



SCCRC

**Scottish Criminal Cases
Review Commission**

**Annual Report
2023–24**

Overview

Laid before the Scottish Parliament by the Scottish Ministers SG/2024/87

2023–24

| | |
|-----|--|
| 177 | New applications received |
| 32 | Applications accepted for stage 2 review |
| 142 | Cases concluded overall |
| 27 | Cases concluded after stage 2 review |
| 4 | Cases referred to the High Court |

1 April 1999 to 31 March 2024

| | |
|-----|---------------------------------------|
| 161 | Cases referred to the High Court |
| 159 | Cases determined by the High Court |
| 96 | Convictions quashed/sentences reduced |
| 50 | Appeals unsuccessful |
| 13 | Appeals abandoned |

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Chairman's Report

I am pleased to present the Annual Report of the Scottish Criminal Cases Review Commission, setting out the work and performance of the Commission for 2023-24.

I shall start by reporting on the work that the Commission undertook in reviewing convictions of subpostmasters and employees of the Post Office.

In 2023-24 the High Court quashed the convictions of six subpostmasters following upon Commission referrals to the Court; the Court quashed two further convictions, in May and August 2024. The Court's judgment reflected that all parties accepted the Commission's legal analysis of the matters at issue.



BILL MATTHEWS

The quashing of those convictions represents the culmination of four years' work by the Commission. We left no stone unturned in our investigations. We wrote to 80 or so subpostmasters or employees of the Post Office whose contact details we were able to obtain and encouraged them to apply to us; where our letters were returned to us, we used tracing agents to find the people concerned; where people had died, we contacted their next of kin. Despite the age of the convictions, we were able to obtain from various sources the information we needed to review

the cases properly: retired sheriffs, in consulting their old notebooks, provided accounts of court proceedings; we unearthed newspaper articles in central libraries; we agreed an information sharing agreement with the Post Office to facilitate their disclosure of information to us. Where it became apparent during our review that employees of large retailers that operated Post Office branches in their stores could also be victims of the faulty Horizon IT system, we carried out a systematic investigation into that matter.

While the ongoing Post Office Inquiry is examining the failings that occurred with Horizon that led to the wrongful prosecution and conviction of subpostmasters, our seven successful referrals to the High Court illustrate the role we played in correcting miscarriages of justice in the Post Office cases and the importance of our role in the criminal justice system in Scotland. Our review of Post Office cases is now ending in light of the legislation the Scottish Government brought forward to exonerate the victims of Horizon.

I thank our Horizon review team for the investigations they undertook and for the quality of their work.

I am pleased to report that this year, like last year, no legal actions were raised against the Commission. This reflects the attention to detail that our Board Members and staff pay when reviewing the cases and applying the relevant law.

We continue to provide our opinion on relevant legal consultations and to develop peer review work with the (English) CCRC, Te Kāhui Tātari Ture (the New Zealand CCRC) and other stakeholders. We provided our responses to the Victims, Witnesses and Justice Reform (Scotland) Bill consultation. We hosted an investigator from Te Kāhui Tātari Ture and a delegation of law professors from Japan, explaining to them how we perform our statutory function and listening to them in how they address similar issues.

This year has seen changes in Board personnel. In June we said goodbye to Jim Fraser, Professor of Forensic Science, whose eight-year tenure as a Board Member came to an end. Jim has extensive experience as an expert witness and in strategic and policy matters in forensic science in the UK and abroad. His input in case discussions was always to the point, and I thank him for his diligence and expert advice during his time at the Commission.

We welcomed two new Board Members, Suzanne Mertes QPM and Finlay Young. Suzanne, a former Chief Superintendent at Police Scotland, brings with her a wealth of experience and knowledge in policing and partnership working in the wider criminal justice system. Finlay is an award-winning journalist who reported on the 2014 ebola outbreak in West Africa and on male suicide and maternal mortality. I know their experience and skills will complement those of their colleagues and both are already excellent additions to our Board.

My time as Chairman will end in December 2024, coincidentally the 25th anniversary of the Commission. It is clear to me that the role of the Commission is as important as it has ever been. The Commission is the “backstop” organisation in the criminal justice system in Scotland, enabling convicted people to challenge their convictions and sentences, sometimes many years after their convictions. Each year in which I served as Chairman we made successful referrals to the High Court.

May I take this opportunity to place on record my gratitude to all my Board colleagues, and in particular Elaine Noad and Raymond McMenamin, whose tenure as Board Members also ends in December 2024. Elaine had served on the Scottish Solicitors' Disciplinary Tribunal, the Parole Board for Scotland, and the Mental Welfare Commission for Scotland. Raymond specialised in criminal defence for over 30 years, was admitted as a solicitor advocate in 2000, and sat as a part-time sheriff. Their contributions to the effective operation of the Commission, both in respect of the case-review work and in instilling good corporate governance, over the last eight years were invaluable. Lastley, I am very grateful, to our staff for their continued dedication, curiosity and diligence in pursuit of our statutory objective.

**BILL MATTHEWS**

Chairman

2 September 2024

Chief Executive's Introduction

In 2023-24 the Commission's cash budget was set at £1,235,000. This represented an increase of 1.3 per cent on our budget for 2022-23. We sought no additional funding during the year. We were able to make savings in respect of the costs of legal actions and staff costs. This facilitated, in part, the implementation of the 2023-24 pay award. We concluded a comprehensive spending review, incorporating a review of estates, Best Value and service contracts.

