



Commission on Conflict of Interest
Commission sur les conflits d'intérêts
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The Honourable
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FROM: COMMISSION ON CONFLICT OF INTEREST

Per: Lynn Harris

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Home Office Reference:

Mr. A

ASSESSMENT

The compensation which I am required to assess is in respect of the Claimant's imprisonment for about 2½ years. There is no claim for pecuniary loss.

In addition to the period of imprisonment, I take account of the fact that the period of 5 years imprisonment which the Claimant faced was substantial, thereby adding to his distress, and also that it was not until December 1987 that the convictions were quashed by the Court of Appeal, so that the Claimant suffered the stigma of the convictions until then.

I assess compensation at £25,000.

I consider that the Claimant's Solicitors' fees of £200 plus VAT are reasonable. They will have to do further work in discussing this assessment with the Claimant and arranging for payment to him. I consider that £250 plus VAT would be a reasonable figure for their fees and this sum will be paid in addition to the compensation assessed.


(Michael Ogden, Q.C.)
Independent Assessor

12th October 1988

MEMORANDUM FOR INDEPENDENT ASSESSOR
PAYMENT OF COMPENSATION TO MR S.
CIRCUMSTANCES LEADING TO THE CONVICTION

1. On or about 2 February 1982 police enquiries commenced into allegations of serious corruption of British Rail employees involving the disposal of redundant scrap metal, and the contracts awarded to companies involved in such matters. Two areas were at the centre of the investigation, one of which was
2. Arising from enquiries made by the British Transport Police, Mr S. , who at the time was a self-employed contractor involved in the collection and subsequent disposal of scrap metal from British Rail, was arrested on 14 July 1982 along with two others. He was released the same day.
3. Subsequently two files were submitted to the Director of Public Prosecutions for consideration of offences of corruption surrounding 16 British Rail employees and 6 civilians. Having considered the files, the Director of Public Prosecutions authorised proceedings against 4 British Rail employees and 5 civilians for various offences.
4. Mr S. , along with a Mr F. (his business manager), a Mr Sh. (a scrap metal dealer) and a Mr W. (employed by Mr Sh. as a weighbridge operator) were jointly charged with
 - i. conspiracy to steal,
 - ii. conspiracy to obtain a pecuniary advantage,
 - iii. conspiracy to obtain an exemption of abatement of liability.

The first charge was a general one alleging the four, with others, conspired to steal scrap materials from British Rail. The remaining two related to an allegation that the quantity and value of scrap materials set out on the weighbridge receipts were untruthful and that appropriate records were therefore false. In addition to the joint charges, Mr S. was charged with six offences of stealing various quantities of 60 foot flat bottom rail belonging to British Rail.

5. On 18 June 1985 all four appeared before Magistrates Court where they were committed to the Crown Court for trial. In each case the accused was allowed bail.

Trial

6. Mr S. , along with the three co-accused, appeared for trial at Crown Court between 5 February and 25 February 1986. Pleas of 'not guilty' were entered in respect of all the charges. The first count of conspiracy to steal was not proceeded with by leave of the presiding judge.
7. On behalf of the prosecution, evidence was presented by 16 civilian witnesses and 5 police officers. At the conclusion of this evidence, Defence Counsel on behalf of the four accused made submissions to the court that their clients had no case to answer. On behalf of Mr S. , Counsel told the court that in his opinion no

admissible evidence had been submitted on which the case could proceed to be considered by the jury. Counsel on behalf of Mr W. advanced a similar line of argument. In response Crown Counsel accepted that the original charges of conspiracy between the four accused and others was, in the light of developments, now only a conspiracy between Mr S. and Mr W. In giving his ruling, the Judge stated that the charge of conspiracy to obtain pecuniary advantage could not be proceeded with, but that of conspiracy to obtain an exemption of abatement of liability should be placed before the jury with amendments to confine the alleged conspiracy to that between Mr S. and Mr W. The other two defendants - Mr F. and Mr Sh. - were then acquitted.

8. The defence offered no evidence in respect of either Mr Simpson or Mr W. The jury were unable to agree a unanimous verdict and, after receiving a majority direction, found the case proved against both men by a majority of 10 to 2. Of the six charges of theft against Mr S., the court record shows the jury to have returned two verdicts of 'not guilty' by direction. In respect of the remaining four counts, the jury were discharged from reaching a verdict and the matters ordered to lie upon file.

9. On 25 February 1986 Mr S. was sentenced to 9 months' imprisonment. Mr W. was sentenced to 6 months' imprisonment suspended for one year.

