

HIE and the funicular – £11.1m retrieved out of over £50m wasted to date

Description

Highlands and Islands Enterprise (HIE) announced that they had settled the three funicular court cases ([see here](#)) out of court four days after I had announced parkswatch was taking a break ([see here](#)). I am happy to admit Parkswatch got it wrong when we predicted ([see here](#)) and ([here](#)) that the court cases would end as costly failures but, while the recovery of £11m in public money is not to be sniffed at, the sum represents only a small proportion of the money has wasted on the funicular to date and raises further questions about the public interest.

HIE's continued cover-up

I and other contributors to parkswatch had been hoping that the court cases might reveal more of the truth about HIE's original decision to build the funicular, why the design was changed ([see here](#) for example) and how it has been managed since, but instead HIE has used the out of court settlement to try and put a lid on the whole disaster with its Chief Executive, Stuart Black, claiming in the news release that this "brings closure to these long-standing matters". Actually that remark and the word "longstanding" suggests that HIE was well aware there were major safety issues with the funicular BEFORE they decided to close it at the end of 2018 and begs the question why they did not do so earlier.

While there were three separate court cases, instead of stating how much public money was recovered by each, which would have been very revealing, HIE has chosen to lump the total sum of money recovered together. This serves to conceal the degree of responsibility accepted by HIE and the parties to the three cases: Arch Henderson who now own AF Crudens who were involved in the original design of the funicular; Galliford Try Infrastructure Ltd who now own Morrisons who constructed it; and Natural Assets Investment Ltd (NAIL) who provided financial guarantees when HIE outsourced Cairngorm Mountain to Natural Retreats.

If, for example, most of the £11m is from NAIL that would indicate quite strongly that HIE was primarily responsible for the design and construction failures relating to the funicular, whereas if most of the money has been recovered from Arch Henderson or Galliford Try the converse would be true. It is likely that HIE will now use the confidentiality clauses, which are part and party of out of court settlements, to cover up the responsibilities it has accepted in each case. The sums awarded, however, should be reported in company accounts and will eventually become public and there is no reason why HIE should not report them now.

All we do know at the moment – a fact not mentioned in HIE’s news release – is that that they had sought to recover £14.5m in all and have therefore failed in part of their claims. Even if most of the £11m relates to the original design and construction, it only covers a small proportion of the costs of building and repairing the funicular which are now around £52m ([see here](#)) and still growing.

The claim in HIE’s news release that the funicular was “built at a cost of £19.5m” is highly misleading in this respect, giving the impression they have managed to recover over half the original costs. In fact the figure of £19.5m, quoted in the Audit Scotland Report into the decision to build the funicular ([see here](#)), refers to the PUBLIC money invested in the construction and the total cost was nearer £25m. Given inflation, even if most of the £11m comes from Arch Henderson/Galliford Try, it only represents a relatively small proportion of the original construction costs. On top of which there is the £25m repair bill and the ongoing commitment to subsidise the funicular to the tune of £70.03m over the thirty years after the repairs were completed ([see here](#)).

The key to the funicular affair – what has Galliford Try agreed to pay HIE?

A couple of weeks before HIE announced the settlement of the court cases, Graham Garfoot provided an explanation of parkswatch for why the funicular was built out of concrete rather than steel, a more expensive option ([see here](#)): besides potentially providing more local employment it would also help to boost the turnover and share price of Morrisons, the construction company who had been awarded the contract to build the funicular and whose owner, Fraser Morrison, was also chair of HIE. While HIE’s Chief Executive, Iain Robertson, also then resigned his job to join Morrison’s, Audit Scotland in their report on the funicular decided there had been no conflict of interest in the way HIE awarded the Morrisons contract.

While that conclusion always seemed far fetched, assuming Galliford Try have contributed to the out of court settlement, this means that HIE has now successfully sued the company controlled and managed by its former Chair and which then employed its former Chief Executive. That is extraordinary. In effect HIE has indirectly successfully sued the two main people within their organisation responsible for the funicular decision! That, I would suggest, has re-opened the lid over what appears to be a huge cesspit. It should provide every reason for the Scottish Government to now set up an independent judge-led public inquiry.

One of the people who should be summoned to give evidence at such an inquiry is local MSP, Fergus Ewing, who backed the funicular from the start and then later as Cabinet Secretary for the Rural Economy approved the business plan which commits HIE to subsidising the funicular for the next 30 years to the tune of £70.03m. Mr Ewing, who has always been very well connected, is one of the few people who might be able to cast further light on HIE’s relationship with Morrisons but following the announcement of the settlement, like HIE, has also been very keen to put a lid back on the whole affair ([see here](#)):

“It is excellent news that HIE have successfully recovered £11 million in litigation settlements. “Given the criticism to which they have been subjected over the years – mostly unfair in my view – this outcome does prove that the contractual arrangements HIE put in place provided reasonable

protection for the public money invested.

“I hope the vocal critics over many years – the Cairngorm carpers of which many are from outwith the area – will now pack their bags and seek other targets or just travel to Cairngorm and our other outdoor ski resorts to enjoy snowsports and other leisure facilities.”

“I trust that all local politicians will also follow suit.”

Actually, the contractual arrangements have not provided “reasonable protection” for the public interest as the money recovered does not even cover half the repair bill to date. And as for us “Cairngorm carpers” on parkswatch, almost all of us enjoy snowsports but have been unable to do this at Cairn Gorm precisely because of the funicular. We are not going to go away and believe its time Fergus Ewing, among others, was asked to give evidence on the witness stand under oath!

Other questions that need to be answered following the out of Court settlements

Fergus Ewing stated in the Inverness Courier that “I hope funds recovered can now be used for further investment in updating facilities” ignoring the fact that the Scottish Minister who took over responsibility for HIE from him, Ivan McKee, was forced reluctantly to contribute £16m of Scottish Government funds to the repair bill. HIE’s announcement said nothing about whether it would have to pay the £11m it had recovered to the Scottish Government.

Nor did HIE explain whether the sums recovered were gross or net of all the costs it will have incurred in instigating the court proceedings, hiring legal teams, commissioning expert reports etc. It could be that once those sums are settled, the net sum recovered will be considerable less than £11m.

Most important of all, had the cases gone to court, the reasons for the funicular failure might have been made public and that information could have been used to answer the questions raised on parkswatch ([see here](#) for example) about how long the repairs to the funicular are likely to work. Now the cases have been settled, however, there is no reason why HIE should not make public all the reports it has commissioned into the failure of the funicular. With the funicular now being closed once again for safety reasons (subject of a forthcoming post) it would clearly be in the public interest to do so.

Category

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Tags

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