In relation to case matters, the High Court quashed the convictions of eight former Post Office subpostmasters (including two in the summer of 2024) following Commission referrals to the Court. We were reviewing the convictions of another 12 subpostmasters or employees of the Post Office. The coming into force of the Post Office (Horizon System) Offences (Scotland) Act 2024 on 14 June 2024 brings our review of those cases to an end. The new legislation quashes the convictions of subpostmasters and employees of the Post Office who, based on Horizon evidence, were convicted of crimes of dishonesty.



MICHAEL WALKER

In 2023-24 we referred four cases to the High Court. The stage 2 referral rate in 2023-24 – ie, the number of referrals expressed as a percentage of the number

of stage 2 cases concluded (27) – was 14.8 per cent. Our overall referral rate in 2023-24 – the number of referrals expressed as a percentage of the total number of cases concluded (142) – was 2.8 per cent.

I am pleased to report that we met all five key performance targets in 2023-24.

I wrote in last year's annual report that we would evaluate this year whether our outreach work, including the issuing of our easy-read application form, had helped people in accessing our services. In 2023-24 we received a record number of applications (177). I am sure that this reflects the work that we undertook to assist potential applicants. This year we were able, for example, to resume our talks to prisoners, which had been suspended owing to restrictions in accessing prisons, and we gave talks in person to prisoners in the prison estate.

The focus of our outreach work in 2023-24 was, however, with members of the defence profession. As I wrote last year, the input of defence counsel and solicitors is valuable at the application stage given the knowledge that defence lawyers retain about the defence led and the trial proceedings. We gave talks about the work of the Commission to Members of the Faculty, Members of the Law Society, the Public Defence Solicitors Office and the Miscarriages of Justice Organisation, the main purpose of which was to assist the profession in how to frame a successful application to the Commission. Those talks were well-attended and well-received.

Notwithstanding this, the number of applications from represented applicants remained low at 29 applications. I recognise, however, that the level of engagement of the profession with the Commission must be seen in the context that criminal lawyers are working long hours in dealing with the backlog of trials and appeals caused by the pandemic. We shall continue to engage with the defence profession and unrepresented applicants as effectively as we can. Next year we go live with a more user-friendly website.

Our ability to conclude the reviews in 142 cases in 2023-24 was facilitated by our comprehensive information sharing agreements with Police Scotland and the Scottish Courts & Tribunals Service. We will, as part of our Business Plan for 2024-25, seek to reach such an agreement with the Crown Office and Procurator Fiscal Service.

I thank our Board Members, our Consultant Legal Advisor and our staff for their expertise and continued hard work, which enabled us to review the cases thoroughly and, where appropriate, to refer cases to the High Court.

I pay special thanks to Professor Jim Fraser, whose period on the Board ended in June 2023, and our Board Members whose tenure ends in December 2024 – the Chairman, Bill Matthews, the Chair of the Audit Committee, Elaine Noad, and Raymond McMenamin, solicitor advocate. Each brought to their role as a Board Member their distinct knowledge of

the criminal justice system and each was always hugely supportive of the staff and the work they were undertaking.

A handwritten signature in black ink, consisting of two distinct, wavy, horizontal strokes.

MICHAEL WALKER

Chief Executive

2 September 2024

The Commission

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OUR PURPOSE

To review potential miscarriages of justice in criminal cases in Scotland and refer appropriate cases to the High Court for an appeal.

The Scottish Criminal Cases Review Commission was established in 1999 by Part XA of the Criminal Procedure (Scotland) Act 1995 as an independent public body to review alleged miscarriages of justice in Scotland. The Commission has the power to refer cases to the High Court for determination.

Any person convicted of a criminal offence in Scotland may apply to the Commission to have their convictions and/or sentences reviewed. Thereafter the Commission has a statutory obligation to provide a statement of reasons for referring or not referring the case to the High Court.

In 2023-24 the Commission's staff complement was as follows: a Chief Executive, a Director of Corporate Services, two Senior Legal Officers, five Legal Officers and three Administration Staff. (The Commission continued to operate with two Legal Officer positions unfilled).

Our Legal Officers investigate cases under the direction of Board Members and the Chief Executive. The Board is responsible for deciding whether cases should be referred to the High Court.

It is a criminal offence for any Member or employee to disclose information that the Commission obtained in the exercise of its functions, except under certain statutory exceptions.

Details of the Commission's remit, specific powers of investigation and case review procedures can be found on our website, [sccrc.co.uk](https://www.sccrc.co.uk), or by request from our office.

Case Statistics

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Case Statistics

Between 1 April 1999 and 31 March 2024 the Commission received a total of 3263 applications, completed the review of 3194 cases and referred 161 cases to the High Court for determination.

The statistics about case volumes and case-related performance in 2023-24 are set out below. For context and where appropriate, the statistics for the four financial years preceding 2023-24 are also set out.

Table 1 provides the number of applications received in each of the last five years, the number accepted for a stage 2 review and the number of cases concluded.

Table 2 provides a comparison between solemn and summary cases in each of the last five years and between conviction (including conviction and sentence) and sentence-only cases.

Table 3 provides the main offences of which applicants were convicted and their number in the last five years.

Table 4 provides the main grounds of review and their number in the last five years.

