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17 May 2024

Dear Sir Bob,

Thank you for your letter of 24 April following the evidence session regarding the Post Office (Horizon System) Offences Bill with leading legal academics. I have also seen your exchange with Kevin Hollinrake during the Committee debate on the Bill. We acknowledge the constitutional sensitivities involved in this Bill and have considered carefully the important points made in your letter. The Government accepts that this legislation is an unprecedented, exceptional response to an exceptional situation. I trust that my response reassures you that we have carefully considered the issues involved and explains why we have concluded that this is the right course of action.

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

The scale and circumstances of this prosecutorial and investigatory misconduct means that, whilst respecting the separation of powers and delicate constitutional balance, a legislative approach is needed to deliver long overdue justice. To achieve this aim, the criteria have been drafted to be capable of objective application.

It is not the overall intention behind this Bill to quash convictions that were not reliant on mistakes made by Horizon. We have carefully drafted the conditions to ensure this is targeted on those wrongly convicted as far as is possible, and to minimise the risk that anyone with safe convictions is able to access compensation.

The Government is clear that the legislation provides for a blanket overturning of convictions that meet the criteria, and that the post legislative process set out in the Bill does not involve caseworkers assessing the merits of any particular case. Importantly, caseworkers will not be making a judgment about whether a conviction involved Horizon evidence, or the safety of that conviction, and therefore does not encroach on matters that are within the domain of the courts.

Assessments will be limited to whether there is sufficient evidence to be able to identify convictions which meet the factual conditions. The Appropriate Authority (the Secretary of State in the case of England and Wales) will need to take all reasonable steps to identify convictions quashed by the Bill. The caseworkers will follow guidance to ensure consistency on how to identify cases in scope. There will also be oversight by a senior caseworker to provide support to the individual caseworkers and the casework guidance will be published on gov.uk.

However, we recognise that in some cases not all the evidence may be available to the casework team working on behalf of the Secretary of State, despite all reasonable steps being taken. In these instances, it will not be possible to identify that a conviction is within scope of the Bill. If a conviction is known to the Ministry of Justice and, based on the evidence we hold, appears to meet some, but not all, of the criteria, the casework team on behalf of the Secretary of State will write to the affected individual (or another on their behalf) to inform them of this.

Where a conviction has not been identified as in scope, and the relevant individual disagrees with that assessment, they can supply further evidence, which may mean that their conviction can then be identified as one meeting the conditions. They do not need to make a formal appeal to do this – this will be an ongoing process which effectively means no case will ever reach the point where it is ‘permanently’ assessed as not in scope and closed. However, where our assessment does not change in the light of any new evidence, and the individual remains of the view that they are within scope of the Bill, it would still be open to them to make an application to the Administrative Court for a judicial review.

You highlighted particular concerns around Condition D in your letter, and I welcome the opportunity to explain this condition in more detail. The relationship conditions outlined in Conditions C and D are drafted to encompass the range of working and other relationships which convicted individuals had with the Post Office. In particular, Condition D aims to focus the legislation on those whose convictions arose from the Horizon scandal and exclude unrelated offences which individuals working in post offices might have coincidentally committed during the relevant period, such as theft from an unrelated shop. This condition is deliberately broadly drafted to include a range of connections between the actions constituting the offence, and the actions a person was taking in carrying on or working for the Post Office.

The purpose is to include actions that took place in the context of someone’s work at a Post Office branch. It does not require that the action undertaken was one that was required to be undertaken or was part of the person’s role. The Government accepts that this means that, for example, theft of Post Office stock by a subpostmaster would be included by this criterion. However, given the evidential difficulties that would otherwise arise if such cases were to be excluded and the resulting lack of certainty as to whether the criterion was satisfied, the Government considers that a broad approach is appropriate. It has been a feature of the development of this Bill, and the policy behind it, that we have had to balance making the Bill broad enough to ensure the right convictions are brought into scope, recognising the challenges with evidence, with making it narrow enough to avoid bringing unrelated convictions into scope. The published casework guidance will set out what kinds of evidence will be considered sufficient to demonstrate that this condition has been met.

## **Excluding convictions considered by the Court of Appeal**

I have carefully considered the points in your letter regarding cases which have been considered by the Court of Appeal, and the representations that were made in evidence to your Committee. This is undoubtedly a complex issue, and one the Government has considered very carefully given the constitutional sensitivity of this legislation. In circumstances where the Court of Appeal has specifically considered matters and upheld a conviction or made a decision not to allow an appeal to progress, it is right that we exercise extreme caution. The safety of these convictions has been considered by judges in the senior appellate court and it is for this reason that we have taken the decision not to include these cases within the scope of the legislation. We will continue to listen carefully to arguments on this issue, particularly as the Bill moves through the House of Lords.

It is important to remember that the Criminal Cases Review Commission (CCRC) can refer cases which have been refused leave to appeal or, where a conviction has been upheld by the Court of Appeal, for further reconsideration, for example if materially new evidence is available.

Where the appeal was dismissed for being out of time, the matter could be referred again to the Court of Appeal by the CCRC. There is no time limit on the CCRC referring cases. As far as we are aware from data currently available, 13 convictions have been refused leave to appeal or had an appeal dismissed, so would be excluded from the Bill. It is possible that additional such cases will become available as records are reviewed through the process of identifying convictions quashed by the Bill, and if this number changes we will update the Committee.

### **Private Prosecutions**

The Government continues to examine the wider question of private prosecutions. The Independent Review of Disclosure and Fraud, chaired by Jonathan Fisher KC, is looking at the operation of the criminal disclosure regime and whether the current framework, including the Criminal Procedure and Investigations Act 1996 itself, is fit for purpose or could be improved. This is due to report in summer 2024. Alongside this we are looking again at the Justice Select Committee's recommendations in the 2020 report.

Yours ever,

A handwritten signature in black ink that reads "Kemi Badenoch". The signature is written in a cursive, flowing style.

**THE RT HON KEMI BADENOCH MP**

Secretary of State for Business and Trade, President of the Board of Trade and  
Minister for Women and Equalities