned the other schemes and those claimants will go into a different scheme, that is now a closed cohort: we have 111 claimants and we will have no more.

The architecture of the scheme is different, in that the panel comes into the scheme right at the last minute. The scheme is an initial offer of £600,000 in full and final settlement of all claims. If that is not accepted, a detailed pecuniary claim is submitted; there is a response from the Post Office; and there are negotiations. It is only heads of claim that are not agreed at that point that come to a panel for assessment.

That panel is the first independent input into the scheme. That is particularly important in this scheme, because this scheme is administered by the Post Office. A lot of claimants, understandably, are wary of Post Office involvement. One important role that the panel plays is therefore to be independent of the Post Office and thereby to come up with an assessment of damages under a particular head that the claimants can be confident is an independent assessment.

Although on the face of the scheme the role is very narrow—to look at particular heads that cannot be agreed between the parties at this late stage; it is a last resort within the scheme—I have adopted the powers that I think I have under the scheme to do two things that at the moment are particularly important. One is to give case management directions: if a party, normally but not always the claimant, thinks that things are not going as well and as quickly as they should, they can apply to me for directions. Secondly—I have not had an application on this, but I have indicated that I believe I have the power to do it under the scheme—if a claimant thinks in the meantime that the interim payments they have



received are not sufficient, they can apply to the panel for a further interim payment. Some of these claims are very big seven-figure claims.

Those two powers, which I believe I have and which I am prepared to exercise until somebody stops me, are really important within the terms of the scheme. The fact that no claim has come to be assessed is, at the moment, not necessarily a bad thing.

Q87 Matt Western: According to month-end June 2024 data, out of 109 notified claims for redress of overturned convictions, five have been referred to your panel for independent assessment, while zero were observed at end of quarter in October 2024. First of all, what is the overall figure for cases that have been referred to you? Secondly, what is the outcome of your intervention in these cases?

Sir Gary Hickinbottom: The structure of the table of figures was agreed between quite a lot of people. I would not necessarily use these figures to publish, because they include moment-in-time-capture figures, snapshot figures and cumulative figures.

The figure that you have chosen is, I think, a snapshot figure from the July report. This was explained in paragraph 6 of the narrative. These were simply cases that had been referred to me for directions. We have not had a case that has been referred to the panel with an assessment at the end of negotiations. We have not yet had an application where the parties have said, "We have tried to settle this head of claim. We are not going to settle it. Can you assess it?"

In those five cases, they asked for directions and I gave directions. As you will see from the second report, the draft report in October, that figure is now nil because there is nothing now before the panel.

Q88 Matt Western: Do you think you will see more claimants applying to the assessment panel now to speed up the process for them?

Sir Gary Hickinbottom: Just to identify in a couple of sentences where we are with the cohort of claimants: there are 111 claimants in the cohort. That figure is not going to increase, we do not think. Some 60 of those claims have fully and finally settled. The precise numbers are in the recent table.

The big majority have been settled for £600,000. A few have been settled for a figure above £600,000. That leaves 51 claims to be dealt with. Of those, eight claimants have submitted detailed claims, which means that of the whole cohort, 43 claimants have not yet decided, or at least have not let everybody know what their decision is. They have not decided whether to accept the £600,000 or make a full claim. For a lot of claimants, that in itself is a difficult decision that often—probably always—requires legal and possibly accountancy advice. It is not a straightforward decision, particularly given the psychological state of some of the claimants.



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I am trying to do two things. One is to put those claimants into the earliest possible position to make an informed decision about whether to take the £600,000 or put in a fully particularised claim and, for those who decide the latter, to put in that claim. We will then have a smaller cohort of continuing claimants. Most of them, if not all, will have large future loss claims.

Future loss claims have two characteristics. One is that they are particularly challenging, because they have to assess damages by comparing what has happened with the counterfactual of what would have happened but for the conviction. At the best of times, that is a challenging task. For obvious reasons, here it is particularly challenging for the claimants and their representatives.

The first thing is to try to get all the claimants into a position to make that informed decision. We can then focus on the big challenging claims that are left and work out how best to deal with them. Unfortunately for the purposes of dealing with them quickly, there will be future loss claims, and future loss claims are quintessentially fact-specific.

As you will see from the recent report, I propose to try to identify at my meeting with the parties later this month some cases—three or four cases or however many the claimants’ representatives can identify—where future loss claims are frankly not going to be settled, because the parties have some issues of principle and some issues with amounts of money, and are not going to reach a compromise without some assistance.

The panel can then deal with those and, hopefully, do two things. One is to assess those cases on their individual facts; the other is to give guidance, on an anonymised basis, that may assist other claimants with similar claims—both in this scheme and in other schemes, particularly the new OC2 scheme, the Horizon convictions redress scheme—that are likely to have similar issues.