Table 1 • Cases Received and Concluded

| | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|---|---------|---------|---------|---------|---------|
| CASES RECEIVED | 128 | 107 | 98 | 139 | 177 |
| CASES REJECTED AT STAGE 1 | 103 | 74 | 74 | 112 | 145 |
| CASES ACCEPTED FOR STAGE 2 REVIEW | 32 | 31 | 21 | 26 | 32 |
| CASES CONCLUDED AFTER STAGE 2 REVIEW | 26 | 19 | 28 | 26 | 27 |
| CASES CONCLUDED OVERALL | 129 | 93 | 102 | 138 | 142 |

Table 2 • Nature of Review

| | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|---|---------|---------|---------|---------|---------|
| | % | % | % | % | % |
| SOLEMN | 70 | 61 | 68 | 67 | 79 |
| SUMMARY | 30 | 39 | 32 | 33 | 21 |
| CONVICTION (OR CONVICTION AND SENTENCE) REVIEW | 86 | 86 | 90 | 92 | 94 |
| SENTENCE-ONLY REVIEW | 14 | 14 | 10 | 8 | 6 |

Table 3 • Types of Offence Reviewed

| MAIN OFFENCE | NUMBER OF CASES | % |
|--|-----------------|------|
| SEXUAL OFFENCES OTHER THAN RAPE | 160 | 20.6 |
| RAPE | 131 | 16.9 |
| ASSAULT | 82 | 10.6 |
| MURDER | 62 | 8 |
| AGGRAVATED ASSAULT | 61 | 7.9 |
| BREACH OF THE PEACE/THREATENING OR ABUSIVE BEHAVIOUR | 42 | 5.4 |
| ROAD TRAFFIC OFFENCES | 23 | 3 |
| CRIMES OF DISHONESTY OTHER THAN THEFT OR ROBBERY | 23 | 3 |
| ATTEMPTED MURDER | 20 | 2.6 |
| DRUGS-RELATED OFFENCES | 16 | 2 |
| ROBBERY | 9 | 1.2 |
| THEFT | 7 | 1 |
| DOMESTIC ABUSE | 6 | 0.8 |
| CULPABLE HOMICIDE | 4 | 0.5 |
| OTHER | 130 | 16.8 |

*Please note that a further five applications (0.7 %) have been recorded as “unknown” as no details of the offence were included in the application.

Table 4 • Grounds of Review Considered

| MAIN GROUND OF REVIEW | NUMBER OF CASES | % |
|---|-----------------|------|
| CREDIBILITY OR RELIABILITY OF WITNESS OR EVIDENCE | 288 | 33.3 |
| DEFECTIVE REPRESENTATION | 204 | 23.6 |
| SENTENCING ISSUE | 69 | 8 |
| UNFAIR TRIAL | 63 | 7.3 |
| FRESH EVIDENCE | 37 | 4.3 |
| MISDIRECTION | 23 | 2.7 |
| POLICE MISCONDUCT | 14 | 1.6 |
| WRONGFUL CONVICTION | 12 | 1.4 |
| HUMAN RIGHTS ISSUE | 8 | 0.9 |
| OTHER | 129 | 14.9 |

*A total of 865 cases were received in the 5-year period. However, the total number of grounds of review exceeds this on account of multiple grounds being recorded against individual cases.

Referrals to the High Court

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Referrals to the High Court

The Commission may refer to the High Court any conviction on indictment or summary complaint, or any sentence imposed in such a case, whether or not the High Court has previously determined an appeal against the conviction or sentence.

The Commission must, before it makes such a referral, believe that there may have been a miscarriage of justice and that it is in the interests of justice that a referral is made. Full details of the applicable legislation are available on the Commission's website, [sccrc.co.uk](https://www.sccrc.co.uk), or within the Commission's information leaflets, available upon request.

In 2023-24 the Commission referred three conviction cases and one sentence case to the High Court.

The referral rate in 2023-24 – ie, the number of referrals (4) expressed as a percentage of the total number of cases concluded, either at stage 1 or stage 2 (142) – was 2.8 %. When one considers only cases concluded after a stage 2 review (27) – in essence, the cases accepted at stage 1 because the applicant had appealed and raised a stateable ground – the referral rate was 14.8 %.

The referral rate in the last five years – the number of referrals (21) expressed as a percentage of the total number of cases concluded (604) – was 3.5 %. The stage 2 referral rate in the last five years was 16.7 %

The overall referral rate – the total number of referrals between 1 April 1999 and 31 March 2023 (159) expressed as a percentage of the total number of cases concluded (3194) – was 5 %. The overall referral rate for conviction cases was 3.8 %.

The referral rate of successful appeals – the total number of successful appeals following upon Commission referrals (96), expressed as a percentage of the total number of Commission referrals the High Court has determined (159) – was 60 %. The referral rate of successful appeals in conviction cases was 50 %.

Case Referral Details

Table 5 provides the main grounds of referral in the last five years.

Table 6 provides the number of referrals and the number of cases the High Court has determined in each of the last five years. (The cases the High Court has determined are not necessarily determined in the same year in which the Commission referred them.)

Table 7 provides details of the cases determined by the High Court in 2023-24 following upon a Commission referral.

(A list of all the cases the High Court has determined since 1 April 1999 following upon Commission referral is available on the Commission’s website, **sccrc.co.uk**. Where the High Court has issued a written judgment in the case, the appropriate hyperlink to the website of the Scottish Courts & Tribunals Service is provided.)

Table 8 provides details about the Commission referrals in 2023-24.

Table 5 • Main Ground of Referral in last five years

| MAIN GROUND OF REFERRAL | FREQUENCY OF GROUND | % OF REFERRED CASES |
|--|---------------------|---------------------|
| PLEA OF GUILTY TENDERED UNDER A REAL ERROR OR IN PREJUDICIAL CIRCUMSTANCES | 7 | 33 % |
| SENTENCING ISSUES | 6 | 28% |
| FRESH EVIDENCE | 5 | 24 % |
| MISDIRECTION | 1 | 5 % |
| INSUFFICIENT EVIDENCE | 1 | 5 % |
| UNREASONABLE VERDICT | 1 | 5 % |

*Non-disclosure was a secondary ground for one of the cases.

