



Joint Committee on Human Rights

Committee Office · House of Commons · London · SW1A 0AA

Tel 020 7219 4710 Email JCHR@parliament.uk Website www.parliament.uk



From Joanna Cherry KC MP

Secretary of State for Business and Trade
The Rt Hon Kemi Badenoch MP

[By Email]

20th March 2024

Dear Kemi,

Re: Post Office (Horizon System) Offences Bill

The background to the Post Office Horizon scandal is well known and the significant negative impact upon those affected by the resulting miscarriages of justice is deplorable as set out in the Explanatory Notes to the Bill.¹ It is deeply unfortunate that those affected had to wait for a High Court challenge in 2016 before any action was taken to recognise the injustice of the situation and to start addressing these failings. Whilst we note the significant number of convictions overturned by the Court of Appeal, following referrals to the Criminal Cases Review Commission, we appreciate that this may not feel fast enough for those affected.

Should Parliament or the Courts overturn criminal convictions?

The normal way criminal convictions are challenged is by means of an appeal to the criminal court, and the Criminal Cases Review Commission. As Vikram Sachdeva KC, former chair of the Constitutional and Administrative Law Bar Association has said “This procedure respects the important principles of the rule of law and the separation of powers, under which parliament makes the law, and the courts carry it out.”²

There has been much discussion over whether it is appropriate or sensible for Parliament to overturn criminal convictions through primary legislation, as opposed to those being done by the Court (whether following an appeal by an individual, or a referral by the Criminal Cases Review Commission). Many have suggested that expedited judicial consideration would lead to a more constitutionally appropriate and accurate approach to exonerations, which could also address any failings. Lady Chief Justice, Baroness Carr, has made clear that since the first appeals came into the criminal courts around 2020 (following the High Court judgment), “the Court of Appeal and the Crown Court have progressed those cases efficiently, effectively and robustly. A bespoke constitution in the Court of Appeal has been set up for this purpose, chaired by the Vice-President of the Court of Appeal (Criminal Division); there are very efficient systems in place.”³

The Committee notes the explanation in the Explanatory Notes that the Government has chosen to legislate due to concerns that individuals may not choose to lodge an appeal, and risks that there isn’t sufficient evidence that a conviction is unsafe.⁴ However, it is not clear, why the Criminal Cases Review Commission could not work through all convictions that are

¹ Explanatory Notes to the Bill, para 3.

² “[Four legal experts on the Post Office exoneration Bill](#)”, in the Guardian.

³ Baroness Carr, Justice Select Committee oral evidence, 16 January 2024, [Q4](#).

⁴ Explanatory Notes to the Bill, para 7.



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potentially unsafe due to reliance on Horizon data and take action to refer those which were unsafe.

Given the well-publicised concerns about the constitutional appropriateness of Parliament seeking to overturn convictions itself, could you please explain what consideration was given to addressing this through the courts expediting consideration of these appeals, including through additional help to the Criminal Cases Review Commission to sift through and seek out relevant cases?

Does the Bill only overturn unsafe convictions or also other convictions, and is it fair in terms of which convictions are overturned?

The Bill quashes convictions for offences (A) committed between 23/9/1996 and 31/12/2018; (B) where the offence was false accounting, fraud, handling stolen goods, money laundering, theft, or ancillary offences; (C) where the convicted person was carrying on or working in a Post Office business at the time; (D) where the alleged offence was committed in connection with running or working for the Post Office business; and (E) at the time of the offence, the Horizon system was being used for the purposes of that Post Office business.

In order to quash a conviction, the Bill does not specifically require that the conviction relied heavily or solely on Horizon evidence. The Bill does not even require that Horizon evidence was used at all in the conviction in order for a person's conviction to be quashed. Indeed, it would seemingly also quash a conviction, for example, in a case of theft from a colleague or from a customer in the Post Office, where that person was seen stealing, or where there was other independent evidence of theft or other dishonesty offences. Given the breadth of the exonerations, this would mean that those who were innocent will not receive the same clarity of innocence as they would through an individualised exoneration by the Courts, given that others whose convictions would be quashed by this Bill would not have been affected by the Horizon scandal.

Is it the Government's policy and intention that the Bill would quash criminal convictions that were not reliant on mistakes made by Horizon? Is it the Government's intention that individuals who, for example, stole from colleagues or customers and whose convictions were reliant on non-Horizon evidence would also be exonerated by this Bill? Has the Government considered replacing criteria E with a requirement that Horizon evidence was used in the conviction?

