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Department for
Business, Energy
& Industrial Strategy

Date: 14 January 2020
 Director General: Justin Manson
 Lead Official: Joshua Scott / Tom Aldred
 Lead Official Telephone: GRO

Recipient	To Note / Comment	To Approve / Decide
Andrea Leadsom MP	X	
Kelly Tolhurst MP		X
Permanent Secretary	X	
Special Advisors	X	

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POST OFFICE LTD. (POL) GROUP LITIGATION CORRESPONDENCE

Summary

1. Alan Bates (lead Claimant in the recently settled POL Group Litigation (GLO)) has written to Minister Tolhurst requesting BEIS pay the Claimants' costs in respect of the GLO of £47m. The Claimants have no legal cause of action against the BEIS SoS for payment of the costs arising from the action they took against POL. However, the response requires careful handling given the history with the litigation and potential for further coordinated campaigning efforts by the claimant group. This note updates Ministers on these developments and proposes a draft response.

Timing

2. Routine – the letter from Mr Bates is dated 4th January. Officials would like to issue our response w/c 20th January.

Recommendation

3. That (a) Ministers and the Perm Sec **note** the letter and the rationale behind the suggested response and (b) that **Minister Tolhurst approve** the draft response (seen at **Annex A**).

Recent Litigation Background

4. On 11 December and following several days of mediation, the parties agreed to settle the litigation with POL paying a total sum of £57.75 million and agreeing to other conditions aimed at strengthening its relationship with postmasters. The joint statement agreed between the parties as part of the settlement can be seen at **Annex B**. Mr Bates was a key participant in the mediation on behalf of the claimants.
5. A further judgment on the reliability of Horizon was handed down on 16 December and was again critical of POL. The parties were aware of the terms of this judgment when they agreed to settle the litigation having been provided with a draft around the same time as the mediation began, although BEIS did not have sight until it was handed down. Broadly, the Judgment found that today's Horizon system (operating from 2018 – present) is "*relatively robust*". However, previous systems were not: Legacy Horizon (2000 – 2010) was "*not robust*" and the robustness of its successor (2010 – 2018) was "*questionable, and did not justify the confidence placed in it by Post Office*". This judgment was a historic analysis of the Horizon system in relation to the period in question in the group litigation, and not a judgment upon the system in use today.

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6. Although the civil litigation against POL is now settled it is not the end of the journey. First, there are still a number of claimants who were convicted of criminal offences and are asking the Criminal Cases Review Commission (CCRC) to refer their convictions to the Court of Appeal to determine whether they should be overturned. In the event that they are overturned, this may lead to claims for malicious prosecution. The CCRC has informed POL and the claimants that they will provide an update “at the end of January”. Second, there may be other postmasters who were not part of the claimant group who come forward with similar claims to those brought in the litigation. This was noted in previous advice submitted on 11 December. Third, the Judge when handing down the Horizon Judgment also questioned the veracity of evidence provided by Fujitsu witnesses in this litigation and other cases and referred his concerns to the Director of Public Prosecutions.

The Letter from Alan Bates

7. Mr Bates issued a letter addressed to Minister Tolhurst dated 4 January 2020 discussing the recent judgments (Horizon and refusing POL’s application for permission to appeal the Common Issue Judgment), POL’s general conduct, the mediation and whether or not he believed Government was aware of the issues with Horizon. This included a request for BEIS to pay the claimants’ costs of £47 million. The full letter is attached at **Annex C**.
8. In short Mr Bates complains that the vast majority of the settlement (£47m of £57.75m) has had to be paid to the claimants’ lawyers and litigation funders leaving only a small residual sum for the claimants themselves. Mr Bates puts forward a number of assertions:
- i) That in accordance with the terms of the Settlement Agreement, BEIS would “be well aware” of how much of the £57.75m was to cover the claimants’ costs. This is factually incorrect. The settlement agreement seen by BEIS recorded that the claimants’ legal fees were £15 million but did not reveal what sum the claimants were having to pay to the litigation funder.
 - ii) That the Post Office were fully aware of the unreliability of the Horizon system but proceeded to contest the litigation.
 - iii) That Ministers should have been more proactive, have a statutory duty to actively oversee and manage the Post Office and that Government was ultimately responsible for the litigation that the claimants brought forward.

Government Response

9. Whilst we have sympathy for Mr Bates and the claimant group, BEIS was not a party to the litigation or mediation and our legal advice is that the claimants do not have a legal cause of action against BEIS SoS for any of the costs they are seeking. The settlement reached between POL and the claimants included legal costs, all other fees (including their litigation funders’ fees) and was in full and final settlement of all claims and legal costs save for (i) claims for malicious prosecution (potentially applicable to the convicted claimants) and (ii) any claims from postmasters who were not party to the group litigation. Furthermore, the litigation funders fees are a contractual matter between the claimants and the litigation funders and cannot be recovered either from POL or the BEIS SoS.
10. That being said, this is a hugely emotive subject whereby the Judge has found that the claimants have been wronged. This has the potential to attract more negative media and parliamentary attention and needs careful handling. It may, for example, be raised at BEIS Orals on 21 January.