**Oppression was a secondary ground for 8 of the Post Office cases.

Table 6 • Referrals and Disposals in last five years

| | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|------------------|---------|---------|---------|---------|---------|
| CASES REFERRED | 4 | 4 | 3 | 6 | 4 |
| CASES DETERMINED | 4 | 2 | 4 | 1 | 8 |
| CASES ABANDONED | 0 | 0 | 1 | 0 | 0 |

Table 7 • Cases Determined 2023-24

| | |
|--------------------------------|---|
| CONVICTION: 7 CASES | |
| NAME: | SUSAN SINCLAIR |
| DATE REFERRED TO COURT: | 08 NOVEMBER 2022 |
| OFFENCE: | EMBEZZLEMENT |
| DATE OF CONVICTION: | 07 APRIL 2004 |
| APPEAL OUTCOME: | SUCCESSFUL |
| DATE OF APPEAL OUTCOME: | 29 SEPTEMBER 2023 |
| JUDGMENT: | HTTPS://SCOTCOURTS.GOV.UK/DOCS/DEFAULT-SOURCE/COS-GENERAL-DOCS/PDF-DOCS-FOR-OPINIONS/2024HCJAC15.PDF?SFVRSN=3CF3192A_1 |
| | |
| NAME: | COLIN SMITH |
| DATE REFERRED TO COURT: | 08 NOVEMBER 2022 |
| OFFENCE: | EMBEZZLEMENT |
| DATE OF CONVICTION: | 23 MAY 2013 |
| APPEAL OUTCOME: | SUCCESSFUL |
| DATE OF APPEAL OUTCOME: | 08 JANUARY 2024 |
| JUDGMENT: | HTTPS://SCOTCOURTS.GOV.UK/DOCS/DEFAULT-SOURCE/COS-GENERAL-DOCS/PDF-DOCS-FOR-OPINIONS/2024HCJAC15.PDF?SFVRSN=3CF3192A_1 |
| | |
| NAME: | JUDITH SMITH |
| DATE REFERRED TO COURT: | 08 NOVEMBER 2022 |
| OFFENCE: | FRAUD |
| DATE OF CONVICTION: | 26 OCTOBER 2009 |
| APPEAL OUTCOME: | SUCCESSFUL |
| DATE OF APPEAL OUTCOME: | 08 JANUARY 2024 |
| JUDGMENT: | HTTPS://SCOTCOURTS.GOV.UK/DOCS/DEFAULT-SOURCE/COS-GENERAL-DOCS/PDF-DOCS-FOR-OPINIONS/2024HCJAC15.PDF?SFVRSN=3CF3192A_1 |

**Table 7 • Cases Determined
2023-24
(continued)**

| | |
|--------------------------------|---|
| NAME: | ANNE QUARM ON BEHALF OF WILLIAM QUARM (DECEASED) |
| DATE REFERRED TO COURT: | 08 NOVEMBER 2022 |
| OFFENCE: | EMBEZZLEMENT |
| DATE OF CONVICTION: | 04 MAY 2010 |
| APPEAL OUTCOME: | SUCCESSFUL |
| DATE OF APPEAL OUTCOME: | 29 SEPTEMBER 2023 |
| JUDGMENT: | HTTPS://SCOTCOURTS.GOV.UK/DOCS/DEFAULT-SOURCE/COS-GENERAL-DOCS/PDF-DOCS-FOR-OPINIONS/2024HCJAC15.PDF?SFVRSN=3CF3192A_1 |
| NAME: | ROBERT THOMSON |
| DATE REFERRED TO COURT: | 08 NOVEMBER 2022 |
| OFFENCE: | EMBEZZLEMENT |
| DATE OF CONVICTION: | 06 APRIL 2006 |
| APPEAL OUTCOME: | SUCCESSFUL |
| DATE OF APPEAL OUTCOME: | 24 JANUARY 2024 |
| JUDGMENT: | HTTPS://SCOTCOURTS.GOV.UK/DOCS/DEFAULT-SOURCE/COS-GENERAL-DOCS/PDF-DOCS-FOR-OPINIONS/2024HCJAC15.PDF?SFVRSN=3CF3192A_1 |
| NAME: | ALEID KLOOSTERHUIS |
| DATE REFERRED TO COURT: | 08 NOVEMBER 2022 |
| OFFENCE: | EMBEZZLEMENT |
| DATE OF CONVICTION: | 24 OCTOBER 2012 |
| APPEAL OUTCOME: | SUCCESSFUL |
| DATE OF APPEAL OUTCOME: | 01 FEBRUARY 2024 |
| JUDGMENT: | HTTPS://SCOTCOURTS.GOV.UK/DOCS/DEFAULT-SOURCE/COS-GENERAL-DOCS/PDF-DOCS-FOR-OPINIONS/2024HCJAC15.PDF?SFVRSN=3CF3192A_1 |

Table 7 • Cases Determined
2023-24
 (continued)

| | |
|--------------------------------|---|
| NAME: | DM |
| DATE REFERRED TO COURT: | 20 JULY 2023 |
| OFFENCE: | MULTIPLE ASSAULTS; THREATENING OR ABUSIVE BEHAVIOUR |
| DATE OF CONVICTION: | 03 AUGUST 2021 |
| APPEAL OUTCOME: | UNSUCCESSFUL |
| DATE OF APPEAL OUTCOME: | 31 OCTOBER 2023 |
| JUDGMENT: | HTTPS://WWW.SCOTCOURTS.GOV.UK/DOCS/DEFAULT-SOURCE/COS-GENERAL-DOCS/PDF-DOCS-FOR-OPINIONS/2023HCJAC44.PDF?SFVRSN=E20D46A9_1 |

| | |
|--------------------------------|-----------------------|
| SENTENCE: 1 CASE | |
| NAME: | BRYAN MOORHEAD |
| DATE REFERRED TO COURT: | 29 SEPTEMBER 2023 |
| OFFENCE: | ASSAULT TO INJURY |
| DATE OF CONVICTION: | 17 MAY 2018 |
| APPEAL OUTCOME: | SUCCESSFUL |
| DATE OF APPEAL OUTCOME: | 07 DECEMBER 2023 |
| JUDGMENT: | NO JUDGMENT AVAILABLE |

