Rùnaire a' Chaibineit airson Ceartas
Cabinet Secretary for Justice and Veterans
Keith Brown MSP

F/T: 0300 244 4000
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Paul Scully MP
Minister for Small Business, Consumers and
Labour Markets and Minister for London
Department for Business, Energy and Industrial
Strategy
UK Government

10 December 2021

Dear Paul

Thank you for your letter of 3 December addressed to the First Minister in relation to the operation of the statutory inquiry into the Post Office Horizon IT system. I am replying on behalf of Scottish Ministers.

I very much welcome the conducting of an independent inquiry to fully assess and understand the relevant events that led to many individuals being convicted of criminal offences which relied on evidence originating from the Horizon IT system.

I note you are engaging with the Scottish Government under the terms of section 27 of the Inquiries Act 2005. In particular, you are fulfilling the requirement to consult the Scottish Ministers that arises from the chair of the statutory inquiry indicating a wish to (a) include in the terms of reference of the inquiry matters that would require the inquiry to determine any fact (and make any recommendation) that is wholly or primarily concerned with a Scottish matter and (b) exercise powers of inquiry in relation to evidence, documents and other things that are wholly or primarily concerned with Scottish matters.

While I welcome this approach, in order for the Scottish Ministers to appropriately assess the request and offer relevant views, it would be helpful if you could more clearly articulate the specific Scottish matters (under section 27(2) of the Inquiries Act 2005) that the inquiry wishes to exercise powers in relation to.

It may be helpful to provide some contextual information about the operation of criminal justice in Scotland. As you may know, all prosecutions are initiated by the Lord Advocate as the independent head of the systems of criminal prosecutions. The Scotland Act 1998, through section 48(5), specifically respects this function as continuing to be undertaken independently of any other person as part of the devolution of powers that took place by virtue of the 1998 Act.

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From your letter, it would appear that the inquiry may wish to exercise powers of inquiry in the specific area of prosecution of cases. If so, it will be necessary to ensure direct engagement with the Lord Advocate for her independent interests in this regard.

More generally, the operation of the criminal justice system is a devolved matter. It is worth highlighting at this stage that the progress of certain relevant cases through the Scottish criminal legal process is not as advanced as in England and Wales. Where an application is made to them by someone who says they have experienced a miscarriage of justice, the independent Scottish Criminal Cases Review Commission (Commission) is responsible for considering whether a possible miscarriage of justice may have occurred and deciding whether to refer the matter back to the courts. While a matter for the Commission, they have advised that there are a number of cases currently being considered by the Commission which could be referred to the Appeal Court. Decisions in these cases are likely in the next few months. It will be important that any powers of inquiry exercised in Scotland sensitively reflect the potential of future criminal appeals.

I hope this is helpful in responding to your letter within the short timeframe set and look forward to receiving further information to help inform the views the Scottish Government can offer in response to this consultation.

A copy of this letter goes to the First Minister, the Lord Advocate and the Secretary of State for Scotland.

KEITH BROWN

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Paul Scully MP
Minister for Small Business, Consumers and Labour Markets and Minister for London
Department for Business, Energy and Industrial Strategy
UK Government

10 January 2022

Dear Paul

Thank you for your further letter of 17 December in relation to the operation of the statutory inquiry into the Post Office Horizon IT system.

It is helpful to receive the additional information contained within the letter. In terms of the statutory requirement for consultation under section 27 of the Inquiries Act 2005 in relation to Scottish matters, I can advise the Scottish Government considers this has been met through our exchanges of letters.

I note the Chair of the Inquiry, Sir Wyn Williams, wishes to explore the following areas:

- Understanding and description in summary of the process by which people are prosecuted in Scotland;
- Information about what, if anything, is happening in relation to convictions of postmasters and postmistresses including whether any are being quashed; and
- If any convictions have been quashed, the reasons for this.

The Scottish Government is happy to facilitate this proposed engagement in Scotland.