Appeal

10. On 17 March 1986 Mr S. applied for leave to appeal against conviction on the grounds of errors made by the Judge in the conduct of the trial by refusing to accede to the defence case of there being no case to answer, and also errors in his subsequent rulings and directions to the jury. The following day - 18 March 1986 - an application for leave to appeal against conviction was submitted by Mr W. citing similar grounds. Leave to appeal was granted to both men on 12 May 1986. In the case of Mr S., an application for bail was refused.

11. Mr S. appeared before Crown Court on 9 June 1986 charged with seven counts of corruption. These offences arose out of the same enquiry conducted by the British Transport Police, although the matters concerned related to the area. Mr S. entered a plea of guilty to four of the seven counts and was sentenced to 9 months' imprisonment, six months of which was ordered to be suspended for a year.

12. Following this decision, on 19 June 1986, Mr S. abandoned his appeal against the February conviction. The withdrawal led to Counsel for Mr W. requesting a delay on his client's appeal, in order that the matter could be reconsidered.

13. The appeal by Mr W. was finally heard by the Court of Appeal on 13 October 1986. The judgement (Annex A) records the Court accepting that many of the documents used at the trial had been inadmissible. The Court indicated that the case had been one which bristled with such uncertainties as to make it somewhat tenuous and that the judge had made some unfortunate remarks. They also found the judge had failed to give proper directions on how to treat certain of

the documentary evidence. On those grounds the Court allowed the appeal by Mr W. and quashed his conviction. The Court said that their decision would result in Mr S's conviction having to be quashed. They directed he be advised to submit an appropriate application. Solicitors on behalf of Mr S. made their application on 21 October 1986 and the conviction was quashed on 23 February 1987.

Application for Compensation

14. An application for compensation was made to the Home Secretary on 17 September 1987. After enquiries into the matter the Home Secretary decided on 22 April 1988 that the circumstances of the case were such as to justify him authorising a payment of compensation.

Time Spent in Custody

15. Mr S. was sentenced to imprisonment on 25 February 1986 and released on 27 August 1986. However, on 9 June 1986, he was sentenced to imprisonment for further offences. In respect solely of the February conviction therefore, Mr S. was detained for 104 days. The remaining 80 days were accounted for by both sentences.

Previous History

16. At the time of his appearance for trial in 1986 Mr S. was aged 62 (date of birth 14 July 1923). He had been a self-employed contractor whose main business was with British Rail, but the company went into liquidation around 1983. Further information will be offered, when dealing with matters raised as items for which compensation should be assessed.

Loss of Earnings

17. In their letter of 14 July 1988 (Annex B) solicitors claim loss of earnings for the period 1981-1988. This is on the basis that British Rail contracts were "withdrawn from Mr S. because of the police investigation (not because of the conviction) and consequently his business went into liquidation".

18. Accounts have been forwarded in support of the claim (Annex B). This shows that for the period 1978/79-1981/82 inclusive, drawings by Mr S. were £12,803, £17,160, £19,377 and £17,389 respectively. In the same period net profits for the company were £10,435, £18,934, £17,980, - £5,864 (ie net loss). In Annex C, solicitors offer comments on the way contracts between British Rail and Mr S. operated in particular the "cost plus" contract. According to them, this was a continuing contract but one dependent upon British Rail providing the materials for Mr S. to make use of. British Rail would have given Mr S. the contract apparently because of his tender for hourly rates would have been competitive and satisfactory. The contracts continued until March 1983 when they were stopped as a result of the court case, although before then it became clear that British Rail were denying him access to further materials. The loss of this source of revenue caused the company to go into liquidation. A request was made for accounts in respect of the year ending March 1983 but apparently none were produced because, according to the solicitors, it "seems to be accepted practice in the [accountancy] profession not to proceed to prepare accounts when a client has been arrested". No documentary

evidence is available dealing with the withdrawal of contracts by British Rail. However the solicitors say that after 14 July 1982 (the date of Mr S.'s arrest) it was clear he was not being invited to tender for the disposal of scrap materials.

19. From enquiries made it would appear that the sale of redundant assets by British Rail is governed by strict procedural rules laid down by the British Railways Board. The system was that as and when any service was required by an outside firm, a contract would be issued for tender. In the case of scrap metal, yearly contracts should have been awarded to the most suitable firm with tenders and bids being made in February/March each year. It would appear that Mr S. had been able to secure three different contracts covering the Newcastle area for the removal and sale of scrap metal and was always successful in maintaining them, to the extent that they were amended to three year contracts.