Table 8 • Cases Referred 2023-24

| | |
|--------------------------------|---|
| CONVICTION: 3 CASES | |
| NAME: | DM |
| DATE REFERRED TO COURT: | 20 JULY 2023 |
| OFFENCE: | MULTIPLE ASSAULTS; THREATENING OR ABUSIVE BEHAVIOUR |
| DATE OF CONVICTION: | 03 AUGUST 2021 |
| APPEAL OUTCOME: | UNSUCCESSFUL |
| DATE OF APPEAL OUTCOME: | 31 OCTOBER 2023 |
| JUDGMENT: | HTTPS://WWW.SCOTCOURTS.GOV.UK/DOCS/DEFAULT-SOURCE/COS-GENERAL-DOCS/PDF-DOCS-FOR-OPINIONS/2023HCJAC44.PDF?SFVRSN=E20D46A9_1 |
| | |
| NAME: | RAVINDER NAGA |
| DATE REFERRED TO COURT: | 27 OCTOBER 2023 |
| OFFENCE: | THEFT |
| DATE OF CONVICTION: | 28 OCTOBER 2010 |
| APPEAL OUTCOME: | SUCCESSFUL |
| DATE OF APPEAL OUTCOME: | AUGUST 2024 |
| JUDGMENT: | NO JUDGMENT AVAILABLE |
| | |
| NAME: | JOANNE HUGHES ON BEHALF OF CAREN LORIMER (DECEASED) |
| DATE REFERRED TO COURT: | 26 JANUARY 2024 |
| OFFENCE: | EMBEZZLEMENT |
| DATE OF CONVICTION: | 03 AUGUST 2009 |
| APPEAL OUTCOME: | SUCCESSFUL |
| DATE OF APPEAL OUTCOME: | MAY 2024 |
| JUDGMENT: | NO JUDGMENT AVAILABLE |

Table 8 • Cases Referred
2023-24
(continued)

| | |
|-------------------------|-----------------------|
| SENTENCE: 1 CASE | |
| NAME: | BRYAN MOORHEAD |
| DATE REFERRED TO COURT: | 29 SEPTEMBER 2023 |
| OFFENCE: | ASSAULT TO INJURY |
| DATE OF CONVICTION: | 17 MAY 2018 |
| APPEAL OUTCOME: | SUCCESSFUL |
| DATE OF APPEAL OUTCOME: | 07 DECEMBER 2023 |
| JUDGMENT: | NO JUDGMENT AVAILABLE |

Review in Post Office Cases

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Review in Post Office Cases

Four years of work for the Commission came to fruition in 2023-24 with the successful appeals in the first group of Post Office/Horizon referrals: see *Quarm v HMA* [2024] HCJAC 15

The problems with the Post Office's Horizon system affected branches in the whole of the United Kingdom. Nonetheless, the Commission received its first two Horizon applications in March 2020. This was after various subpostmasters in England and Wales had applied to the Commission's sister body, the CCRC.

The first task facing the Commission was to determine the scale of the potential issue. Over the summer 2020 it opened lines of communication with the Crown Office and the Post Office. It obtained from the Post Office a list of individuals identified in a review of their investigation files. The Crown Office provided the Commission with the contact details that it held on file. In September 2020 the Commission began the first systematic effort of any public body in the UK to contact all of those potentially affected by Horizon. The Commission wrote to every individual whose contact details it had been able to obtain, encouraging them to apply. Over the course of 2021 the Commission used tracing agents to obtain current details for individuals it had been unable to reach. In cases in which the convicted person had died, the Commission tried to find the details of the next of kin.

In 2022 it became apparent to the Commission that there was potentially a class of cases that did not feature in Post Office records. The Commission

received an application from an individual who had been reported to the police by their former employer, a large retailer. The Post Office had not been involved in the investigation. The Commission obtained from the Post Office a list of the latter organisation’s “strategic partners”, large retailers who operated multiple Post Office branches in their stores. Over the course of 2022-23 the Commission contacted each of those strategic partners, including many of the best-known names in UK retail. Again, the Commission was the first public body in the UK to deal with this issue systematically.

The Commission made its first Horizon referrals in 2022, in a group of six cases. The Commission split its statement of reasons into two parts in each of these cases. A lengthy “General Statement of Reasons” covered the common issues among the referral cases, while shorter “individual” statements of reasons dealt with the case-specific matters. Although it could build upon the work of the Courts in England and Wales and the CCRC, the Commission needed to deal with the substantial legal and institutional differences between the jurisdictions. The Crown conceded each of the appeals over the course of 2023-24. The court’s judgment reflected that all parties substantively accepted the Commission’s legal analysis of the main issues at hand.

In 2023-24 the Commission referred two more cases to the court. The court has now allowed both of those appeals. The Commission has suspended its remaining work on Horizon cases following the coming into force of the Post Office (Horizon System) Offences (Scotland) Act 2024. This new legislation

quashes the convictions of subpostmasters and employees of the Post Office who, based on Horizon evidence, were convicted of crimes of dishonesty. The Commission's review in this class of cases is thus ending.