Q89 **Matt Western:** We heard from the previous panel—you may have heard too—about the complexity. Is there a simple way of enabling claimants to come to that calculation? For the 43 that you talked about, is there something simple that could be done, such as a calculator? Do you know what I mean?

Sir Gary Hickinbottom: I do, absolutely. I wish there were, but there is not and there will not be. These future loss claims require the claimant to set out historically what happened to them. For some of these claimants, that in itself is a traumatic exercise, to relive the events. Even more difficult for the representatives is to work out with these claimants the counterfactual—what would have happened but for the conviction. That is a really challenging task for the claimants and their representatives.

Whereas in commercial litigation, as a judge or an assessor one can set down pretty strict time limits for all parties—particularly claimants, because they have brought the claim—to do anything, here you cannot.



You can do what you can to put the claimants into the best position to do this task, such as ensuring that they have legal representation and forensic accountancy expertise, which they will almost certainly need. But one cannot say, "Unless you put your claim in by date X, something adverse will happen."

Q90 **Antonia Bance:** You have spoken about some of the obstacles that the 43 claimants who are outstanding may face. What do you see as the factors impeding their ability to progress those claims?

Sir Gary Hickinbottom: There are a couple of things that one might, knowing the circumstances, think could delay claims. For example, within the OC scheme there is no facilitator. I asked the parties at an early meeting, "Would a facilitator help?", to which the resounding answer from all the parties was no. That was right and is right.

I do not rule out the possibility of, for example, having in these big claims an early neutral evaluation. Some senior lawyer or retired judge—it would not be me; they would have to be outside the assessment part of the scheme—could look at the papers, hear very short submissions and say, "Look, this is not worth X. It is going to be worth between Y and Z". That may assist the parties. I do not rule that out. At the moment, that is not delaying settlement.

The absence of resources at the hands of the claimants is not delaying matters. Of course, some reports may be slightly delayed, but it is not a systemic problem. It may become a problem when OC2, the bigger redress scheme, comes online, but it is not a problem at the moment. The challenge facing the claimants and their representatives is in putting these big claims together. That is what these 50 claimants will have to do. It is challenging.

Certainly, over the last year, some of the delay has been at the door of the Post Office. Some of that has been to do with producing documents. One understands that it is not easy to produce documents from 10, 20 or 25 years ago. That is what they are being asked to do. There have been times when they have taken longer than necessary.

There were also complaints from the claimants' representatives that the Post Office was wanting too much in terms of particularisation of claims before they responded. In respect of both of those, things are now better than they were a year ago when I started.

There were also delays in decision making, from the Post Office's point of view. Under the scheme, the Post Office has to respond to a claim within 40 days—within eight weeks. It sometimes takes 10 or 12 weeks, and sometimes a bit longer. Even in more straightforward claims, it is taking nearly 40 days. The governance of the Post Office sometimes slows down decision making, both in respect of settling the whole of claims and in respect of things like interim payments.



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- Q91 **Rosie Wrighting:** You have noted in writing that some of the “undue delays” experienced by claimants might have been exacerbated by “governance processes” within the Post Office and DBT. What did you mean by that?

Sir Gary Hickinbottom: Because of my role, what happens in the Post Office is really closed to me. All I can do is give anecdotal evidence of what appears to be happening from where I am standing.

I have identified the matters that have been of concern over the last year. First, there is the speed at which documentation is produced. Secondly, there are the requirements on claimants and their representatives. They are asked too many questions. The Post Office is requiring them to particularise their claim in too much detail, which you may have to do in court proceedings but not necessarily in these assessment proceedings. Thirdly, there have been some delays during the governance procedure. When something goes off to them for decision, it seems to take quite a long time to get through the Post Office governance procedure for a decision to come back. Often that decision is positive, but there is scope to save time there.

- Q92 **Rosie Wrighting:** Earlier this afternoon, we heard from the sub-postmasters and their legal representatives about how their schemes have been complicated, for reasons including the involvement of multi-scheme administrators and the burden of work on claimants, who might have initially lacked legal representation from the beginning. Based on your own legal experience and wider knowledge of the schemes, do you share this concern?

Sir Gary Hickinbottom: It is certainly a concern. It may be more of a concern in the other schemes, where there are a lot more claimants.

In the scheme in which I am involved—this is a generalisation that is not universally true—all the claimants have been prosecuted, convicted and then had their convictions overturned by the court. One can possibly expect quite a high general level of trauma for these particular postmasters compared with other postmasters in other schemes. That is not saying that other postmasters in other schemes have not had very considerable trauma—they have been sued, made bankrupt and all sorts of other terrible things—but there is a high level of trauma among these particular claimants. In working out the best way of dealing with the claims, one has to bear that in mind at all points.

