



Home Office

Rt Hon Damian Green MP
MINISTER OF STATE FOR POLICING AND CRIMINAL JUSTICE

2 Marsham Street, London SW1P 4DF
www.homeoffice.gov.uk

Jack Dromey MP
House of Commons
London
SW1A 0AA

Dear Jack,

30 JAN 2014

**Anti-social Behaviour, Crime and Policing Bill: Commons Consideration
of Lords Amendments - Compensation for miscarriages of justice**

I am writing to you in advance of Commons consideration of the Lords amendments to the Bill on 4 February about Lords amendment 112 which relates to the test for determining eligibility for compensation for miscarriages of justice. You will be aware that Lords amendment 112, sponsored by Lord Pannick, was made to the Bill at Lords Report stage on 22 January following a division.

The Lords amendment would replace the Government's proposed definition with a requirement that "*the new or newly discovered fact [on which a conviction was overturned] shows conclusively that the evidence against the person at trial is so undermined that no conviction could possibly be based on it*". This is a similar test to that proposed by Lord Phillips of Worth Matravers (the then President of the Supreme Court) in May 2011 in the case of *Adams*. That decision has since been superseded by the Divisional Court's decision in the case of *Ali* in January 2013.

The aim of clause 151 as approved by the Commons was to introduce a straightforward statutory test for a miscarriage of justice. Our provision would have provided for the payment of compensation in respect of a miscarriage of justice when "*if, and only if, the new or newly discovered fact shows beyond reasonable doubt that the person was innocent of the offence*". This is the straightforward test that was operated successfully by different Governments between 2008 and 2011 in line with the case law that existed at the time.

While the Government agree the test proposed by the Lords amendment is preferable to an earlier amendment tabled (by Lord Beecham at Lords Committee stage) based on the definition in *Ali*, we cannot support this new test since in the Government's view, it continues to provide for ambiguity and is open to interpretation. The fact that the definition inserted in the Bill in the Lords is open to various interpretations is evident from the significant number of judicial review cases awaiting consideration by the Administrative Court, seeking to challenge the application of the Supreme Court's judgment in *Adams*, the very test the Lords refer in their amendment.

That said, the Government acknowledges that the debates on this matter have usefully highlighted a number of issues, including:

- a) agreement that the current definition set out by the Divisional Court in *Ali* is not clear enough;
- b) the need to legislate for a clear definition of a miscarriage of justice given the ongoing uncertainty and reinterpretation of definitions by the Courts; and
- c) this is not about seeking to restrict compensation but rather about providing clarity.

Whilst, for the reasons I have set out, the Government cannot support the Lords amendment and will invite the Commons to disagree with it, we do recognise the concerns expressed in some quarters in relation to our reference to 'innocence'. We have therefore tabled an amendment in lieu of amendment 112 to address this particular point.

The Government amendment in lieu will modify the definition of a miscarriage of justice so as to provide for the payment of compensation "if, and only if, the new or newly discovered fact shows beyond reasonable doubt that the person *did not commit* the offence". This will ensure our aim to ensure those who genuinely warrant compensation remains intact, whilst at the same time taking into account the view of some in the House of Lords that using the term "innocent" is problematic.

Our amendment will continue to respect the presumption of innocence and ensure that our international obligations are observed.

If our amendment is passed into legislation, where the new fact shows clearly that the individual did not commit the offence, compensation will be paid. Where it does not, although they will still benefit from the presumption of innocence, they cannot be said to have suffered a miscarriage of justice beyond reasonable doubt. We believe that this is a fairer and more transparent way to approach things.

Finally, I am aware of the continued misconception in some quarters that applicants would be somehow required to prove they did not commit the offence before compensation could be considered. Our amendment does not require the applicant to demonstrate his or her innocence. It focuses on the new fact and whether it shows beyond reasonable doubt there was a

miscarriage of justice. Applicants need only to rely upon information that is already available as a result of their appeal process.

I am copying this letter to Sadiq Khan, Emily Thornberry, Jeremy Corbyn, Julian Huppert, Hywel Williams, Mark Durkan, Dr Hywel Francis (Chair, JCHR), Lord Pannick, Lord Beecham, Baroness Smith of Basildon, Baroness Kennedy of the Shaws, Baroness O'Loan, Lord Wigley, Lord Phillips of Worth Matravers, Lord Hope of Craighead, Baroness Hamwee, Lord Cormack, Lord Brown of Eaton-Under-Heywood, Lord Elton, Lord Brennan, Lord Cullen of Whitekirk and Lord Faulks. I am also placing a copy in the library of the House and on the Bill page of the Government website.

A handwritten signature in black ink, appearing to read 'Damian Green', written in a cursive style.

Rt Hon Damian Green MP