

Justice For Subpostmasters Alliance

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

4th January 2020

Reference: Alan Bates & Others and Post Office Limited, Judgment (No 6) "Horizon Issues"

Dear Minister

You will recall that I last wrote to you on 30 April 2019 following the handing down of the Common Issues judgment, enclosing a copy of said judgment for your consideration.

From it, you would have seen that the judgment was utterly condemning of Post Office Limited, with references to its poor management littering the document and being far too many to repeat here. You were also aware that at that time, Post Office Limited had chosen to apply to the Court of Appeal to contest the findings of that judgment. A judgment which, on 22 November 2019, the Court of Appeal upheld, having dismissed all 26 grounds of the Application [copy enclosed].

Then, on 16 December 2019, the release of the Horizon Issues judgment [copy enclosed] clearly showed that Post Office Limited's Horizon system had never been fit for purpose since the day it had been launched. These further 418 pages reveal that Post Office Limited had little or no control over its Horizon system and were again accompanied by an additional catalogue of disastrous management decisions and failures.

So with nearly 1000 pages of the most revealing and damning court tested evidence of the failures of Post Office Limited and its Horizon system over the years, the claimant group attended mediation talks which began on 27 November 2019. We attended purely because of the legal advice we were given as to the underlying economics of the case which, due to the way the Group Litigation had to be funded, the claimant group were left with little choice but to accept the miserly £57.75m offered. And in accordance with the terms of the Settlement Agreement following that mediation, BEIS would have had sight of that Agreement and will be well aware that the greater majority of the £57.75m went to pay the cost to the claimant group of bringing the litigation.

Yet because of the tyrannical conduct of Post Office Limited over the years, unchecked by a Government who is the sole shareholder of Post Office Limited, the claimant group has had no option other than to pursue litigation in order to have its evidence tested by the courts. And as you pointed out to me in your 17 June 2019 letter, when you identified that this matter lays within your ministerial portfolio, and you stated '*It is important that the court process be allowed to run its course in order to finally resolve those issues.*' This the court has done, and the court has now resolved that not only was Post Office Limited operating a Horizon system which was 'not fit for purpose' but that Post Office Limited was fully aware of the condition of the system; yet despite this fact being known to it, was then allowed to contest that very point in the court, presumably with your department's blessing. Basically Post Office Limited has abused the use of public money to try and keep the truth about its conduct and the appalling state of its Horizon system covered-up, and that cannot be right. Going forward, I fully expect many MPs will be asking whether there has been misconduct in public office or there is even worse yet to be uncovered.

There is no doubt that our almost 1000 pages of court tested evidence is clear testament to the disastrous condition Post Office Limited is in, and has been in for many years. And it is because of the nonsense spouted in such dismissive responses by Ministers to real concerns, that it has been left to the claimant group to expose the truth. You only have to compare the real facts that were established in the court to demolish such claims that formed part of a letter to me dated 7 December 2010 from Ed Davey, who at that time, was the Minister for Postal Affairs:-

'I recognise that the core of the JFSA's concerns relates to the Horizon system to which you attribute the financial discrepancies and shortages which have led to a number of subpostmasters having their contracts terminated and subsequent court action. However POL continues to express full confidence in the integrity and robustness of the Horizon system and also categorically states that there is no remote access to the system or to individual branch terminals which would allow accounting records to be manipulated in any way. In addition, I understand that all system activity, down to the individual key stroke, is also recorded into a separate vaulted transaction file with every record encrypted and written to the log and with each record having a unique incrementing sequence number. This log is retained on a separate server independent of Horizon for at least seven years, cannot be altered in any way and all access to it is securely controlled. This approach is consistent with that of banking systems and provides a fully secure audit file which can show all system activity in a particular branch.'

But by far the most shocking consequence of the failure of successive governments to address the responsibilities they have for Post Office Limited, is the disastrous effect it has had on the lives of the claimant subpostmaster group, and who knows how many others. Purely because of the way, either intentionally or by ignorance, successive Ministers have failed to carry out their duty to actively oversee and manage Post Office Limited.

Your June 2019 letter also states that '*While publicly owned, Post Office Ltd operates as an independent, commercial business.*' This is a statement that in various forms has been the excuse

given over the years to MPs, the media and to claimants in the group from a string of Ministers with the responsibility for Post Office Limited. It seems to have been the template response when trying to 'duck the issue' of not having got to grips with the enormity of the problem that dealing with the conduct of Post Office Limited has been, and still is, for successive governments.

By way of example is an extract from a letter to me in May 2010, again from Ed Davey:-

Since 2001, when the Royal Mail (which includes Post Office Ltd (POL)) was set up as a public limited company with the Government as its only shareholder, Government has adopted an arm's length relationship with the company so that it has the commercial freedom to run its business operations without interference from the shareholder.

However, it would seem Ministers have always had a statutory duty to proactively manage Post Office Limited, a fact which was recently brought to my attention having been extracted from a range of Government research papers from which the following was observed:-

- Post Office Limited (POL) is a Public Corporation, identified by the National Audit Office as an Arm's Length Body (ALB) of the Department of Business, Energy and Industrial Strategy (BEIS).
- HM Treasury owns United Kingdom Government Investments (UKGI). The Secretary of State for BEIS owns POL's shares and the UKGI is charged with managing POL on behalf of BEIS.
- The Permanent Secretary for BEIS also acts as its Accounting Officer (AO).
- The Secretary of State for BEIS is ultimately accountable to Parliament for the overall effectiveness and efficiency of POL as an ALB and is charged to exercise meaningful and commensurate oversight of that ALB's strategy, financial management, performance and risk management, but may delegate such duties to the AO.
- BEIS is expected to play an active role in the governance, financial management, risk management and performance monitoring of POL and is responsible for managing the relationship with POL on behalf of the Minister, as Parliament has a duty to hold the Minister accountable for all the policies, decisions and actions of POL.

So, from the list above, and quite contrary to the arm's length management of POL mantra that so many Ministers like to chant, Ministers and BEIS should have been considerably more proactive in delving into the problems that individuals, the media and MPs have been raising with the department ever since Horizon was introduced.

The department cannot state it was not aware of any issues or concerns, as there is considerable correspondence in reply from Ministers and the department praising Post Office Limited's management, the robustness of Horizon and the lack of third party access to the system. All of which the court has shown are total misnomers, but it has been the claimant group that so far has had to pay for the work that Government should have undertaken. That is why the claimant group is now seeking to recover the cost from Government and in particular BEIS, for having to bring the

litigation in order to provide the evidence of the numerous instances of mistreatment and mismanagement of Subpostmasters by Post Office Limited.

A payment request for the costs so far incurred by the claimant group in connection with the provision of nearly a 1000 pages of court tested evidence relating to the failures of Post Office Limited and its Horizon System is enclosed for your consideration.

Sincerely

Alan Bates

Encl.:

- Payment Request
- Decision "Court of Appeal Refusal of Post Office Limited's Application to Appeal"
- Judgment (No.6) "Horizon Issues" and Appendixes