



Justice Affairs Select Committee
House of Commons
Westminster
London
SW1A 0AA

28 June 2021

Dear Chair and Members of the Justice Select Committee,

Extraordinary submission: Inquiry on Safeguards in Private Prosecutions

Post Office deeply regrets the miscarriages of justice that resulted from past private prosecutions that were undertaken by the organisation before 2015 and has followed the Inquiry into Safeguards for Private Prosecutions with interest. I would like to thank the Committee for its work.

Under new management, Post Office is committed to addressing past wrongs fairly and transparently. As the Committee is aware, the history of Post Office's reliance on Horizon in its prosecutions is lengthy and complex. There is a significant amount of detail that is important to be considered to understand what went wrong and to prevent such events ever happening again.

We therefore believe that the Justice Select Committee should be informed of the information included in our submission to correct, for the record, some inaccuracies and misunderstandings during its evidence session that took place on Tuesday 25 May 2021 with Helen Pitcher, Karen Kneller and Miles Trent from the Criminal Cases Review Commission and the subsequent session with Stephen Wooler, Paul Jarvis and Andrew Marshall.

In making this submission I would like to underline that Post Office is in no way seeking to undermine criticisms of the serious failures in its conduct of historical prosecutions, nor to criticise the evidence of the witnesses, but only to ensure the Committee bases its findings on accurate information.

By way of background, Post Office has, throughout the appeals process for cases in which it acted as prosecutor, supported the overturning of convictions that were an abuse of the courts process.

We are contacting other people with potential relevant convictions since 1999, following an extensive search of historical records and have been undertaking an extensive post-conviction disclosure exercise to assist people who may wish to appeal.

It is very important that there is a comprehensive picture of what went wrong in the past and we are actively and transparently engaging with the statutory public inquiry led by Sir Wyn Williams.

We understand that the Committee will be in the process of finalising its report but we would appreciate your consideration of our submission.

Please do not hesitate to contact us should you have any further questions.

Yours sincerely,

Ben Foat

General Legal Counsel

Extraordinary submission to the Justice Select Committee

Post Office is pleased to provide extraordinary evidence to the Justice Select Committee, in response to the oral evidence given to the Committee on Tuesday 25 May 2021.

Some evidence given by the witnesses appears to be based on incorrect premises concerning issues raised during the Court of Appeal hearings earlier this year in the case of Hamilton & others and in the judgment issued on 23 April¹. We would appreciate the Committee considering this submission in its final report, given the importance of the subject matter, the statutory public inquiry and with further appeals of historical Post Office cases progressing through the Courts.

The submission concerns legal advices provided to Post Office in July and August 2013 by barrister Simon Clarke (known as the 'Clarke advices') and the actions taken by Post Office at the time.

We have set out the detail below.

Should you require any further information, please do not hesitate to get in touch with Kenneth Pritchard, Head of Parliamentary Relations (Kenneth.pritchard@postoffice.co.uk).

Session two - Stephen Wooler, Paul Jarvis and Andrew Marshall

- Parts of the witness evidence and discussion in the second part of the Committee's hearing on 25 May 2021 (Mr Wooler, Mr Jarvis and Mr Marshall) appeared to be based on the premise that advice from external counsel Mr Simon Clarke, provided to Post Office in 2013 regarding its disclosure obligations in criminal proceedings, was not followed by the Post Office. This premise is incorrect.
- There were two advices from external barrister Mr Simon Clarke in 2013 and both were followed by Post Office at the time. The Court of Appeal considered both advices, and Post Office's response to them, at paragraphs 81-90 of its judgment.
- The first advice, in July 2013 related to information in an interim report by forensic accountants Second Sight regarding two bugs in the Post Office's Horizon computer system, which were not considered for disclosure in earlier prosecutions. The advice, which came after the last of the appellants in the Court of Appeal had already been convicted, recommended a review of potentially affected cases. Post Office published the Second Sight report and the advice from Mr Clarke to conduct a review was followed with disclosure made in some cases. During its hearings in March 2021, the Court of Appeal was provided with a disclosure note which sets out the context and the actions taken by Post Office and its external criminal lawyers at the time. This is attached and is a public document which may be published. The Court of Appeal's concern was not that Post Office failed to follow Mr Clarke's advice, but that it should have been necessary for Mr Clarke to provide "basic advice to a prosecuting authority about its duty in respect of disclosure" at all. Post Office accepts entirely the Court's findings in this regard, but it is not correct to say that Post Office ignored that advice when it was received.
- The second advice from Mr Clarke, in August 2013, was regarding the Post Office's prosecutorial duty to record and retain material. It related to a weekly conference call that had been established as a 'central hub' for issues concerning Horizon. Following the third of these calls Mr

¹ Hamilton & Ors v Post Office Ltd [2021] EWCA Crim 577 (23 April 2021)

Clarke was informed that an instruction had been given that previous minutes of the calls should be “shredded”, and typed minutes would no longer be produced. This was clearly serious and unacceptable. The Post Office’s General Counsel at the time was alerted, Mr Clarke’s advice to correct the situation was swiftly acted upon and, in the event, no minutes had been destroyed. The 2013 General Counsel’s letter is attached and again this is a public document that may be published.

- The Court of Appeal Judgment on 23 April 2021 commends Mr Clarke for the firmness and clarity of his advice but comments that it was extraordinary that he should have had to advise Post Office, as a prosecutor, in those terms. Again, the Court’s criticisms were not that Post Office did, in fact, shred any documents (as it did not), nor that it failed to follow Mr Clarke’s advice.
- Post Office supported the quashing of convictions, fully accepts the Court of Appeal’s Judgment and is sincerely sorry for the impact on the lives of postmasters affected by miscarriages of justice.
- Post Office is also fully co-operating with the Criminal Cases Review Commission (CCRC) and was pleased to note that CCRC Chair Helen Pitcher told the committee that Post Office disclosure it is receiving is satisfactory.
- Post Office is contacting people with potentially relevant convictions, following an extensive search of historical records and is urging anybody who believes that they may have a relevant case to come forward.