Accountability

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Accountability

The Commission seeks the highest levels of accountability in how it undertakes its core functions and delivers its services. It has several governance-related structures and processes to facilitate this, which are outlined below.

Stakeholder Engagement

The Commission's Engagement Strategy addresses the ways in which the Commission can engage effectively with individual applicants, including prisoners, and with the legal profession.

In 2023-24 the Commission was able to resume its talks to prisoners, which had been suspended owing to restrictions in accessing prisons. Our legal officers gave talks in person to prisoners in each prison in the prison estate, with one exception. This included talks to the National Induction Centre at HMP Shotts, HMP and YOI Polmont, and the female Community Custody Units.

The focus of our outreach work in 2023-24 was with members of the criminal bar. Our legal officers gave talks about the work of the Commission to Members of the Faculty, Members of the Law Society, the Public Defence Solicitors Office and the Miscarriages of Justice Organisation. The purpose of the talks was to assist the defence profession in how to frame a successful application to the Commission. For the same purpose, a blog about the Commission was published on the Law Society of Scotland's website and an extended version of this blog formed the basis of an article in the March edition of the Journal of the Law Society of Scotland. The full article can be found **here***.

* <https://www.lawscot.org.uk/members/journal-hub/articles/miscarriage-of-justice-has-bounded-back-into-public-consciousness/>

The result of this work saw an increase in the number of applications that we received this year compared with last year (177 compared with 143). The percentage of applications from represented applicants has, however, remained low at 18.6 % (20.3 % in 2022-23). We continue to assist potential applicants who are unrepresented as much as we can.

As part of our objective to promote understanding of our role, we gave talks to law students, both undergraduate and diploma students, at the University of Strathclyde. We plan to roll out talks to law students at the other Law Schools in Scotland. In June 2023 we welcomed an investigator from Te Kāhui Tātari Ture (the New Zealand CCRC), who spent a week at our office, met with our staff and examined our review process and procedures. In March 2024 we hosted a delegation of law professors from Japan.

Complaints Procedure

The Commission has a formal Complaints Procedure (available on the website or upon request from the Commission). The Complaints Procedure is limited to administrative matters and does not cover complaints about the Commission's case decisions.

In 2023-24 the Commission received two formal complaints (compared with three in 2022-23). None of those complaints was upheld, with one falling outside of the Complaint Procedure remit and the other following investigation.

Code of Conduct

The Commission has a Code of Conduct for Members and staff. In 2023-24 we updated the Code of Conduct.

All Members and staff must declare any known conflicts of interest – where they have, for example, had previous involvement with an applicant or a witness in a case. Conflicts are recorded, and the individual involved is excluded from any involvement in the respective case.

The Commission maintains a Register of Interests for Members (available on the website or for inspection at the office). All Members are required to review and update their registration on at least an annual basis.

Freedom of Information

The Commission has a Publication Scheme in accordance with the Freedom of Information (Scotland) Act 2002 (FOISA). The Publication Scheme can be found at sccrc.co.uk/publication-scheme

In 2023-24 the Commission received 22 freedom of information requests and issued a response in each case.

The responses issued were as follows:

| | |
|-----------------------------------|----------|
| full disclosure of information | 15 cases |
| partial disclosure of information | 3 cases |
| non-disclosure of information | 4 cases |

Where it did not disclose information, the Commission did not do so for one of the following reasons:

- the information was exempt from disclosure under FOISA
- the information was not held by the Commission
- the information was publicly available

Data Protection

In 2023-24 the Commission received 17 requests under the Data Protection Act 2018 (DPA) for personal data and issued a response in each case.

The responses issued were as follows:

| | |
|----------------------------------|----------|
| full disclosure of personal data | 11 cases |
| non-disclosure of personal data | 6 cases |

Where it did not disclose personal data, the Commission did not do so for one of the following reasons:

- the data was exempt from disclosure under DPA
- the data was not held by the Commission

Persistent & Repeated Applications Policy

The Commission has a Persistent & Repeated Applications Policy to address repeat applications in which an applicant has raised no new grounds of review.

Where they meet the relevant criteria in the Policy, an applicant is placed on the Commission's Persistent & Repeated Applications Register. Where it receives an application from an individual who has been placed on the Register, the Commission addresses the application in accordance with the Policy.

An applicant may appeal the decision to place them on the Persistent & Repeated Applications Register. The Commission reviews annually the registrations on it.

In 2023-24 the total number of registrations was 19 (compared with 18 in 2022-23) – three new registrations were made and two applicants were removed from the register.

Legal Actions

No legal actions were raised against the Commission this year.

In 2023-24 the Commission's spend on legal costs and debt recovery fees was minimal (£298). A total of £7,916 was recovered in respect of the recovery agreement signed in October 2022. The net income was therefore £7,618 (compared with net expenditure of £548 in 2022-23).

Performance Analysis

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Performance Analysis

Corporate Planning

The Commission has a Corporate Plan covering the period between 1 April 2022 and 31 March 2025. The Corporate Plan sets out the Commission's strategic aims and priorities for the three-year period and how the Commission intends to deliver those aims. It identifies how the Commission will align with the Scottish Government's National Performance Framework and contains a three-year financial forecast.

The Commission produces an annual Business Plan in support of the Corporate Plan. The Business Plan sets out a full performance assessment for the preceding year and the operational objectives and agreed budgetary provision for the year ahead.

The Corporate Plan and Business Plan are available on the Commission's website, [sccrc.co.uk](https://www.sccrc.co.uk), or by request from our office.

