

Justice For Subpostmasters Alliance

Paul Scully 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, Repayment for Court Case Costs

Dear Minister

May I first welcome you to your new appointment, I think you are eleventh or twelfth person to hold this Ministerial post since the start of the Horizon debacle.

Your department will no doubt be able to make you aware of my earlier correspondence with your predecessor, Kelly Tolhurst, and your department files will hold numerous pieces of correspondence with other Ministers from over the years. With your assistance, I am hoping that you may be the last Minister I will be corresponding with on this matter.

In my last letter to Kelly Tolhurst I had enclosed a request for repayment for the costs the 555 strong claimant group had incurred to provide nearly a 1000 pages of court tested evidence that exposed the failures of Post Office Limited and its Horizon System. This the group had to undertake because, as I pointed out in that letter, BEIS and previously BIS had failed to carry out its statutory duties when overseeing Post Office throughout the years when we, either individually, as a group or through our MPs, had been raising the Horizon problems with your department. Payment of that request is still outstanding and I have enclosed a copy for your attention, however, upon advice, there is a small addition in respect of interest that will be applied from the date of the signing of the Settlement Agreement with Post Office on 10 December 2019. This is at the recognised court award rate of 8% which was agreed with Post Office during discussions surrounding that Agreement.

If there is any doubt at all within your department, I think it is important to clarify that the group does not accept that the Settlement Agreement with Post Office means that this issue is over, or that they can move on. The few pounds that will be paid to each of the claimants after they have paid your costs will go nowhere near the average of £700,000 of loss each has suffered. Had costs been paid on top of the settlement figure, then that would have meant a multiple of 4 or 5 times of what each claimant will presently receive. This would still have been far from their actual losses

but it might have assuaged the anger of the insult of what they have been forced to accept. And forced to accept is the correct description of the acceptance of the Settlement Agreement.

You should bear in mind that throughout the trials, nigh on all the claims the group had been making for many years were recognised by the court as being the truth of the matter. A truth it seems that, according to what came out during the trial, the Post Office Board were well aware of years before, but still decided to fight in court. Presumably, a position Post Office could afford to take being a 100% government owned business and therefore backed by the public purse. It is true that, as it was backed by the public purse, Post Office eventually managed to outspend the group, but not before significant truths had been revealed. Had Post Office not achieved its goal of outspending us, the further trials planned would have seen even more about the duplicity of the organisation and its cover ups being exposed in open court and in the media.

It now seems government only wants to discuss the promises of improvements by Post Office going forward. This is of no interest at all to the group, as until a judge led public inquiry takes place, and those responsible are held to account for the appalling decisions that ruined so many lives, will we ever allow Post Office to rebuild itself in peace. Government, as the sole shareholder, has to address the damage Post Office has caused to so many if it wants to give Post Office a chance to move on, otherwise I fear we are going to be campaigning in the public spotlight for many years to come.

Surely, from the near 1000 pages of the most revealing and damning court tested evidence about the failures of Post Office and its Horizon system over the years, (hard copies of which I sent your predecessor) it is clear that Post Office has been running amuck with neither oversight nor real control by Government, something it was duty bound to do. Extracted from a letter by your predecessor to an MP, it is clear from her statement that *'this long-running dispute resulted in nearly 1000 pages of judgment that provided exhaustive insight into what happened at the Post Office'* is of great use to the department, and as such needs to be paid for.

Throughout those years, BIS, now BEIS, has issued complete and utter denials of any problems and provided blanket support of Post Office's position whilst failing to investigate any of the claims. I will not list the numerous examples that illustrate how time after time, and year after year, the problems with Post Office and Horizon were brought to the attention of Ministers and a department that, for whatever reason, did not act on them. Nor will I restate the rationale behind the department's failure to instigate its statutory powers which was explained in my previous letter to Kelly Tolhurst.