I am very happy to put pressure on the Post Office to return with a response to an offer within 40 days, because there is usually no good reason why it should not do that as a general rule. With claimants, it is far more difficult.

- Q93 **Mr Reynolds:** You mentioned in your October summary report that as less complex cases were settled, you thought you would be left with more complex cases. You have mentioned future loss claims. Is that something



that will be specific to the overturned convictions, or will it affect any other schemes? If so, are we going to see a build-up and a backlog of these higher-value and more complex cases?

Sir Gary Hickinbottom: The answer is yes. In respect of the new scheme, the OC2 scheme, the claimants will probably have a similar profile and similar issues will arise. One can expect, within that cohort, to have big future loss claims. For various reasons, one might expect a bigger proportion of those claimants to accept the £600,000. That may or may not turn out to be the case, but the issues will generally be the same.

In respect of the other schemes, for which I know less about the claimant cohort, I am sure that as a matter of logic they too will have claimants with, for example, future loss claims. They will be left as a rump of their particular cohorts.

That is why, in the hearing of claims within the OC scheme, which I hope is going to be early next year, I hope the panel will look at future loss. I really want to get as much value as possible out of that hearing, and I want as many categories of people and representatives as possible to buy into that hearing. Certainly I propose to ask representatives with claimants in the other schemes whether they want to make submissions and whether any aspects of these issues are peculiar to their scheme, so that we get the most out of these hearings and the guidance is as helpful as it can be.

Q94 **Sonia Kumar:** Should anything change in the design of any of the schemes to ensure faster and fairer redress?

Sir Gary Hickinbottom: I cannot really speak about the other schemes, because I do not know enough about the GLO scheme and the HSS.

With the OC scheme—as I say, similar issues are likely to occur in the OC2 scheme—we have to be very sensitive to what may happen in future. As I say, we have ruled out the advantages of a facilitator in our scheme, because we have a small number of cases, and we are going to be left with a smaller number of challenging cases. I certainly do not rule out things like early neutral evaluation in particular claims, if that is a way that might break through in that claim and result in a settlement.

Generally speaking—I have done a number of things in the OC scheme to try to moderate this—for obvious reasons, where the administrator of the scheme is the Post Office as opposed to the DBT, there are trust issues with a proportion of the claimants and sometimes with the claimants' representatives. It is very important that we, or certainly I, within the OC scheme maintain both independence and confidence from all the parties, and in particular from not just the claimants' representatives, but the claimants. The claimants have to believe that they will get fair compensation through the system, including the assessment.

Q95 **Chair:** The last question that I have is just an observation, really. You



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said at the beginning that your role appears to be having a positive influence on the way the system as a whole is working. One thing you are able to encourage is a bringing of sides together to try to make progress in settling pecuniary losses. That is not something that Sir Ross Cranston can do in the GLO scheme. If you are thinking about the system as a whole, even without knowing the complete detail, it feels as if the role that you play could be usefully replicated in other schemes, in terms of trying to get some adjudication at an earlier stage of the process about some of the thornier problems like pecuniary loss.

Sir Gary Hickinbottom: Possibly that is right. The only powers I have under the OC scheme are really soft powers. I cannot actually order anybody to do anything.

Probably the best example is the £450,000 interim payment, which I recommended because I thought that if, as part of the scheme, claimants are offered £600,000 in full and final settlement, £163,000 by way of interim payment when they make their claim is really an inappropriately small proportion of the figure when they come to make a fully particularised claim. I recommended £450,000 as an interim payment at that stage, and that was accepted. The soft power that I had was supported by the advisory committee, helpfully.

In terms of bringing parties together, I have meetings with the parties' representatives on a regular basis. I have one next week. They can put anything they want on the agenda. We just look for ways in which progress may be made, either as a cohort or in individual cases, although the individual cases are confidential in that forum. Sometimes I can identify cases that would be helped by having a meeting between me, on the one hand, and either both parties or sometimes just the claimants, with the Post Office's knowledge and acquiescence, to see what the claimants think is holding up their individual claim. Sometimes we can do something about that. I have a meeting with one of the claimants' representatives again later this month to do exactly that.

Chair: It strikes me that we might need a bit more of that. Sir Gary, thank you very much indeed for your evidence.

That concludes this panel. It is only left for me to provide the breaking news to members of the Committee that the Prime Minister has now responded to the letter from Sir Alan Bates. We look forward to receiving and considering that response.