20. Following the obtaining of evidence to show senior railway employees had been involved in corruption, and arising from their admissions, the tendering procedures of British Rail were tightened which no doubt caused British Rail to take the action they did over the awarding of contracts.

21. Mr S.'s company relied heavily on work from British Rail to keep it solvent. There was of course no obligation on British Rail to continue with these contracts, as they were on an annual basis only and therefore subject to termination. The loss of business to Mr S. was not due to his conviction in 1986, but allegedly associated with enquiries made in 1982 into large scale corruption within British Rail and evidence then obtained. Furthermore enquiries into those matters which led Mr S. to enter a plea of guilty in June 1986 to four charges of corruption, would in themselves have had an adverse effect on the business. In these circumstances, no claim for loss of earnings arising out of the circumstances of the conviction in February 1986 of Mr S. can be met, other than with regard to the period spent in custody.

Arrest of Mr S.

22. The solicitors enter a claim for compensation in respect of Mr S. being detained by the police "incommunicado" on 14 July 1982 is the day of his arrest. On this date fell Mr S.'s birthday.

23. Enquiries of the police have established that Mr S. was arrested at 10.40am on 14 July 1982 and released at 7.30pm. During that period he was not held incommunicado; being offered all the conditions of section 62 of the Criminal Law Act 1977, upon arrival at the office of the British Transport Police. At 2pm the same day Mr S. was taken to his home address, which was searched. Prior to entry by the police, Mr S. was allowed to talk privately with his wife. This is a matter which should, if proved, be the subject of separate representations to the police. Ex gratia payment here is in recognition of the quashed conviction and its effects; there is no indication or evidence that Mr S. was wrongly or unlawfully arrested, nor of any default by the police.

Family Relationship

24. Solicitors seek compensation for the breakdown in the marriage between Mr S. and his wife, due to his change in character brought about by the pressures placed upon him during the police investigation, the threat of prosecution and the threat of conviction. After his release Mr S. moved away to an address at where he apparently remained for some 18 months before returning home. There is no evidence offered in support of these assertions.

Medical Effects of the Conviction and Sentence

25. Compensation is sought for the worry and upset caused by the police investigation, the effort and time put into preparing for the defence and duress of the trial. In addition a claim is presented in respect of Mr S.'s deterioration in health caused by the conviction and sentence. Upon request a medical report from Mr S.'s doctor has been provided (Annex D). This shows Mr S. suffered from depression and an anxiety state in 1979. In August 1981 and February 1983 he showed further symptoms of an anxiety state which necessitated treatment with tranquillisers. He continued to take the treatment on an 'as necessary' basis until September 1987, when a recurrence of his anxiety related chest pain arose for which tranquillisers were prescribed.

Effects on Social Life

26. Compensation is sought for the "stigma" of having served a prison sentence. Until his appearance for trial in February 1986, Mr S. had no previous convictions. The resultant conviction therefore led to the first occasion he had been committed to prison.

27. Reference is made by the solicitors to the subsequent conviction of Mr S. in that he pleaded guilty to four counts of corruption a) because his health could not suffer a further trial similar to the previous one and b) the Judge gave an indication that if he pleaded guilty he would not receive any additional time in prison. There is no evidence to support these assertions.

28. The proceedings in June 1986, although arising out of the same enquiry, dealt with matters surrounding British Rail operations in the area (the February 1986 convictions related to the area) and involved corruption at very senior levels within British Rail. While the solicitors suggest that had the first convictions not occurred Mr S. would have fought the subsequent charges and may have probably been acquitted, at these latter hearings British Rail officials admitted corruption charges in the form of gifts from Mr S.

General Matters

29. Solicitors seek compensation to offset the fact that because Mr S.'s business went into liquidation he was adjudged bankrupt for an approximate sum of £70,000 and that because of his age, this debt will continue. They suggest that if police enquiries had been conducted in a more "sensitive fashion" the debt would not have arisen. The conduct of a police investigation however is not a matter for which compensation by the Home Secretary may be considered.

Out of Pocket Expenses

30. Expenses under this heading are limited to costs incurred by Mr S. travelling to and from his solicitor's office. The solicitors report that Mr S. wishes to make no claim for these (Annex E).

Interim Awards

31. There has been no interim award.

Legal Costs

32. The solicitors ask for their costs of £200 plus VAT (ie £230) to be met (Annex E). This Annex also contains comments on the memorandum.

