

Prime Minister - The Rt Hon Boris Johnson MP
10 Downing Street
London SW1A 2AA
By email and recorded delivery

Our ref: DE/JFSA/PM

3 February 2021

Dear Prime Minister

Re-establishment of the Post Office Horizon IT Inquiry on a statutory footing

We write on behalf of Mr Alan Bates and 555 members of the Justice for Sub Postmasters Alliance (JSFA) of which Mr Bates is the Chair, to request an urgent meeting with you and to seek a commitment from you to:

1. pause the current non statutory Post Office Horizon IT Inquiry;
2. re-establish that Inquiry as a Statutory Inquiry; and
3. hold a short public consultation on the Terms of Reference.

We act for Mr Bates and the JFSA in relation to public inquiries and also in relation to matters in the purview of the DPP, the Metropolitan Police and parliamentary select committees. We note that the JFSA already have a wider complaint currently before the Parliamentary Ombudsman. The fact of that complaint being before the Ombudsman should in no way be used as a basis not to engage with or act upon the urgent matters set out in this letter.

We write to you on this matter, rather than the Secretary of State for Business, as the Ministerial Code requires that the Prime Minister is consulted regarding any proposal to set up a major public inquiry. It is also clear that the Department for Business, Energy & Industrial Strategy has a clear conflict of interest that renders it inappropriate to be the sponsoring department for an inquiry into these matters and to have control of the scope of the terms of reference of any inquiry. This is a matter that will require you to consult the Cabinet Office Propriety and Ethics team in line with the Cabinet Office's Guidance on public inquiries.

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Summary

The trial judge in the civil litigation brought by the 555 subpostmasters, Mr Justice Fraser, has raised concerns that the evidence relied upon to prosecute subpostmasters may have been tainted by perjury. If this is the case, the Post Office prosecutions of (reportedly) over 900 subpostmasters (and the associated issues) would represent the most serious miscarriage of justice in British legal history. A non-statutory inquiry with limited terms of reference and with limited powers, under the sponsorship of a government department with a clear conflict of interest, will not suffice to redress the unprecedented and historic injustices of which the subpostmasters are victims.

Background

As you are aware, the current non-statutory inquiry was established on 29 September 2020 following the conclusion of the group litigation involving postmasters and Post Office Limited (Post Office Ltd) in December 2019. The Scope of the Investigation states:

'Government wants to be fully assured that through the Inquiry there is a public summary of the failings that occurred, which were associated with Post Office Ltd's Horizon IT system. The Inquiry will draw on the findings made by Mr Justice Fraser from the Bates V Post Office Group Litigation (in particular Judgment (No3) 'Common Issues' and Judgment (No 6) 'Horizon issues') and other evidence, listen to those that have been affected, understand what went wrong, assess whether lessons have been learned and that concrete changes have taken place, or are underway, at Post Office Ltd.'

We understand that a police investigation is already underway in relation to these perjury allegations. In those circumstances, government must investigate how it was possible that hundreds (reportedly as many as over 900) of small businesspeople were prosecuted for theft and false accounting, on the basis of flawed and potentially perjured evidence. The current inquiry's terms of reference specifically exclude examination of any issues pertaining to this centrally important matter.

You will be aware that the background of this issue is the introduction by Post Office Ltd (owned by UK Government Investments) of the Horizon IT system; a system developed and delivered by Fujitsu. Post Office subpostmasters were required to conduct and record transactions using that system. The Horizon IT system has now been found by the High Court to have been seriously flawed, and that both the Post Office and Fujitsu were aware of those flaws from an early stage. It is noted that the Board of the Post Office has two directors nominated by BEIS. Thus, the extent of knowledge of these matters within BEIS is a matter that requires examination. This is an additional and compelling reason why the Department for Business, Energy & Industrial Strategy cannot act as the sponsoring department for an inquiry.

The flaws in Horizon led to accounting irregularities in post offices operated by subpostmasters across the country. You will be aware that the Post Office Ltd reportedly prosecuted over 900 subpostmasters for matters including theft and false accounting, as a result of incorrect and inaccurate reports caused by the flaws in the Horizon IT system.

