



Justice Committee

The Rt Hon Kemi Badenoch MP
Secretary of State for Business and Trade
President of the Board of Trade
Minister for Women and Equalities

By email only

24 April 2024

Dear Kemi,

I am writing concerning the Post Office (Horizon System) Offences Bill following the Justice Committee's oral evidence session on the Bill on 16 April with Dr Hannah Quirk, Professor James Chalmers, Joshua Rozenberg KC (Hon) and Dr Robert Craig. I wish to follow up on two specific issues raised in the Committee's evidence session.

The Bill's approach to quashing convictions: separation of powers

The first point that we wish to raise relates to the separation of powers. The Explanatory Notes to the Bill state that the conditions in Clause 2 are "intended to be unambiguous and capable of being applied without any element of judgment or discretion" (para 23). During the evidence session, the witnesses raised doubts as to whether the conditions in Clause 2 were in fact unambiguous, for example Joshua Rozenberg told us "There are bound to be borderline cases [...] where officials are going to have to take a decision and make a recommendation to the Secretary of State".

In particular, Condition D in Clause 2(5) requires the offence to have been committed "in connection with carrying on, or working for the purposes of, the post office business". As was discussed during the evidence session, there does seem to be some ambiguity over how this condition will be applied in practice. For example, it is not clear if this condition would cover a post office worker convicted of theft for stealing stock for personal gain.

In all cases officials in the Department for Business and Trade will have to decide whether an individual's offence meets the conditions in Clause 2 in order to comply with the requirements in Clause 4 regarding the identification and notification of quashed convictions. In applying the legislation, important judgements will need to be made by officials. Could you explain how officials within the Department for



Justice Committee

Business and Trade will decide whether the relevant conditions have been satisfied? If the Secretary of State decides that an offence does not meet the statutory conditions and does not notify the convicting court of the details of the conviction, will there be a mechanism for those affected to ask the Secretary of State to reconsider?

Excluding convictions considered by the Court of Appeal

The second point concerns the Bill's exclusion of convictions that have been considered by the Court of Appeal. All the witnesses that appeared before the Committee agreed that it was unfair for the Bill to take a restrictive approach to excluding convictions considered by the Court of Appeal when the Bill takes an expansive approach elsewhere, such as quashing convictions even if Horizon evidence did not form part of the prosecution (which is the effect of Clause 2).

We note that your letter to the Chair of the Joint Committee on Human Rights acknowledges that the effect of the exclusion is that those who chose to appeal their conviction and were unsuccessful may end up with "a different outcome to those with similar cases who did not, and whose convictions may be quashed by the Bill". The letter then says that this difference in treatment "is justified where the Court of Appeal has carefully considered matters and upheld convictions", and it also draws attention to the *Hamilton* judgment, where three convictions were upheld by the Court of Appeal on the basis that the reliability of Horizon evidence was not essential to the convictions in those cases.

There are two concerns that we wish to raise in relation to this justification for the exclusion of convictions upheld by the Court of Appeal. The first is that the legal basis upon which the Court of Appeal upheld the convictions in *Hamilton* is fundamentally different from the approach taken in this Bill. As your letter points out, the Government decided against including a requirement that Horizon evidence was essential to the original prosecution in the Bill. Having decided against that approach and opted for a blanket approach instead, it seems extremely unfair to exclude cases that the Criminal Cases Review Commission (CCRC) considered had a real possibility of a successful appeal. The Bill is in effect treating cases where the CCRC had credible evidence that Horizon data might have been essential to the prosecution case less favourably than those that the CCRC considered had no credible evidence and therefore no basis upon which to refer to the Court of Appeal. Can you explain why the Bill proposes to quash the 32 cases which the CCRC reviewed and decided not to refer to the Court of Appeal, but will not quash those that were referred and upheld by the Court which was then applying a more restrictive test than that proposed in the Bill?



Justice Committee

The second concern is that the Bill defines a conviction to have been considered by the Court of Appeal even if leave to appeal was refused. There may be cases where leave to appeal was refused on the grounds of delay in making the application (and so the conviction will not be quashed by the Bill) where the merits of those cases are similar to convictions where no appeal was ever brought. But in those cases, the conviction will be quashed by the Bill. Can the Government confirm the number of Horizon cases where the Court of Appeal has either dismissed an appeal or refused to give leave to appeal since 23 September 1996?

Finally, we welcome the commitment in your letter to the Chair of the JCHR to look again at the Justice Select Committee's recommendations on private prosecutions. We look forward to your response.

I am copying this letter to the Lord Chancellor, the Chair of the Business and Trade Committee and the Chair of the JCHR.

Yours sincerely,

Sir Robert Neill KC (Hon) MP
Chair
Justice Committee