



Department for
Business, Energy
& Industrial Strategy

Paul Scully MP

Department for Business, Energy &
Industrial Strategy
1 Victoria Street
London
SW1H 0ET

The Rt Hon the Lord Arbuthnot of Edrom
ina **GRO**

T **GRO**
E [enquiries](#) **GRO**
W www.gov.uk

18 December 2020

The Clarke Advice to the Post Office

Dear James,

Thank you for your email on 14 December 2020.

I assure you that my Department and I take the concerns that you have raised regarding Post Office and the evidence it submitted to Parliament very seriously. I also note you have had several correspondences with Lord Callanan on the matter. As he has confirmed to you, my Department does not hold a copy of the Clarke Advice.

As you know from the Court of Appeal hearing on 3 December, the court has decided not to disclose the Clarke Advice. The Clarke Advice is a privileged document disclosed for a specific purpose in the proceedings. It also has the potential to impact a live police investigation. Post Office is respecting the court's decision to not disclose the advice at this time and we must do the same.

On the issue of evidence provided by Post Office to the BIS Select Committee in 2015, these are very serious allegations, against both Post Office and Paula Vennells as the former CEO. I understand and share your desire to get to the truth and therefore my officials have been liaising with Post Office as a matter of urgency on these questions. I attach for you the account that they have provided me with.

It is important that this issue is looked at in the right forum and with that in mind I have provided this response and the information Post Office has provided to the BEIS Select Committee to consider.

I pay tribute to the work you have done, and continue to do, in championing the cause of postmasters. As you know, I have spoken to a number of postmasters and I do not underestimate the damaging impact the Horizon ordeal has had on their lives and livelihoods. Post Office is working tirelessly to address the wrongs of the past and I assure you that my Department and I will hold them to account.

As you are aware, Sir Wyn Williams is currently undertaking an independent Inquiry on Horizon, which I expect will establish a clear account of the implementation and failings of Horizon over its lifecycle and help to ensure that something like this can never happen again. I have also written to him to make him aware of your concerns and provided him with the Post Office's response.

I hope you find this information useful. The issue relates to evidence provided by Post Office and if you have any further questions please contact Declan Salter (Director of Historical Matters, Post Office declan.salter@postoffice.co.uk) keeping my office copied in.

GRO

PAUL SCULLY MP

Minister for Small Business, Consumers & Labour Markets
Minister for London

Post Office Ltd. Statement on the Clarke Advice

What has come to be known as the “Clarke Advice” was prepared in July 2013 in connection with the Second Sight “Interim Report” and the “Helen Rose report”. The former, which contained information concerning two specific bugs within Horizon, was published by Post Office on its website immediately after its release. The latter, which identified another potential bug, was disclosed to Second Sight.

The Clarke Advice is a document subject to legal professional privilege. The Criminal Cases Review Commission has been aware of the existence, contents and conclusions of the Clarke Advice since at least February 2015. It has also been disclosed for the specific purpose of the *R v Hamilton & 40 Others* proceedings currently progressing before the Court of Appeal Criminal Division (Criminal Appeal Office Reference Number: 202001558 B3).

Following publication of Second Sight’s report, and based on the information known at that time, Post Office identified and reviewed prosecutions dating back to 1 January 2010 to assess whether post-conviction disclosure should be made of both reports. That review was completed in September 2014. The recipients of disclosure included 7 of the appellants whose convictions were referred for appeal by the Criminal Cases Review Commission.

The BIS Select Committee inquiry in February 2015 focussed on the Complaint Review and Mediation Scheme established by Post Office following the publication of Second Sight’s report. Among others, Post Office’s Chief Executive at the time, Paula Vennells, gave oral evidence at a hearing on 3 February 2015. Post Office also provided written evidence both in advance of and following the hearing.

The evidence provided to the Committee was based on the information known at that time, and included the following written statement regarding criminal cases:

“Post Office does not have the power to reverse or overturn any criminal conviction – only the Criminal Courts have this power. If at any stage during the Scheme, new information comes to light that might reasonably be considered capable of undermining the case for a prosecution or of assisting the case for the defence, Post Office has a duty to notify you and your defence lawyers. You may then choose whether to use that new information to appeal your conviction or sentence.”

That statement was also reflected in the application materials prepared for Complaint Review and Mediation Scheme. The written evidence provided to the Committee also stated:

“To date no evidence has been identified by Post Office as part of its reinvestigation of each and every case, nor advanced by Second Sight or an individual Applicant, to suggest that the conviction of any Applicant to the Scheme is unsafe. As noted above, had any such evidence come to light, Post Office’s duty of disclosure would immediately be engaged. Post Office takes these responsibilities very seriously. Post Office has written to everyone who has suggested that they have or have seen evidence that a conviction is unsafe and asked them to disclose that evidence so that it can be acted on. To date no-one has provided that evidence”.

Although Post Office cannot comment on the oral evidence provided to the Committee by its former Chief Executive, as only she can do that, the summary above suggests that the evidence was given in the context of the Complaint Review and Mediation Scheme and the steps taken to investigate cases through that scheme.

Statement Ends

16 December 2020