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Date  
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**Classification:**  
Confidential

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Dear Chris,

Thank you for your letter of 15 May. I recognise how strongly people feel about this, and understand why there is frustration about how these cases are being handled.

A detailed response to your letter, prepared by the team, is in the appendix – it is based heavily in the legal context, but I believe that is unavoidable for the reasons explained there. More detail of the relevant rules can be provided if that would be helpful. The key point is that Post Office is bound either to concede or “oppose” an appeal and there is no “third way”. And based on what we have seen in the cases we’ve looked at so far, we have no choice but to “oppose” – however uncomfortable that is for Post Office and, I am very sorry to say, distressing for the individuals involved. In essence, this is because it is not clear as to the extent that Capture evidence was relied upon and there does seem to be evidence unrelated to Capture which the Court may conclude means that these particular convictions are not unsafe (the test the Court itself has to apply).

None of this changes our recognition of past failings or our commitment to seeing unsafe convictions overturned. It is precisely because of that history that we believe it is important to proceed carefully and transparently, and to support the Court in reaching the right outcome in each case.

I would welcome the chance to talk this through with you and the Advisory Board, including how we can explain our approach more clearly.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Nigel Railton".

Nigel Railton  
Chair



## Appendix

1. It is not open to Post Office to adopt a blanket non-oppositional stance or to “leave it to the Court” by making a short statement of position and then standing back. That is not how the criminal appeal process is designed to function, and it would not be consistent with the interests of justice for the Court, for appellants, or for other participants in the system.
2. The Criminal Procedure Rules comprise the procedural code intended to achieve the overriding objective that criminal cases are dealt with justly. Each party must prepare and conduct each case in accordance with that overriding objective, comply with the Rules and directions, and assist the Court in its function. They do not treat participation as optional, still less do they contemplate a party simply adopting a policy of withholding their assistance from the Court on relevant legal or evidential matters. The Rules make it plain that in appeals, the Court of Appeal is entitled to expect that the respondent will identify and assist with the issues that may properly bear on their safety analysis, including where those issues arise from the basis upon which the Criminal Cases Review Commission has referred the case; legally and evidentially.
3. For that reason, where the Court directs (which it has), Post Office must file the appropriate respondent documentation addressing the appeal grounds and the CCRC Statement of Reasons. That is not an exercise in “taking arguments that could be made rather than should be made”. It is the practical expression of the respondent’s duty to assist the Court by engaging with the case that is actually before it, within the established framework of criminal appeals. A blanket statement of non-opposition, without engaging with the grounds and the CCRC’s reasoning, would risk depriving the Court of considerations that may be necessary to decide the appeal justly, and would risk unfairness to appellants and the criminal justice system more generally, if potentially relevant matters were not brought into focus promptly and transparently.
4. Post Office has not “shifted responsibility” to its legal advisers. Decisions about the conduct of appeals are taken within Post Office’s governance structures and remain Post Office decisions. We do, however, obtain external legal advice from very senior King’s Counsel precisely because independent expertise is essential if we are to approach these cases with appropriate rigour and objectivity. That advice is tested internally, challenged and then used to support the very well established decision-making process within the delegated Board framework.
5. There should be no concern about the use of Counsel associated with certain chambers. Barristers’ chambers are an administrative and practice-support structure. They have no legal personality and are not a single adviser with a unified mind, nor do they affect the independence of individual barristers. Each barrister is independently regulated and owes personal professional duties, including a paramount duty to the Court and a duty to maintain independence. Those duties apply irrespective of the client and irrespective of the chambers from which a barrister practises. In other words, the relevant safeguard is not the branding of chambers, but the individual barrister’s professional obligations and the fact of independent practice.



6. It is also important to recognise that the Advisory Board's own published account of the July 2023 meeting records, in clear terms, that the very same counsel and solicitors described their objective as ensuring that unsafe convictions were quashed and safe convictions upheld, and that the Court of Appeal would not quash convictions simply because Post Office asked it to do so; rather, it would review the evidence and reach its own conclusion. The note also records the constraints created by the Court's approach in prior decisions, including the practical reality that conceding cases without a sufficient evidential basis may not assist appellants if the Court is not willing to dispose of appeals on that basis. This is mentioned not to be argumentative, but because it illustrates that there is common ground on the core point: the Court's task is a judicial evaluation of safety on proper materials and legal principles, and the parties are expected to assist it with that evaluation.
7. Turning to Capture, we agree that there is a pressing need to ensure that anyone convicted in circumstances that render the conviction unsafe obtains justice. Post Office has already made a clear concession that if a case was purely based on Capture evidence or was "Capture essential" as advanced by the CCRC, Post Office would naturally concede such a case. At the same time, it is important not to proceed as if Capture was simply Horizon by another name. Capture and Horizon are very different, deployed in different ways and in different periods, and at present the use of Capture evidence in prosecutions or otherwise has yet to be considered by any court let alone by the Court of Appeal. That means there has been no judicial scrutiny of the Capture software or of the way in which Capture data may (or may not) have been used in any individual prosecution. In both of the current Capture cases, it remains an issue of fact whether, and if so how, the prosecution case depended on the reliability of Capture evidence at all. In those circumstances, it would be premature and potentially misleading for Post Office to invite the Court to adopt a broad, system-wide conclusion about Capture without the Court having had the opportunity to examine the evidence and argument in the cases before it.
8. That last point connects directly to the CCRC referrals. Where the CCRC has referred a case, it has done so on an articulated basis that will need to be considered by the Court alongside the grounds advanced by the appellant and the material available. The test the CCRC's applies is whether there is "a real possibility" that the Court will find the conviction to be unsafe, which has been explained in case law as "more than an outside chance or a bare possibility, but which may be less than a probability or a likelihood or a racing certainty." This is necessarily a lower threshold than the Court itself applies. Post Office's duty as respondent includes engaging with the CCRC's statement of reasons, not to frustrate an appeal, but so that the Court is properly assisted on the legal grounds by which the case has come before it and on the implications of the arguments advanced. At present, Post Office does not consider it safe to simply assume that the legal basis on which any particular Capture referral has been made will necessarily be accepted on the basis advanced, still less that the approach taken by the CCRC is already settled by established authority in the way that the Court's approach to "Horizon cases" was shaped by the judgment in *Hamilton* and related decisions. The Court will determine the proper approach in Capture appeals after considering the parties' submissions and the evidence in those cases. Until that happens, Post Office cannot responsibly adopt a course that amounts to inviting the Court to decide issues in a factual or legal vacuum.
9. None of this detracts from Post Office's responsibility for past failings, nor from our determination to support the quashing of unsafe convictions. It is precisely because of those failings that we consider it essential to act with scrupulous care and transparency in our



dealings with the Court and the appellants to reach just outcomes, case by case, within the framework Parliament has provided. That approach is also consistent with the prosecutorial principles that the public rightly expects to be applied: decisions should be evidence-based, fair, and sensitive to the public interest, not driven by expedience or by the understandable desire to short-circuit difficult legal questions.

10. There is clear distinction between (i) Post Office's stance on unsafe convictions and (ii) the procedural duties that apply to a respondent in appellate proceedings. If it would be helpful, we can provide a short note setting out Post Office's relevant legal duties to the Court of Appeal.