As per my previous letter, any questions and queries relating to the system of prosecution – both generally and also any specific questions regarding relevant cases – should be directed to the Lord Advocate as the independent head of the system of prosecution in Scotland.

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In respect of the system that exists for criminal cases to be reopened for future criminal appeals, officials in the Justice Directorate of the Scottish Government would be happy to assist in the first instance in helping explain how the system operates. This would include the important role of the Scottish Criminal Cases Review Commission in the Scottish criminal justice system. Any request for specific information on cases currently being considered for referral back to the Appeal Court would best be directed to the Commission and copied to the Lord Advocate for awareness. It should be noted that the Commission operate with their own strict statutory disclosure rules relating to the cases they deal with.

As noted in my previous letter, in carrying out the functions of the lines of inquiry in Scotland, it is critical that the Inquiry is sensitive to the need to ensure no prejudice to either ongoing or future criminal appeals. This reflects that the process of considering individual cases in Scotland is at a different, earlier stage than many of the cases that have already been through an appeal process in England and Wales.

I hope this is helpful in confirming the position of the Scottish Government.

A copy of this letter goes to the First Minister, the Lord Advocate and the Secretary of State for Scotland.

KEITH BROWN

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From: Solicitor General <SolicitorGeneral@gov.scot>
Sent: Thursday, January 6, 2022 12:25 PM
To: [redacted]
Subject: RE: Further letter from UK Government on Post Office Horizon IT Inquiry - draft reply provided for clearance and issuing by Fri 7 Jan

[redacted] and **[redacted]**

The Law Officers have reviewed the draft letter and have suggested a small amendment to the sentence regarding queries about specific cases should be directed to the SCCRC. The Law Officers have no difficulty with this, but indicate that it would be helpful if questions about specific cases could be directed to the SCCRC and copied to the Lord Advocate for awareness. This would allow COPFS officials to liaise with their contact in the SCCRC to ensure that there is no risk of information being released which could be prejudicial to any appeal proceedings in due course

I've attached an amended draft showing the proposed amendment.

Many thanks – **[redacted]**

[redacted]
Private Secretary to Solicitor General

[redacted]

From: [redacted]
Sent: 23 December 2021 13:01
To: Cabinet Secretary for Justice and Veterans <CabSecJV@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>
Cc: [redacted]

Subject: Further letter from UK Government on Post Office Horizon IT Inquiry - draft reply provided for clearance and issuing by Fri 7 Jan

Dear **[redacted]**

Please find attached a suggested response for the CSJV to send to the UK Government. It would helpful for the letter to be cleared by one of the Law Officers prior to the letter being issued from the CSJV's office by Friday 7 January.

Thanks

[redacted]

From: [redacted] On Behalf Of Solicitor General
Sent: Thursday, December 9, 2021 6:21 PM
To: Cabinet Secretary for Justice and Veterans <CabSecJV@gov.scot>; **[redacted]** ; Lord Advocate <LordAdvocate@gov.scot>
Cc: [redacted]
Subject: RE: URGENT - Letter from UK Government on Post Office Horizon IT Inquiry - advice and suggested reply

Good Afternoon **[redacted],**

The Solicitor General on behalf of the Law Officers notes the submission of 8th December and is content with the terms of the draft letter, as a means of initiating more detailed engagement with the UKG and the Inquiry.

As part of that subsequent engagement it will be important to make the point that appeal proceedings in Scotland are not put at risk of being prejudiced by evidence or witness testimony relating to them being heard as part of the Inquiry, in advance of any appeal proceedings being concluded.

It may be preferable if any Scottish appeals proceedings are concluded prior to the Inquiry exercising powers in relation to Scottish cases. But this can be taken up directly with UKG as part of the clarification process requested in the reply.