Home Office Reference

MA 5

ASSESSMENT

In early February 1982 Police enquiries began into allegations of corruption arising out of the disposal of scrap metal by British Rail. On 14 July 1982 the Claimant was arrested at about 10.40 a.m. being released on bail at 7.30 p.m. On 25 February 1986 the Claimant was convicted of an offence of conspiracy and was sentenced to 9 months imprisonment, from which he was released on 27 August 1986. However on 9 June 1986 he pleaded guilty to 4 counts of corruption and was sentenced to 9 months imprisonment, 6 of which were suspended. Since the conviction in respect of which the Claimant is to be compensated is that in February 1986, it follows that the period of that imprisonment with which I am concerned is between 25 February 1986 and 9 June 1986, being a period of 104 days. I am not concerned with the allegation that after his arrest the Claimant was kept incommunicado; I am concerned only with the quashed conviction and its effects.

A substantial claim is made for loss of earnings and the Claimant's subsequent bankruptcy. I am unable to accept that claim. The reason why the Claimant ceased to be offered the British Rail contracts was because they considered that the Claimant had engaged in corrupt practices. About this, as a result of the Claimant's pleas of guilty, British Rail was plainly correct, although it

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related to corruption in the area rather than in the area, it being the latter which was the area concerned in the convictions in February 1986. In any event I am concerned with the conviction and its effect; it is plain that British Rail stopped dealing with the Claimant long before the conviction. Had the February conviction stood alone it is possible that British Rail might have reconsidered the case, although I doubt it. What is certain is that they would not have done so whilst the other trial was pending and, of course, there would have been no question of British Rail doing so following the pleas of guilty in June.

For somewhat similar reasons I do not consider that I can take account of the stigma of the Claimant having served a prison sentence. By his pleas of guilty in June 1986 he admitted that he had been guilty of corrupt practices, albeit different charges from those concerned in the earlier case, and was sentenced to imprisonment. Inevitably this gave rise to the stigma of which the Claimant complains. I should add that I can pay no regard to assertions that the Claimant was in fact innocent of the charges to which he pleaded guilty and, in any event, as I have said, the stigma arose because of the pleas of guilty and the sentence then passed.

Exactly the same point arises in respect of marital difficulties, consequently, it is unnecessary to seek satisfactory, confirmatory evidence about the allegation.

From what I have said it will be seen that I have concluded that the assessment must be limited to compensation for the period of 104 days imprisonment.

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Having read Dr.M report I accept that the Claimant suffered from an anxiety state. Obviously imprisonment would have a greater effect upon the Claimant than it would upon a person who was not suffering from such a condition and I take this fact into account.

I assess compensation at £6,000.

In February 1989 the Claimant's Solicitors put their fees at £200 plus VAT. However, they will need to communicate further with the Claimant and arrange for payment of the award to him. I consider that fees of £300 plus VAT would be reasonable and these will be paid in addition to the award.



(Sir Michael Ogden, Q.C.)
Independent Assessor

24 April 1989

MEMORANDUM**EX GRATIA PAYMENT TO MR [REDACTED] AR [REDACTED]****Circumstances leading to detention**

On 15 June 1986 a boy of 15 was killed at [REDACTED] railway station when, in trying to cross the rails, he came into contact with a live rail and was electrocuted. Enquiries provided information that Mr Ar [REDACTED] had made threats against the boy during the weeks preceding 15 June and that the boy had been in fear of him. There were no witnesses to the boy's death but a friend of the deceased said he had seen Mr Ar [REDACTED] on the railway platform looking for someone at the relevant time, and had also seen the deceased acting in a way that suggested he was trying to hide. When interviewed by police Mr Ar [REDACTED] denied any involvement in the boy's death; however, he was arrested and remanded into custody on 18 June 1986. He was charged with manslaughter and on 18 May 1987 after a trial lasting 16 days he was convicted of the offence and sentenced to 30 months' imprisonment.

2. Mr Ar [REDACTED] appealed against the conviction and on 10 November 1987 the Court of Appeal quashed the conviction on the grounds that, having regard to the directions of the trial judge on findings of fact (which were properly given), it was impossible for the jury to find against Mr Ar [REDACTED]. Furthermore, having considered the quality of the evidence of the key witness, all appeal judges expressed "more than a lingering doubt about the safety of the conviction". A copy of the judgement is at Annex A. Mr Ar [REDACTED] was released from custody on 10 November 1987.

Application for compensation

3. On 2 February 1988 Mr Ar [REDACTED] wrote to a number of MPs indicating that he intended to seek compensation. Home Office officials wrote to him on 11 May and on 26 May his solicitors, [REDACTED], wrote confirming his intention (copies of the correspondence are attached at Annex B).