The Bill does not quash convictions that have been appealed to the Court of Appeal. This seems to apply irrespective of whether the Court of Appeal considered the unreliability of Horizon evidence as part of the appeal (or permission to appeal). The Committee is therefore concerned that there could be individuals whose convictions were reliant on inaccurate Horizon evidence who would not be exonerated by this Bill.

Has the Government considered drafting that would also exonerate those individuals whose convictions were reliant on inaccurate Horizon evidence and who had previously unsuccessfully appealed their convictions (perhaps because the appeal court at the time had not been aware of, or adequately considered, the inherent problems in the Horizon software)?



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The result of the Bill therefore seems to be that a person who has been witnessed by independent evidence (perhaps CCTV or eye witnesses) stealing would be exonerated, yet a person who was convicted based on Horizon evidence and then unsuccessfully appealed to the Court of Appeal would continue to have a criminal conviction. This seems to treat people in different situations differently in a way that leads to seemingly unfair results. An approach that quashed all convictions based on Horizon evidence during the relevant period (and perhaps allowed any others where questions are more complicated to seek a review by the Criminal Cases Review Commission) would be more likely to result in a fairer outcome.

Could you please explain your reasoning in developing the policy and drafting of the Bill that would seem to result in those who unsuccessfully appealed their Horizon-based convictions not having their convictions quashed, whilst those whose convictions had nothing to do with Horizon evidence would have their convictions quashed? In light of these concerns, have you considered drafting that would quash the convictions of those whose convictions relied on Horizon evidence?

Other matters arising

There are parts of the Explanatory Notes that seem to be missing (paragraph 41 cuts off part way through an explanation as to the conditions for alleged offences and paragraph 34 refers to certain issues “noted in paragraph 20ff above”, yet this paragraph 20ff doesn’t seem to exist). ***Could you please provide this missing information.***

Clause 7 empowers the Secretary of State to make Statutory Instruments amending Acts of Parliament, without any suggestions as to why this power might be needed or how it might be used. “Henry VIII powers” which empower a Government Minister to amend an Act of Parliament by Statutory Instrument are a hugely significant power and should not be granted without a compelling reason. ***Why does the Government need this power and how does it intend to exercise it?***

We note that the bill applies only to England and Wales. ***Do you have an indication as to the intentions of the Scottish Government and the Northern Ireland Executive?***

The explanations given in the explanatory notes as to compatibility with the European Convention on Human Rights merely note that “the Government does not consider that the Bill raises any significant issues in relation to the European Convention on Human Rights”. ***Could your Department please provide more adequate analysis as to the human rights engaged by the issues raised including any potential Article 14 issues that might arise with the approach taken.***

It is understandable the other major human rights issues raised by the Post Office Horizon scandal are not addressed in this Bill – for example concerns at the standards and ethics of the investigators and prosecutors involved; the ability and willingness of investigators, prosecutors and the courts to look into complaints about an IT system being relied upon in evidence; and enquiries into the reasons why these miscarriages of justice were not exposed sooner. However, the Committee would nonetheless be grateful for information as to the steps being taken to consider and address the concerns and issues raised, including:



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- The standards to be applied by prosecutors (including private prosecutors) in bringing prosecutions. ***Does the Government consider that greater or clearer standards of propriety are needed for prosecutors (and especially private prosecutors)? Do such prosecutorial teams need some level of oversight by an independent body to ensure that appropriate prosecutorial standards are being met?***
- Processes for making inquiries – at both the investigatory/prosecutorial level as well as at the judicial level – as to the reliability of IT systems. ***Are clearer guidelines needed as to processes to follow before relying on evidence generated by IT systems, and as to processes to follow where concerns are raised about the reliability of an IT system used in evidence? What efforts are being taken to ensure investigators, prosecutors, advocates and the judiciary are clear as to the standards to apply before relying on such evidence?***
- ***Why were the human rights abuses and abuses of justice not brought to light sooner in the Post Office scandal? What prevented effective access to justice and the enforcement of human rights in these cases? Is there any evidence that non-disclosure agreements played a role in preventing access to justice and the exposure of systemic violations? What can be done in the future to ensure that such miscarriages of justice are brought to light sooner?***

I am copying this letter to the Secretary of State for Justice, the Chair of the Business and Trade Committee and the Chair of the Justice Select Committee.

I would be grateful for a response by 15 April 2024.

Yours sincerely,

Joanna Cherry KC MP

Chair, Joint Committee on Human Rights