Yet of recent, there does seem to be some recognition of the department's failings in the government's responses given in the House of Lords on 4 February 2020:-

Q - Lord Polak – *"My Lords, the department has a representative on the board of directors. What is his exact role?"*

A - Lord Duncan of Springbank – *“We have a non-executive director who is responsible for representing the department and the Government. His role has evolved from a perhaps more passive approach to a much more active one going forward. We have to have a much stronger view about how we manage this area, through the chief executive, the chairman and the non-executive director with responsibility for governance and clear adherence to the responsibilities of the board itself.”*

The use of ‘evolved’ in that statement perhaps should more actually be replaced with ‘woken up to the fact’. That role has not ‘evolved’, that role has always been an ‘active one’. And it is the very fact that he and his predecessors have fallen down on their job which has resulted in the debacle Post Office has found itself in, and why it was down to a group of Subpostmasters to do the job he should have been doing – hence the reason the shareholder owes us the costs we incurred in providing the evidence.

Further proof of the department recognising its failings was given on 25 February 2020 in the Lords Grand Committee, when the Lord Callanan, on behalf of government, responding to questions about what BEIS was doing following the court case judgments, stated:-

“My department has taken steps to strengthen the mechanisms for doing so. This has included expanding the BEIS Post Office policy team that works closely with UKGI in holding the Post Office to account at an official level. It also means strengthening the relationships and responsibilities of the Post Office, BEIS and UKGI through a new framework document that formalises that relationship and the responsibilities of those parties involved. I can announce that this will be published shortly.”

This clearly shows that the department had failed to undertake the statutory duties it had already been charged with, and that over the years had failed even to provide any framework document for its operation as was clarified in a FOI request dated 12 June 2019 when the department stated:-

‘I can confirm that there is currently no Memorandum of Understanding, Framework Document or Accountability Systems Statement which exists between this Department and the Post Office’, and that ‘we are working towards putting one in place’.

Yet these documents should have been in place, and so now it seems the department is planning to bolt the stable door after the horse has bolted.

Lord Callanan, at the Lords Grand Committee, highlighted the £2bn investment in Post Office between 2010 and 2018, and there had also been the £1bn written off at the start of the Horizon project followed shortly afterwards by yet a further half billion and no doubt much more in between. This raises the question of how much of those public funds were spent on the Horizon system despite the Post Office Board having known that “the IT was not fit for purpose” years before it was revealed in the court. Perhaps this is a question that the Public Accounts Committee should be looking into. So trying to recover our costs seems almost insignificant in the grand

scheme of things, especially when we have already been credited by your department for documentation '*that provided exhaustive insight into what happened at the Post Office*'. Not being able to do so amicably will leave us with little choice but to look for other sources where it could be met from, for example, the Post Office suspense accounts, following another comment that Lord Callanan made at the Lords Grand Committee:-

'The financial performance of Post Office Ltd has also improved, with the Post Office making a profit for the third year in a row, thereby reducing government funding from £415 million in 2013-14 to £50 million in 2020-21.'

With that in mind, you may not be aware that Post Office suspense accounts were an issue that Sir Anthony Hooper was extremely interested in when he chaired the Initial Complaint Review & Mediation Scheme 2012-2015. Post Office never answered his question as to whether or not any of the unreconciled money in the Post Office suspense accounts that it took into its Profit & Loss account after 3 years, might actually belong to a Subpostmaster, as Post Office unilaterally decide to terminate the scheme without answering his question. And now, with the benefit of the Horizon judgment, there seems every likelihood that this took place, and on a regular basis.

My point here is that when Post Office went into credit and reduced the subsidy it required from its sole shareholder, it is probable that the shareholder was benefiting from unreconciled monies via Post Office's Profit & Loss account which actually belonged to a Subpostmaster. That being the case, then in my view, legally, it would mean that government was guilty of unjust enrichment. Something the courts might want to consider if we end up following that route to recover the costs the claimants have so far had to bear, which in actuality are due to the failures of BEIS/BIS. And be assured that high profile uphill legal actions are something the claimant group do have some experience of.

With the recent appointment of the new government and the new Ministers in charge, this is the ideal opportunity for a fresh look to resolve this matter once and for all, and we would be delighted to assist you when we see a willingness to do so. I do have concerns that there may still be a number of influences within your department that have contributed to decisions over the years that led us to take legal action, and which may try to put hurdles in your way. But if there is genuinely a refreshed involvement between government and the Post Office, resolving our issue might be the ideal way for government to assist Post Office to move forward.

I know my MP, David Jones, had tried to arrange a meeting between your predecessor and ourselves, but it seems she was only prepared to meet him without me. My offer to meet with you still stands, although it might be worth leaving such a meeting until a time when there is a way through this impasse.

Sincerely

Alan Bates