4. Having considered all the circumstances surrounding the period which Mr Ar . . . had spent in custody (a total of 511 days) officials wrote to the solicitors on 5 October 1988 advising them that the Home Secretary would be prepared to make an ex gratia payment and invited them to submit any information which they wished to have taken into account by the assessor. Mr Ar . . . replied to this letter on 17 October and a copy of this reply is attached at Annex C. His solicitors subsequently wrote setting out their client's representations more fully (attached as Annex D).

5. Certain parts of these representations relate to Mr Ar . . . alleged treatment by the police and "loss of standing" in the local community, which was allegedly affected by police actions. These are not matters for which compensation by the Home Secretary may be considered and the following passages in particular should not therefore be taken into account in the assessment of the ex gratia payment which the Home Secretary has agreed to offer:-

(a) from, on page 4, "Not content with the four outstanding charges ..." to "in the . . . area which he formally enjoyed", at the end of the fourth paragraph of page 5. (Effectively, these allege that the police concocted charges against Mr Ar . . . , and they might therefore form the subject of complaints or of civil proceedings against the police. The Home Secretary is unable to consider these matters).

(b) the fifth paragraph on page 5, from "The feeling against the Claimant ..." to "Section 47 against the Claimant". (This appears to be an unsupported allegation of what occurred while in police custody. Again, it might form the subject of a separate action; but is not something the Home Secretary can consider).

(c) on page 8, the third, fourth and fifth paragraphs from "It is a measure of the damage to the claimant's reputation. ..." to "complaints of police harassment". (These make allegations about the claimant's treatment by Merseyside and British Rail police which, again, the Home Secretary cannot consider). 19

Details of period spent in custody

6. Mr Ar [redacted] was held in the following establishments during his time in custody:

HM Remand Centre, (June-December 1986)

HM Prison, (December 1986-January 1987)

HM Remand Centre, (January-May 1987)

HM Prison (May-September 1987)

HM Prison, (September-November 1987).

He was at all times dealt with in accordance with the Prison Rules. He was segregated under Rule 43 for a total of 132 days, ie 8-20 January 1987 (14 days) and 26 February-22 June 1987 (118 days) following adjudications for offences against good order and discipline, and was further ordered to forego certain privileges (association, canteen, cinema, smoking, classes, radio and Sunday and open visits) for periods totalling 40 days.

In his representations, Mr Ar [redacted] refers to the regime at HM Remand Centre, [redacted] and to its condemnation by HM Chief Inspector of Prisons. Attached at Annex E to this memorandum is a copy of the Chief Inspector's report on [redacted] Remand Centre dated April 1988.

Previous history

7. Mr Ar [redacted] is 27 years of age and single with no dependants. He lives alone in rented accommodation and is currently unemployed and in receipt of unemployment benefit. Up until the time of his arrest in 1986 he had been employed full time as a maintenance worker with the [redacted] Passenger Transport Authority. His earnings averaged about £120 per week gross. He had been in custody before and a list of his convictions from 1983 to date is attached at Annex F.

Interim payment

8. An interim payment of £3,000 has been made.

Possible claim against Police

9. It is understood that solicitors acting for Mr Ar wrote to the police in November 1987 regarding compensation from them for his wrongful arrest and subsequent detention and for all the damages flowing from that arrest. To date no proceedings in pursuit of this claim against the police have been commenced.

Legal costs

10. An account of Mr Ar's legal costs is attached at annex G.

Mr. AR

ASSESSMENT

A. Non-Pecuniary Loss

1. Mr. Ar, who is aged 27 years and who is single with no dependants, was in custody (either on remand or as a convicted prisoner) from 18 June 1986 until 10 November 1987 - a period of 511 days (or 73 weeks).
2. The charge brought against him of manslaughter was obviously serious, and the circumstances in which it was brought and prosecuted were aggravated by racial overtones.
3. The conditions under which Mr. Ar spent his time in prison were, taken overall, distinctly unpleasant.
4. This was not, however, Mr. Ar's first experience of imprisonment. In 1983 he had been sentenced to a term of imprisonment, but, although he was again convicted of several offences in 1984 and in 1985, the disposal of each of those cases was by way of non-custodial means.
5. My assessment for non-pecuniary loss is £25,000.