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11. Officials have received multiple pieces of correspondence in the New Year covering various topics noted by Mr Bates. We recommend that you agree a response for Mr Bates first, which we can then use in responding to other correspondence.
12. A draft reply to Mr Bates is at **Annex A**.

Minister Tolhurst – are you content for the letter at Annex A to be issued to Mr Bates and for the language to be used in similar correspondence.

Comms Handling

13. Mr Bates' letter is the subject of an article on Computer Weekly, published on Friday 10 January. We have subsequently been approached for comment and are clearing a response with SpAds office which will come to Ministers shortly that acknowledges the letter and notes that we will respond in due course. We expect that this will be provided to Computer Weekly and possibly other media.

Contributors

14. BEIS POL policy colleagues have been consulted on this advice and are content with its contents. UKGI and BEIS Legal have also been consulted on the content of this submission.



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Annex A – Suggested Correspondence Draft in Response to January 4 Letter

Alan Bates

GRO

T
E [enquiries](#)
W www.gov.uk

Our ref:

January 2019

Dear Mr Bates,

Thank you for your letter of 4 January in relation to the Post Office Group Litigation.

As you have noted, this has been a long-running dispute with nearly 1000 pages of judgment received providing exhaustive insight into what had happened at the Post Office. I was pleased to hear before Christmas that, after several days of mediation, during which the parties engaged with each other in good faith, a comprehensive resolution to the litigation was reached. I was particularly pleased to hear that as part of that comprehensive resolution the Post Office accepted and recognised that in the past they had got things wrong in their dealings with a number of postmasters and apologised. I was also pleased that they made clear that the role of postmasters was core to the Post Office's future success and that they were committed to a reset in their relationship with postmasters, placing them alongside their customers at the centre of their business.

The financial settlement is a major step towards resolving the grievances of the claimants but there remains the issue of the claimants with convictions which is in the hands of the Criminal Case Review Commission (CCRC). Post Office also has to implement the necessary changes it has committed to under the leadership of its new CEO. I am determined to see that they deliver on these commitments and will continue to monitor the company's progress in these areas and hold the Post Office to account.

It is clear that the role you have played on behalf of all the claimants in achieving this settlement has been crucial. In engaging in mediation, it is almost invariably necessary for the parties to make difficult compromises. It also requires a recognition of the limits that the law places on what sums might be recoverable. I have no doubt that the process was a challenging one, particularly bearing in mind the long history, and I thank you and all the claimants for your participation in order to finally resolve this matter and enable the parties to move forward.

I note that the settlement agreed with the Post Office included all legal and other costs. In those circumstances I must respectfully refuse your request for payment.

Yours sincerely,

KELLY TOLHURST MP

Minister for Small Business, Consumers & Corporate Responsibility

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Department for
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The Parties to the Group Litigation in Bates v Post Office are pleased to report that they have reached a comprehensive resolution to their long-running litigation in the High Court, following several days of respectful, challenging, and ultimately successful mediation during which the parties engaged with each other in good faith.

The Post Office would like to express its gratitude to claimants, and particularly those who attended the mediation in person to share their experiences with us, for holding us to account in circumstances where, in the past, we have fallen short and we apologise to those affected.

The Post Office is committed to applying the lessons it has learnt. Its new Chief Executive Officer, who joined in September and led this drive to a mediated resolution, is undertaking an ambitious and sustained programme of changes to the Post Office's relationship with postmasters whose role we recognise as being core to our future success. We look forward to working in genuine partnership with postmasters to seize the opportunities ahead of us and to continue to serve communities across the country.

Post Office Chairman, Tim Parker, said:

"We are grateful to the claimants for taking part in this mediation and agreeing a settlement, bringing the Group Litigation to a close. I am grateful to Nick Read for his important engagement in the mediation process. We accept that, in the past, we got things wrong in our dealings with a number of postmasters and we look forward to moving ahead now, with our new CEO currently leading a major overhaul of our engagement and relationship with postmasters."

Nick Read commented:

"I am very pleased we have been able to find a resolution to this longstanding dispute. Our business needs to take on board some important lessons about the way we work with postmasters, and I am determined that it will do so."

We are committed to a reset in our relationship with postmasters, placing them alongside our customers at the centre of our business. As we agree to close this difficult chapter, we look forward to continuing the hard work ahead of us in shaping a modern and dynamic Post Office, serving customers in a genuine commercial partnership with postmasters, for the benefit of communities across the UK."

Alan Bates commented:

"The Steering Committee would like to thank Nick Read, the new CEO of Post Office, for his leadership, engagement and determination in helping to reach a settlement of this long running dispute. During the mediation, it became clear that he intends to reset the relationship between the Post Office and its Subpostmasters and put in place new processes and support for them, as part of a wider programme of improvements."

It would seem that from the positive discussions with Post Office's new CEO, Nick Read, that there is a genuine desire to move on from these legacy issues and learn lessons from the past."