Kind Regards

[redacted]
Assistant Private Secretary
Law Officers Private Office
25 Chambers Street
Edinburgh
EH1 1LA
0300 020 4350
[redacted]

From: [redacted] <Philip.Lamont@gov.scot>
Sent: 08 December 2021 13:10
To: Cabinet Secretary for Justice and Veterans <CabSecJV@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>
Cc: [redacted]
Subject: URGENT - Letter from UK Government on Post Office Horizon IT Inquiry - advice and suggested reply

Dear **[redacted]**

URGENT - Letter from UK Government on Post Office Horizon IT Inquiry - advice and suggested reply

Please find attached an urgent submission in relation to the above. With apologies, clearance for the draft letter to issue by Friday 10 December is requested.

Thanks

[redacted]

From: [redacted]
Sent: 06 December 2021 11:47
To: Lord Advocate <LordAdvocate@gov.scot>
Cc: [redacted]
Subject: Letter from Minister Scully - Post Office Horizon IT Inquiry

PS/Lord Advocate

Please find attached a letter sent to the First Minister regarding the current public inquiry into the wrongful convictions of postmasters flowing from issues related to the Post Office Horizon IT system.

We are considering how Ministers should respond but would be interested in views from the Lord Advocate given the potential for the inquiry to look at prosecutorial decisions in Scotland (noting that SCCRC are already considering). Please note the very tight deadline set by UKG.

Kind regards

[redacted]
Courts and Reserved Tribunals, Justice Directorate
Scottish Government

[redacted]

Department for Business, Energy & Industrial Strategy

Paul Scully MP

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Keith Brown MSP
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By email only.

17 December 2021

Dear Keith,

Thank you for your letter dated 10 December requesting some further detail specific to Scottish matters (under section 27(2) of the Inquiries Act 2005) that the Post Office Horizon IT Inquiry wishes to exercise powers in relation to. I am pleased to confirm that Sir Wyn's focus is factual:

- to assist his understanding and description in summary of the process by which people are prosecuted in Scotland;
- to provide him with information about what, if anything, is happening in relation to postmasters' convictions and whether any are being quashed; and
- if any convictions are quashed the reasons(s) for this.

For context**,** I refer to:

1. The Inquiry's Completed List of Issues published 17 November 2021, in particular paragraphs 162 and 163; and
2. The statement from the Chair published on the same date.

Paragraphs 162 and 163 of the Inquiry's Completed List of Issues ask whether there were divergences in the policies and practices adopted by the Royal Mail Group and Post Office Limited within the four countries of the United Kingdom when taking action against sub-postmasters (SPMs), managers and assistants alleged to be responsible for shortfalls shown by Horizon.

As noted in the statement from the Chair, the lines of investigation suggested in paragraphs 162 and 163 of the List of Issues may ultimately require the Chair to determine facts or matters which are wholly or primarily Northern Irish transferred matters, Scottish matters and Welsh matters – this is because Scotland and Northern Ireland have their own separate legal systems and matters of criminal justice in those countries are, to a very great extent, devolved matters. This includes the conduct of criminal prosecutions.

I hope this is helpful and that you are now happy to endorse Sir Wyn's proposed line of inquiry and request regarding his powers under S. 21 so that I can confirm to him our collective support for his Inquiry.

I would be grateful for a response by Friday 7th January.

Yours sincerely,

PAUL SCULLY MP
Minister for Small Business, Consumers & Labour Markets
Minister for London

Department for Business, Energy & Industrial Strategy

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Rt. Hon. Nicola Sturgeon MSP
St Andrew's House
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3 December 2021

Dear Nicola,

Post Office Horizon IT Inquiry - S. 27 Inquiries Act 2005 (2005 Act) Consultation

The Post Office introduced its Horizon IT system in 1999/2000. Following its implementation, the Horizon accounting system recorded shortfalls in cash in post office branches for which postmasters were held personally liable. As a consequence, there were a large number of prosecutions (many resulting in convictions) and repayments made to correct shortfalls in the balances of individual post offices recorded on the Horizon IT system. In 2019, Mr Justice Fraser, in his judgments in relation to the Bates et al v Post Office Ltd Group Litigation, criticised the Post Office and identified significant failings at Post Office Limited and in relation to the robustness of the Horizon IT system which had persisted over many years.