B. Personal Pecuniary Loss: Loss of Earnings.

6. Mr. Ar had been in regular employment, as a maintenance worker, but (according to the applicant) this was the only job he had ever had. I am, however, prepared to infer that, but for his being taken into custody in June 1986 the probabilities are that he would have continued this (or other similar) employment. I am also prepared to accept that he gave up his employment simply because he was taken into custody.
7. Mr. Ar's earnings fluctuated a good deal from week to week; but I am prepared to assess his net loss for the whole of his period in custody at £100.00 per week. My assessment, under this head, for the period in custody is £7,300.
8. In addition, it seems to me reasonable that Mr. Ar should also receive something for a short period after he was released from custody; and, also under this head, my assessment is one of £2,600.
9. My total assessment for loss of earnings is, accordingly, £9,900.

C. Legal Costs

10. Mr. Ar's. solicitors claim £884.02 (inclusive of VAT). They were necessarily involved in considerable work in pursuing this claim on their client's behalf, and the sum claimed appears to me to be reasonable. Indeed it is probable that the solicitors will incur further slight expenditure in order to complete this matter. My assessment under this head is £925.00 (inclusive of VAT).

D. Assessment

11. In the result, my overall Assessment is a follows:

Under A	£25,000
Under B	£9,900
Under C	925

TOTAL	£35,825

E. Interim Payment

12. An Interim Payment of £3,000 has already been made. When further payment is made, the Interim Payment will have to be deducted from the overall Assessment set out above.

16 October 1989

D C Calcutt
D C Calcutt
Independent Assessor

Compensation for Wrongful Imprisonment

Peter Ashman

Imprisonment is the heaviest penalty exacted from wrongdoers by our society today. Apart from the loss of liberty and the harshness and indignities of prison life, it often involves loss of livelihood and home, break-up of family and loss of children, and loss of reputation. Because of this, the criminal justice system requires the highest standard of proof before someone can be convicted and imprisoned.

All legal systems, though, are fallible, as the experience of JUSTICE has shown over the past 28 years, in bringing to light human errors which have led to wrongful convictions. If those failings are caused by unlawful arrest or malicious prosecution, there is a remedy (albeit costly, time-consuming and uncertain) in a civil lawsuit. But most frequently they are caused by human weakness of all kinds, and for these the law provides no remedy. The Home Secretary, however, has a policy of making an ex-gratia payment of compensation where he considers that someone has been wrongly imprisoned in "exceptional circumstances", or where there has been serious default on the part of the police or some other public authority.

For many years, JUSTICE has considered that this situation was inadequate and that such compensation should be a legal entitlement enforceable (if necessary) through an independent legal tribunal. The Home Secretary's discretionary power was not a satisfactory remedy because he was, in effect, a judge in his own cause; he gave little guidance as to what he considered to be exceptional circumstances or default; he took advice on quantum but was not bound by this, and he did not give any reasons for refusing compensation, except that he regarded it as "inappropriate".¹

In the recent past, similar views have been expressed by the Prison Reform Trust, the National Association of Probation Officers and the Labour Party Civil Liberties group. These criticisms led to the Home Secretary setting up a review of the present scheme.

One of JUSTICE's criticisms was that the present scheme failed to meet the UK's international obligations. Article 14(6) of the UN International Covenant on Civil and Political Rights (ICCPR) (by which we have been bound since 1976) reads as follows:

"When a person has by a final decision been convicted of a criminal offence

and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated *according to law*, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him". (Our italics)

The UK's compliance with this, and the other provisions of the ICCPR, was examined by the UN Human Rights Committee in New York in April 1985. It doubted whether the present ex-gratia scheme complied with Article 14(6) and the UK delegate responded that the Government was reviewing the position.

On November 29, 1985, the Home Secretary made a statement to the Commons, in the form of a written reply to a question by Tim Smith MP, setting out the results of this review. The principal features were these:

1. He did not intend to change the basis of the scheme from an ex-gratia to a statutory one.

2. He would in normal circumstances continue to pay compensation to someone who applied for it, who had been wrongly imprisoned, and

(i) who had been pardoned by the Queen; or

(ii) whose conviction had been quashed by the Court of Appeal or the House of Lords

(a) after a reference back to those courts under s 17 of the Criminal Appeal Act 1968, or

(b) after the time normally allowed for an appeal by those courts had elapsed; or

(iii) where the Home Secretary was satisfied that the imprisonment resulted from a serious default on the part of a member of a police force or of some other public authority.

3. In future he would pay compensation to any person

(i) where this was required by the UK's international obligations; or

(ii) where he considered that there were exceptional circumstances, eg facts emerging at the trial or at an appeal brought within time that completely exonerated the defendant.

4. He would not pay compensation simply because the prosecution was unable to sustain the burden of proof at the trial.

5. In future, he would regard himself as bound by the decision of the independent assessor as to the quantum of compensation. Michael Ogden QC has been appointed as the assessor for England, Wales and Northern Ireland.