Hundreds of hard-working small businesspeople, the backbone of this country, who provided vital services to communities across the country, were compelled to pay significant monies to Post Office Ltd to make up for alleged accounting discrepancies. The Post Office alleged those shortfalls were caused by subpostmasters, in spite of the clear knowledge it had that the Horizon system was to blame. Subpostmasters made payments in the context of an overwhelming imbalance of power, often on threat of the loss of their livelihoods. Reportedly over 900 subpostmasters and assistants were subjected to criminal prosecution, by Post Office Ltd, for theft and false accounting. Many received significant sentences. You will appreciate that there were many other subpostmasters and assistants who may not have been prosecuted, but were subjected to investigation and penalties, including being threatened, bullied and intimidated into making payments to Post Office Ltd for substantial sums that they did not owe. As a result of Post Office Ltd.'s actions, the subpostmasters, assistants and their families have suffered exceptional financial harm and hardship, including bankruptcy. Further they have suffered devastating damage to their reputation and standing within their communities. The harms, distress and hurt caused to the subpostmasters, assistants and their families is incalculable, and must be put right.

You may be aware that the Criminal Cases Review Commission has recently referred 47 of these cases to the Court of Appeal; the largest ever number of cases referred by the CCRC. It appears that Post Office Ltd are not seeking to contest 44 of those 47 appeals. Given that there may be over 900 prosecutions of subpostmasters and assistants, it is highly likely that there will be hundreds of further reviews and appeals before the Court of Appeal in due course.

Mr Justice Fraser, the judge in civil proceedings¹, wrote to the Director of Public Prosecutions on 14 January 2020. In that letter, he expressed concerns that at least two employees of Fujitsu gave apparently perjured evidence in criminal and civil cases involving the Post Office and subpostmasters². Fraser J's letter stated:

"On the basis of information that has come to my attention as a result of the Post Office group litigation, I consider important evidence given both to the Crown Court and the High Court on previous occasions in other cases was not true, and was known not to be the truth, the whole truth and nothing but the truth, at the time it was given..."

On 13 November 2020, the Metropolitan Police announced that it had opened a criminal investigation into the Fujitsu staff who gave evidence in trials of subpostmasters. If it is found that Fujitsu employees committed perjury in both criminal and civil proceedings, it is unlikely that those criminal acts will be limited to those witnesses. Our clients consider it likely that those witnesses (whose evidence was treated in proceedings as expert and determinative) will have been widely considered within Fujitsu and within the Post Office, who prosecuted and litigated these and many hundreds of other strikingly similar cases.

The evidence of perjury is a new and highly material development that arose after the establishment of the current inquiry and after settling of its Terms of Reference. This alone is sufficient to warrant a review of the current inquiry. It is inconceivable, and plainly not in the public interest, that the Horizon IT inquiry should close its eyes to, or be prevented from, considering and redressing such a clear and egregious injustice.

¹ *Bates & Others v Post Office Ltd* [2019] EWHC 606 (QB)

² *R v Misra and Post Office Ltd v Castleton* [2007] EWHC 5 (QB)

Current non-statutory inquiry

The current inquiry was established on 29 September 2020. You may be aware that the 555 subpostmasters represented by JFSA have refused to participate with or support the inquiry in its current format. Their reasons for adopting this position include:

1. The non-statutory nature of the Inquiry is not commensurate with the seriousness, breadth and public importance of the matters involved.
2. The non-statutory nature of the Inquiry renders it incapable of (for example) compelling evidence and hearing evidence under oath, and this a fundamental requirement given the central issues involving extensive criminal prosecutions, flawed and potentially perjured evidence. The relative impotence of the inquiry renders it totally unable to fulfil its terms of reference or to command the confidence and trust of the public or of the subpostmasters.
3. The non-statutory nature of the inquiry denies rights under the Inquiries Act 2005 to those who would otherwise be entitled to apply for core participant status.
4. The exceptionally limited Terms of Reference of the inquiry which specifically excludes obviously relevant and material issues, including the *"...Post Office Ltd's prosecution function, matters of criminal law, the Horizon group damages settlement, the conduct of current or future litigation relating to Horizon and/or the engagement or findings of any other supervisory or complaints mechanisms, including in the public sector..."*. It is inconceivable that a public inquiry into these matters, in circumstances where there is now compelling evidence that potentially hundreds of law abiding citizens were prosecuted and convicted on unreliable evidence, is specifically prevented from considering the *'Post Office Ltd's prosecution function [and] matters of criminal law'*. This is compounded further in the current circumstances of an ongoing and material investigation into perjury in directly related and relevant proceedings
5. The scheduled timetable of the current inquiry is so short that it is certain to conclude its work before vital evidence (which is anticipatable) becomes available to it. Judgments from the Court of Appeal in the 47 cases referred to it by the Criminal Cases Review Commission are likely to be unavailable before the inquiry reports. The Inquiry's currently published schedule details that it will aim to submit its findings to the Secretary of State for Business, Energy and Industrial Strategy at the latest by summer 2021. As such, its evidence gathering stage will have completed by April or May at the latest. It is therefore certain that the inquiry will not, at the time of drafting its report, have before it most material evidence arising from the Metropolitan Police Investigation and the Court of Appeal.
6. The Department for Business, Energy & Industrial Strategy is clearly an inappropriate sponsor for this inquiry. It has a direct, financial and controlling interest in Post Office Ltd, as detailed in the department's ["Post Office Limited: Shareholder Relationship Framework Document"](#). Post Office Ltd is classified as a Public Non-Financial Corporation under the Office for National Statistics national account system and BEIS is its sponsoring department. It is a clear conflict for the government department with responsibility for the

Post Office (and who has a direct financial and political interest in it) to be the sponsor of the inquiry into its conduct. The conflict of interest has striking echoes of Post Office prosecutions: the same organisation acting as 'victim', investigator, and prosecutor without independence and little accountability. The JFSA are rightly concerned that the non-statutory inquiry, sponsored by and reporting to the organisation which effectively owns the Post Office, will not have the requisite independence. Nor are they satisfied that BEIS will implement the recommendations of any inquiry with the propriety and thoroughness that they demand and deserve. Given this clear conflict and the central issues of criminal and civil law, the JFSA consider that the appropriate sponsoring department is the Ministry of Justice and/or Home Office. The only appropriate role for BEIS in any inquiry will be to serve as a witness and provider of evidence.

For these and other reasons, the subpostmasters (those most affected by these matters) have no confidence in the inquiry as currently established. We ask you to take the reasonable and lawful steps requested in this letter to assuage their fears and to address the long-standing and ongoing injustices.

Wider public importance

The treatment of subpostmasters is not only a travesty in and of itself, but raises serious concerns about the reliance on computer generated evidence and the potential for it to cause miscarriages of justice in the future. It is clear from the criminal and civil proceedings in the Post Office cases that the courts, agencies and defendants are not currently equipped to probe and test such evidence.

This is not an abstract concern, but a current reality and one experienced by hundreds of members of the JFSA. The Dutch Cabinet recently resigned, after thousands of families were wrongly accused of child welfare fraud on the basis of a flawed computer system. Similarly in October 2019 an Australian Government computerised system was found to have unfairly and wrongly targeted thousands of Australians for unpaid taxes.

The implications of the Post Office Horizon IT issues are likely to be of vital importance to wider society.

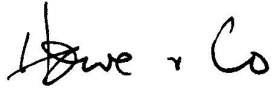
Conclusion

We request an urgent meeting with you to discuss this matter and in the meantime seek a commitment from you to:

1. pause the current non statutory Post Office Horizon IT Inquiry;
2. re-establish that Inquiry as a Statutory Inquiry; and
3. hold a short public consultation on the Terms of Reference.

Please contact me at my offices or at partners@howe.co.uk in order to arrange an initial meeting on this matter.

Yours sincerely

A handwritten signature in black ink that reads "Howe & Co". The signature is written in a cursive, slightly stylized font.

DAVID ENRIGHT JP

PARTNER

HOWE & CO SOLICITORS

- CC. Sir Wyn Williams (Chair – Post Office Horizon IT Inquiry)
Darren Jones MP (Chair - Business Energy and Industrial Strategy Select Committee)
Sir Robert Neill MP (Chair - Justice Select Committee)
Rt. Hon. Yvette Cooper MP (Chair - Home Affairs Select Committee)