In response to this, Government launched the Post Office Horizon IT Inquiry, chaired by Sir Wyn Williams FLSW, to fully understand these events including what went wrong with Horizon, gather available evidence and ensure lessons have been learnt so that this cannot occur again.

In April this year, the Court of Appeal quashed 39 convictions; it concluded that the failures of investigation and disclosure were so egregious as to make the prosecution of any cases reliant on data from the now discredited Horizon IT system an affront to the conscience of the court. There are potentially many more postmasters affected and to date 72 convictions have been quashed. Following this significant judgment, I agreed to put the Inquiry onto a Statutory footing, governed by the rules of the Inquires Act 2005. The Terms of Reference are set out here: https://www.postofficehorizoninquiry.org.uk/publications/terms-reference.

The Horizon Group Litigation and prosecutions were conducted over many years and have had a hugely negative impact on affected postmasters and their families. I recognise that there has been a lot of pain and distress caused to those affected by this scandal and I have met a number of affected postmasters.

Sir Wyn has progressed the Inquiry well, has gathered evidence and held a number of public and private hearings, with more hearings and evidence gathering to come.

Sir Wyn held a hearing earlier this month with the Core Participants, which included a consultation on his lines of inquiry. All core participants, save my Department which remained neutral, asked that the Inquiry consider whether and to what extent there existed divergences in the policies and practices adopted by Royal Mail Group and Post Office Limited within the four countries of the United Kingdom when taking action against SPMs, managers and assistants alleged to be responsible for shortfalls shown by Horizon.

S. 27(2) Inquiries Act 2005

Sir Wyn has now written to me, saying that he is persuaded to undertake an investigation into the existence of any divergences in policy and practice across the United Kingdom and the reasons for the same. He considers that the Inquiry's work would be incomplete if it were confined to investigating policies and practices adopted in some, but not all, of the constituent countries of the United Kingdom. I agree that it is important that he fully investigates the issues that have arisen and uses the evidence that he gathers to inform his report and make recommendations. I am also aware that if this line of inquiry is pursued there is a prospect that Sir Wyn may be required to determine facts which are wholly or primarily concerned with Scottish, Welsh or transferred Northern Irish matters (in particular, the conduct of criminal investigations and proceedings).

The 2005 Act S.27(2) places an obligation on me to consult with you if there is included in the Terms of Reference of the Inquiry anything which might require Sir Wyn to make such a determination or make a recommendation.

To date all cases that have been quashed have been at the Court of Appeal and Southwark Crown Court. Our understanding is the rate of prosecution was lower in Northern Ireland and Scotland than was the case in England and Wales, and that to date no cases have been quashed in Scotland or Northern Ireland.

S. 27(3/4) Inquiries Act 2005

Sir Wyn has also invited me to give him written permission under S. 27(3) of the 2005 Act to exercise his powers under S. 21 of that legislation in respect of evidence, documents or other things that are wholly or primarily concerned with Scottish, Welsh or transferred Northern Irish matters. This section gives him the power to compel the production of evidence and extends to compelling individuals to give oral evidence before the Inquiry. Failure to comply with such a request without reasonable excuse under S. 35 of the Act gives rise to the commission of an offence which may lead to prosecution.

It is through the exercise of powers under S. 21 that Sir Wyn will be able to get to the bottom of what went wrong with Horizon and gain a full understanding of events from which lessons can be learnt. Under S. 27(4) of the 2005 Act, I am under an obligation to consult you before granting Sir Wyn the permission that he has requested.

Accordingly, I am writing this letter in discharge of my obligations to consult under the 2005 Act and to seek your views in relation to the proposed line of inquiry and Sir Wyn's request in relation to the exercise of powers under S. 21.

I hope that you are happy to endorse Sir Wyn's proposed line of inquiry and request regarding his powers under S. 21 so that I can confirm to him our collective support for his Inquiry. I would be grateful for a response by Friday 10 December.

Yours sincerely,

PAUL SCULLY MP
Minister for Small Business, Consumers & Labour Markets
Minister for London