In a letter to JUSTICE, the Home Office Minister of State set out the reasons for these conclusions which are worth considering in a little detail.

The Ex-Gratia Scheme

The Home Secretary considered that the ex-gratia scheme met the requirements of the UK's international obligations "in both spirit and purpose". Moreover, he was accountable to Parliament for the way it operated. A statutory scheme would impose an additional burden on the courts and remove this element of accountability. He did not consider that the decisions of an independent tribunal would improve upon his own decisions, nor would they meet with uncritical acceptance in view of the wide variety of cases and circumstances. More importantly, in his view, the present scheme retained an essential element of flexibility which enabled exceptional and complex cases to receive due consideration. Finally, the assessor was independent of him, and his undertaking to accept as final the assessor's advice as to quantum emphasised that independence.

The Criteria for Compensation

The Home Secretary rejected the suggestion that the court of trial, or of appeal, should be able to issue a certificate for compensation on the grounds that this would create two classes of degree of innocence. However, he accepted that where there had been default, he would consider the question of compensation.

Is the Revised Scheme now Satisfactory?

The new scheme has failed to meet most of the criticisms levelled at the old one. It has no legal force and can be

¹ See "Compensation for Wrongful Imprisonment", JUSTICE Report, 1982.

amended at any time by a future Home Secretary. Parliament has no power to approve or amend it, and, as in the present revision, may not even be given the opportunity to debate it. The Home Secretary, responsible for the conduct of the police and the running of magistrates' courts, is expected to judge whether they have been negligent or otherwise at fault, with no independent element in the investigation. He has not indicated that he will in future give reasons for either granting or refusing compensation. No case studies are to be published to give guidance to applicants or their advisers, nor are any more detailed guidelines to be issued. No information is given to people whose convictions have been quashed about how to apply for compensation, or whether they are likely to qualify for it. The scheme itself remains little publicised; how many legal practitioners read the written replies in *Hansard*, the only place where it has so far been set out in any detail?

The Home Secretary's reasons for rejecting an independent tribunal, or the involvement of the courts generally, are without merit. Surely every case that comes before the courts is given "full and separate consideration". Many are exceedingly complex, and even controversial, but it cannot seriously be suggested that, because of this, the courts have difficulty in determining whether or not there has been fault by any party, or to what degree, or that they cannot determine the quantum of damage which the injured party should receive. As for

accountability, the courts are accountable to the law, and the requirement on them to give reasons for their decisions, which are subject to scrutiny on appeal, would suggest that they are more accountable even than the Minister, who suffers no such disabilities, and has, quite literally, the whip hand over his Parliamentary majority.

The objection that the courts might be required to assess degrees of innocence applies with equal, if not more, force to the Home Secretary, who does not have the opportunity to hear the witnesses and to see the evidence scrutinised. In any event, the courts are already called upon to express a view on this question of moral blame. Once the jury has determined the issue of guilt or innocence, the court may award costs on the basis of the conduct of the parties—a power which has been greatly extended by the Administration of Justice Act 1985.

Finally, the revised scheme clearly fails to meet the UK's international obligations. Article 14(6) of the ICCPR requires that compensation payable in the circumstances set out in it must be "according to law". That phrase also occurs in the European Convention on Human Rights and has been considered on several occasions by the European Court of Human Rights. Most recently, in the case of *Malone v the United Kingdom* (judgment of August 2, 1984), the Court re-iterated that this phrase required that the law must be adequately accessible so that the citizen is able to be aware of it. Moreover, something cannot be

regarded as "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct. If the law confers a discretion, it must indicate the scope of that discretion, and it must not be so wide as to permit arbitrary use. Lack of certainty in the provisions of the law will create doubts as to whether something is in "accordance with the law".

The present scheme has been through none of those procedures, statutory or customary, by which deeds or words become recognised in our society as law. It is not subject to review by the courts, nor by Parliament, and it can be changed at any time without anyone's leave. It contains none of those procedural safeguards of natural justice by which we measure the fairness and justice of the legal process. Indeed, the Home Office Minister of State has now conceded to JUSTICE that he is "not contending that political accountability of a Minister of the Crown to Parliament is to be regarded as conferring rights in law".

In his report on the *Preece* case,² Sir Cecil Clothier QC, the former Ombudsman, said that a miscarriage of justice by which a man or woman loses his or her liberty is one of the gravest matters which can occupy the attention of a civilised society. On the basis of the remedy now being offered for it, that sentiment does not appear to be shared by the Home Office. o

² HC 191, 4th Report, Session 1983-4, para 38.