The key performance information contained in the Business Plan is detailed below. This includes the performance against all five key targets in 2023-24, a comparison of achievement against all key performance indicators in the last five years, and the financial results in 2023-24.

Performance Against Key Targets

The Commission's strategic aims, as set by the Scottish Ministers, were as follows:

- to identify, review and address potential miscarriages of justice, and thereby contribute to the strengthening of public confidence in the Scottish criminal justice system and its ability to correct such miscarriages;
- to investigate all cases efficiently, without undue delay and to a consistently high standard;
- to work with others to deliver a quality service which is person-centred and trauma-informed; and
- to promote public understanding of the Commission's role.

The Commission sets specific objectives and targets to meet its broad aims and to demonstrate its commitment to the National Performance Framework. The Corporate Plan and the Business Plan identify those objectives and targets for 2023-24.

The Commission's performance against its key targets for 2023-24 is as follows:

| TARGET | OUTCOME | PERFORMANCE |
|--|------------|----------------------------|
| (i) to allocate cases received within an average of 1 week from the date of receipt. | Achieved* | 4-day average |
| (ii) to complete the stage 1 pre-acceptance procedure within an average of 2 months from the date of stage 1 allocation. | Achieved | 1.7-month average |
| (iii) to conclude sentence-only reviews within an average of 4 months of the date of stage 2 allocation. | Achieved | 4.0-month average |
| (iv) to conclude cases involving a review of conviction within an average of 8 months of the date of stage 2 allocation. | Achieved** | 7.2-month average |
| (v) to complete the review of 98% of the cases received before 31 March 2022, so that by the beginning of the 2023-24 reporting year no more than 3 of the Commission's cases are more than 12 months old. | Achieved | 0 cases over 12 months old |

*During the year the Commission experienced a significant increase in new applications; to manage these within existing resources, this target was temporarily extended from 1 week to 4 weeks. Despite this, an overall average of 5 days was achieved.

**Post Office Cases – two cases were removed from this section as they had initially been placed on hold, awaiting the receipt of further post office cases so that these could be dealt with together.

Full details of the Commission’s performance against these targets and objectives are available on the Commission’s website, [sccrc.co.uk](https://www.sccrc.co.uk).

The Commission achieved all five key targets in 2023-24, including the sentence-only review target; this target continues to be a challenging objective given the small number of sentence-only cases received each year and the effect that the delay in obtaining information in one or two cases has on the average review period. We improved our performance in respect of concluding stage 1 reviews and maintained our performance against our other targets.

Key Performance Indicators

The Commission sets several key performance indicators (KPIs), as identified within the Corporate Plan, and reports on those in the Annual Report. The table below sets out performance against the KPIs in each of the last five years:

| | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|--|------------------------|------------------------|------------|------------|------------------------|
| Number of applications received | 128 | 107 | 98 | 139 | 177 |
| *Number of concluded cases | 129 | 93 | 102 | 138 | 142 |
| Average time taken from date of acceptance to date of conclusion | 7.0 months | 6.8 months | 7.3 months | 6.0 months | 6.6 months |
| Number of cases where an initial decision not to refer is changed to a decision to refer following further submissions | 0 | 0 | 0 | 0 | 1 |
| Referrals | 4 | 4 | 3 | 6 | 4 |
| High Court determinations of appeals following Commission referral | 2 granted 2 refused | 1 granted 1 refused | 1 granted | 1 granted | 7 granted 1 refused |
| Cases abandoned following upon a Commission referral | 0 | 0 | 1 | 0 | 0 |
| Number of formal complaints received | 3 | 3 | 7 | 3 | 2 |
| Number of cases subject to judicial review | 0 | 2 | 2 | 0 | 0 |

*The number of concluded cases can exceed the number received in each year because cases received in previous financial years conclude in a subsequent year.

Financial Results

In accordance with paragraph 9(1)(b) of Schedule 9A to the Act, the Commission's statement of accounts covers the period 1 April 2023 to 31 March 2024. The Commission's statement of accounts is prepared in accordance with the Accounts Direction issued to the Commission by the Scottish Ministers.

The accounts for the year ending 31 March 2024 were signed off by the Accountable Officer on 9 July 2024 and have been published separately to the Annual Report. These are available on the Commission's website, [sccrc.co.uk](https://www.sccrc.co.uk)

The Commission's cash budget for 2023-24 was set at £1,235,000. No additional funding was sought during the year.

Comprehensive net expenditure for the year was £1,189k, which includes £132k of non-cash expenditure against a cash budget of £1,235k. As with 2022-23, expenditure on both legal costs and investigations was below budget primarily because of no new legal actions being raised against the Commission during the year. Recurring savings were also realised in respect of staff costs, which facilitated, in part, the implementation of the 2023-24 pay award.

| | | | | |
|--------------------------|------------|--|--|--|
| 2023-24 Cash Budget: | £1,235,000 | | | |
| 2023-24 Non-Cash Budget: | £90,000 | | | |
| Additional Funding: | 0 | | | |

| | Quarter 1 | Quarter 2 | Quarter 3 | Quarter 4 |
|--------------------|-----------|-----------|-----------|-----------|
| 2023-24 Draw Downs | £358,000 | £307,000 | £274,000 | £296,000 |

| | | | | |
|-------------------------|------------|--|--|--|
| Total Funding Draw Down | £1,235,000 | | | |
|-------------------------|------------|--|--|--|

The capital budget for the year was set at £10k. Actual capital expenditure for the year amounted to £2k and was in respect of replacement IT hardware.

Payment Performance

In line with Scottish Government directions, the Commission's policy for the payment of invoices not in dispute is within 10 days of receipt (or the agreed contractual terms if otherwise specified). The Commission aims to pay 100 % of invoices, including disputed invoices once the dispute has been settled, within these terms.

