

# Justice For Subpostmasters Alliance

Kelly Tolhurst MP  
Minister for Postal Affairs  
The Department for Business, Energy & Industrial Strategy  
1 Victoria St.  
LONDON, SW1H 0ET

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Reference: Alan Bates & Others and Post Office Limited, Judgment (3) "Common Issues"

Dear Minister

It is with dismay that I have been reading many of the responses emanating from your department in reply to a number of queries from the media and other MPs regarding the Judgment of the Common Issues trial. From those I have read, I can only assume that you have not been receiving particularly accurate legal advice.

As one of the 550 Claimants in the group litigation action and also chairman of the Justice For Subpostmasters Alliance which was instrumental in bringing this legal action against Post Office Limited, I can assure you that I am well versed in the finer details of the issues associated with the problems that have eventually resulted in our need to take legal action. Whilst it has never been our aim to destroy or damage the Post Office brand, the current Board is ably demonstrating that it is more than capable of managing that without our help. Yet, for whatever reason, to me, it seems that the Board is either being misled by Post Office personnel or it is incapable of understanding exactly what has been endemic within Post Office Limited for many years, resulting in the position it now finds itself in.

Throughout all the years that we have been campaigning to right the wrongs that Post Office Limited has been allowed to inflict on individuals, numerous external professionals have been involved at one time or another. These have comprised of forensic accountants, IT experts, and many from within the legal profession, however I doubt if there is one of them, who has spent time actually examining the details of the issues, who did not find major and systemic problems within the management of Post Office and also in its Horizon computer system.

Yet, of those most vocal in expounding the position of Post Office Limited, other than its own employees, is a single, well compensated legal firm, which by my observation, has been providing a very narrow, and at times questionable, view to Post Office Limited for many years. Compound

this with a Board that I have heard tell, is determined to 'run this litigation into the ground regardless of the cost' and a Government that is set on dealing with this matter at 'arms-length', then there is every reason to start to listen to those commentators who say this case will cost billions to redress.

In writing to you, I am not asking that you adopt our position with this matter. I am only too well aware of Post Office Limited's ministerial lobbying technique of providing an Executive team to 'brief' successive Ministers on the 'correct view' to take with regards to this issue. However, what I do ask, and I don't think this is unreasonable, is for you to seek a genuine independent view of what is going on.

If you looked through your department's records you would find a letter dated 5 November 2003 from a previous Minister, Stephen Timms, to Betty Williams who was my MP at that time (also the date of my termination by Post Office Limited). He comments that '*Conflicts over contractual matters are issues for the sub-postmaster and Post Office Ltd – with ultimate recourse through the legal system*'. It may well have taken 16 years to follow that ministerial advice, but follow it we have, which has resulted in the Judgment from the Common Issues trial, and I have enclosed a hard copy for your attention.

However it now seems that Post Office Limited, a department ultimately under government control, has decided to set itself above the legal system when that legal system does not do what it wants. Post Office Limited most recently demonstrated this arrogance with its Board decision to recuse the Judge (a hard copy of that Judgment has also been enclosed within the accompanying binder), it is a move I can only interpret as having been taken in desperation, in order to stop our IT expert's findings of the flaws within the Horizon system being exposed in open court. Evidence, which once it has been given, will no doubt raise serious concerns within a number of Post Office Limited's third party clients.

In writing to you, I would ask that you seek independent legal and IT expert advice, away from any you may have received from Post Office Limited and its entrenched legal advisors. I believe you also need to be made aware of the real facts behind how this legally binding Common Issues Judgment has dramatically changed the contractual position between serving Subpostmasters and Post Office Limited, and how it has now totally undermined Post Office Limited's current business model.

By way of just a few examples of the major contractual changes the Common Issues Judgment has established, it is now clear that there is a relational and not a commercial contract between Post Office Limited and Subpostmasters. This means that there have always been implied terms that Subpostmasters were entitled to rely on which were not previously recognised by Post Office Limited. Put simply, Post Office Limited has a legal duty to act in good faith in all dealings with every Subpostmaster, especially to provide equipment and systems that are fit for purpose. It must immediately advise every Subpostmaster of known errors, and it must not act in any way that might undermine the trust and confidence on which the relationship is based.

These implied terms include specific requirements for Post Office Limited to, in effect, give full transparency of all transactions and to provide full reconciliations and balances to each Subpostmaster, with an absolute duty to retain and keep proper accounting records. Post Office Limited has now to co-operate in any enquiry and to fully investigate any discrepancy before seeking repayment. It is not to act, or to unreasonably exercise Post Office Limited's discretion, especially in matters relating to the termination of Subpostmasters or when bringing legal proceedings.

The Common Issues Judgment also finds that some important aspects of Post Office Limited's contracts cannot be enforced against Subpostmasters. These include clauses which Post Office Limited has relied on for years to demand purported debts and to terminate Subpostmaster contracts. Clauses which have in many cases resulted in the financial ruin of Subpostmasters and in some cases criminal convictions.

As you will also see from the Judgment of the Common Issue trial, the Court found that there was a *'culture of secrecy and excessive confidentiality generally within the Post Office, but particularly focussed on Horizon.'* It made findings about how Post Office Limited has conducted itself, including that it engaged in *'oppressive behaviour'* demanding sums in a way that suggested there was no option but to pay them. Furthermore, the Common Issues Judgment highly criticised the evidence given by certain Post Office Limited's witnesses at trial, especially senior managers.

Minister, you should have no doubts about the determination of the Claimant group to see the full extent of Post Office Limited's failings being exposed in court, no matter how many trials it takes. We have been fortunate to find financial support that can clearly see what has happened to the group and is prepared to back us all the way, no matter how long it takes.

You need to try to view the whole case from the perspective of the Claimants. Sub post offices are usually in the heart of a community or village, and as such, the Subpostmaster and his family are often known to many. When a sub post office is suddenly closed, Post Office Limited rarely explains any of the issues that might have been involved, it normally only states that it will be doing all it can to ensure services are available as soon as possible.

Needless to say, many assertions can then arise in that locality casting doubt on the integrity of that Subpostmaster, and the event can have far reaching implications for that person, their family and their futures. This case, albeit that it is centred on financial loss, is about so much more to the majority of Claimants and their families. It is about vindication for the position a major corporation has left them in, resting secure in the knowledge that no one individual could ever afford to challenge it. It is about returning their self-respect in communities where many have spent most of their lives, and although it would never alone receive funding, it is about justice. Financial redress is important, but it is just one aspect of the issue, and in the many cases, possibly not the main one, it is about exposing the truth about the way a major corporation has been allowed, by successive Governments, to treat individuals and the detrimental effect it has had on so many lives.

In closing, I make the same offer to you that I have been making to other MPs since the Common Issues Judgment was handed down. If you would find it useful, the head of our legal team and I would be available to attend any meeting to interpret exactly what this far reaching Judgment really means. Those we have met with so far have found it extremely useful, however I would fully understand and support your decision should you prefer to hear it from independent legal and IT expert advisors.

Sincerely

Alan Bates

Encl.:

- Judgment (No.3) "Common Issues"
- Judgment (No.4) "Recusal Application"