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bumph volume contains essential extra statutory data.

The tax series is of unquestionable value today as a reliable "nuts and bolts" guide and reference text. The explanations provided are however of limited depth and should not be expected to provide solutions to questions of interpretation. Within these terms of reference the volumes are good value for the tax practitioner.

LEON CANE



Commission on Conflict of Interest
Commission sur les conflits d'intérêts
4th Floor, 101 Bloor Street West, Toronto, Ontario M5S 2Z7

The Honourable
Gregory T. Evans, Q.C., B.A., LL.D., Ph.D., K.C.S.G.
Commissioner

Telephone (416) 324-4440
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TO: McInnes, Cooper & Robertson
ATTENTION: Kylie Spicer

FROM: COMMISSION ON CONFLICT OF INTEREST
Per: Lynn Harris

DATE: March 21, 1990 TIME: 3:49

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March 20, 1990

By Hand

Hon. Gregory T. Evans, Q.C.
Commissioner
Commission on Conflict of Interest
101 Bloor St. West, 4th Floor
Toronto, Ontario

Dear Greg,

Re: Compensation for Donald Marshall Jr.

Under cover of this letter I am enclosing material that I hope will be of assistance to you in determining the level of compensation to be awarded to Donald Marshall Jr. by the Government of Nova Scotia.

(1) From the Home Office, London

This is a letter, with enclosures, from the Branch that handles compensation for wrongful conviction in England and Wales. Until very recently this was an *ex gratia* scheme under the prerogative powers of the Crown. This has become a statutory scheme under the provisions of the Criminal Justice Act, 1988, s. 133. According to the Legal Adviser to the Secretary of State, Mr. A.H. Hammond, the English legislation (which I am assuming does not extend to Scotland) is based on the United Nations Covenant relating to Civil and Political Rights, Article 14(6).

I have already acknowledged and thanked the Home Office officials for their prompt cooperation. Copies of my letters are enclosed for your information.

(2) From the Centre of Criminology, University of Toronto

There is a substantial package of material resulting from the library search by Cathy Matthews, Head Librarian, and Jane Gladstone, Reference Librarian, at the Centre of Criminology. The covering letter from the Head Librarian dated yesterday, March 19th, and the accompanying summary of the contents of the binder, describe how the research material has been arranged. Needless to say I have not had an opportunity to do more than get a feel for the dimensions of the subject but I trust that this exercise will prove to be useful to you.

- 2 -

Cathy Matthews has emphasised her indebtedness to Archie Kaiser at Dalhousie Law School with good reason. Let me know if there is anything else I can do to help.

With kindest personal regards,

Sincerely,



J.L.L.J. Edwards
Professor Emeritus

/dw

March 8, 1990

A. H. Hammond, Esq.
Legal Adviser
Home Office
Queen's Gate
LONDON, SW1H 9AT

Just a short note to thank you sincerely for responding so readily to my telephone inquiry regarding the scheme for compensating persons wrongfully convicted in England and Wales.

I have now received from Mr. K. MacKenzie, C3 Division, the kind of helpful material that I was looking for and which I shall transmit to the Hon. Gregory T. Evans, the Commissioner who has the task of determining the level of compensation to be paid to Donald Marshall Jr. by the Government of Nova Scotia.

Because of the extraordinary circumstances revealed in the handling of the Marshall case you may be interested in the Report of the Royal Commission which has recently been published by the Government Printer in Nova Scotia. The main part of the report, with the Commissioners' findings and recommendations, is contained in Volume 1. Its relevance to the Guildford bombing Tribunal of Inquiry will readily become apparent as the circumstances of the two cases are compared. I shall follow the English inquiry with great interest.

Thanks again for your help,

With my best wishes,

Yours sincerely,



John L.L.J. Edwards
Professor Emeritus

/dw

March 8, 1990

Mr. K. MacKenzie
C3 Division
Home Office
Queen Anne's Gate
London SW1H 9AT
United Kingdom

Dear Mr. Mackenzie,

I write to thank you for your letter of 8th March 1990 and the enclosures which I have read with interest.

The papers you brought together for me explain the current system in England and Wales clearly and, I hope, fully enough for the purposes of the Commissioner appointed by the Government of Nova Scotia to perform, in the Donald Marshall case, a similar task to that performed by your independent assessors.

With best wishes,

Sincerely,

S.

/dw

J.Ll.J. Edwards
Professor Emeritus