As a result of remote working and post-pandemic operating procedures, the Commission continued to adopt a flexible approach to supplier payments, making use of both BACS payments alongside SEAS payments. A total of 98.8 % of invoices were paid within the 10-day target, albeit the average payment timescale was 2.8 days from the date of receipt. This compares with 98.4 % and 3.2 days respectively in 2022-23. This demonstrates the Commission's ongoing excellence in payment performance.

As at 31 March 2024 the value of supplier payments outstanding at year end was nil.

Our People

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Our People

The Board

The Board has corporate responsibility for making sure the Commission fulfils the aims and objectives that the Scottish Ministers set the Commission and for promoting the efficient and effective use of staff and other resources in accordance with the principles of Best Value.

The Board has executive responsibility in discharging its statutory role by making decisions in all cases the Commission receives. Two Case Committees, the Audit Committee and the Remuneration Committee support the Board. The Board sits twice a year as the Policy Group.

The Commission has exceeded its 50:50 gender equality target on its Board.

| | | START DATE: | FINISH DATE: |
|-----------------------|-----------------------|-------------|--------------|
| Chairman: | Mr Bill Matthews | 01.01.17 | - |
| Board Members: | Professor Jim Fraser* | 01.07.15 | 30.06.23 |
| | Mr Raymond McMenamin | 01.01.17 | - |
| | Mrs Elaine Noad* | 01.01.17 | - |
| | Dr Alex Quinn | 01.04.19 | - |
| | Mrs Laura Reilly* | 01.04.19 | - |
| | Mrs Gillian Mawdsley | 01.07.21 | - |
| | Ms Jacqueline Fordyce | 01.07.21 | - |
| | Mrs Suzanne Mertes* | 01.10.23 | - |

*Audit Committee Members

| | MALE | FEMALE |
|---------------|------|--------|
| Chairman | 1 | - |
| Board Members | 2 | 5 |

Staffing

The Commission's Chief Executive, Mr Michael Walker, is the Accountable Officer and was supported by the following staff:

| JOB TITLE: | MALE | FEMALE |
|--------------------------------|------|--------|
| Director of Corporate Services | 1 | - |
| Senior Legal Officer | 1 | 1 |
| Legal Officer | 1 | 2 |
| Senior Administration Officer | - | 1 |
| Administration Officer | 1 | 1 |

All staff are based at the Commission's office, in Glasgow, although the Commission operates hybrid working arrangements.

Absence Monitoring

Staffing matters are detailed within the full 2023-24 Annual Report, which is published separately. The Commission has monitoring arrangements to review staffing performance issues such as rates of absence. The average number of sick days per employee in post in 2023-24 was 1.7 days; this is a slightly higher rate than in 2022-23 where the average was 0.4 days. (The 1.7 figure does not take into account employees who were on long-term absence.)

Training & Development

The Commission is committed to having well-trained staff. All staff are encouraged to identify and attend suitable training events and have direct access to the Chief Executive and Members and are encouraged to express their views on the efficiency and the effectiveness of the Commission.

Performance Management

The Commission has a Staff Appraisal and Performance Policy. This sets out the Commission's commitment to staff training and development in terms of their current role and wider career aspirations, as well as the link between performance and reward. The Commission is also bound by the Scottish Government's Pay Policy, which is reviewed annually as part of the development and approval of the annual pay remit.

Equal Opportunities & Diversity

The Commission has an Equal Opportunities Policy. This is to make sure that there is no employment discrimination on the grounds of disability and that access to employment and career development with the Commission is based solely on ability, qualifications and suitability for the work.

Equalities data are gathered on an annual basis from employees to assist the Commission in identifying and addressing any actual or perceived equality or diversity issues, in accordance with the Commission's Equality Duty Mainstreaming Report. The Mainstreaming Report includes any agreed actions and is published on the Commission's website.

Health & Safety

The Commission has a Health & Safety Policy. This forms part of the Staff Handbook and sets out our responsibilities for the staff's health and safety. Several related policies and procedures, covering issues such as fire safety and staff travel etc, support it. The Commission's Health & Safety Officer – who reports to a bi-annual meeting attended by the Accountable Officer, the Director of Corporate Services and the Environmental Officer – monitors the Health & Safety Policy.

Environmental Matters

In 2023-24 the Commission continued to monitor compliance with its Environmental Policy and performance of its Environmental Action Plan, demonstrating its ongoing commitment to the reduction of its environmental impact. Ongoing policy commitments include:

- to reduce energy and minimise waste, paper and water consumption;
- to minimise the impact of the Commission's travel arrangements on the environment;
- to purchase products and services with regard to environmental impact; and
- to ensure staff are aware of and are committed to the duty to reduce the impact of the Commissions operations on the environment.

Details of the Commission's Environmental Policy and Action Plan are available on the website: [sccrc.co.uk](https://www.sccrc.co.uk)

The environmental actions taken forward during the course of 2023-24 have included:

- reducing the level of energy consumption where possible;
- recycling more of our waste and exploring the possibility of further recycling options;
- reducing the generation of paper by moving to a default system of paperless case files;
- continuing to reduce business mileage and travel where possible; and
- educating staff further on their responsibilities to contribute to the achievement of the Commission's environmental aims including conducting regular dialogue on environmental matters and staff attendance at home energy training in December 2023 with a view to reducing impacts of home working and generally raise awareness of energy saving measures.

In addition, the Commission has produced and published its 2021-2023 Biodiversity Report which is also available on the website.



Scottish Criminal Cases Review Commission

Annual Report
2023–24

