

IN THE POST OFFICE HORIZON IT INQUIRY

SUBMISSIONS OF CORE PARTICIPANTS REPRESENTED BY HOWE + CO ON AN APPLICATION FOR A RESTRICTION ORDER MADE BY BEIS, 24 JUNE 2022

Introduction

- (1) These submissions are made on behalf of those core participants represented by Howe + Co, in response to the Chair’s invitation for written submissions. We are grateful for the Chair issuing his ‘minded to’ note dated 29 June 2022, expressing his preliminary view on the application dated 24 June 2022 made by the Department for Business, Energy and Industrial Strategy (**‘BEIS’**) to anonymise or otherwise restrict the publication of civil servants’ names (**‘the Application’**).
- (2) The core participants represented by Howe + Co oppose the Application. These submissions are intended to be brief in nature to reflect the preliminary view expressed by the Chair to refuse the Application. Our clients submit that the order sought in the Application would unduly hinder the Inquiry’s work, and undermine the entitlements and participation of other core participants’.
- (3) As a matter of principle, the inquiry process is designed to be transparent. In particular, one of this Inquiry’s primary roles is to shed light on the actions, knowledge and culture of the institutional core participants – including BEIS – which to date have been shrouded in secrecy and, we submit, the subject of deliberate obfuscation.
- (4) Government ministers have repeatedly stated their commitment to this Inquiry, and pledged their support for a transparent inquiry process. Indeed the Applicant repeats this commitment at paragraph 21 of its application:

The Department fully acknowledges the importance of public transparency in the Inquiry’s process. It set up this independent Inquiry with precisely that in mind; and,

for example, it has chosen to waive its absolute right to claim legal professional privilege, and has disclosed privileged documents, in order to assist the Inquiry to fulfil its Terms of Reference.

- (5) The Applicant confirms that the Inquiries Act 2005 imposes a positive duty (subject to a notice or order under section 19) on the Chair (“*must*”) *to secure public access to the Inquiry’s proceedings and information*. Whereas section 19 provides the Chair with a discretion (“*may*”) to impose restrictions in very particular circumstances.
- (6) We submit that the bar should be set very high to restrict publication or disclosure of information about decisions (and decision-makers) which are, or may be, responsible for the grave and extremely serious matters to which this Inquiry relates.

Data protection matters

- (7) It is not for us as core participants, to determine or assess the Inquiry’s obligations as a data processor, whether data processing is necessary, or the lawfulness of the order proposed in the Application. Plainly, those are matters for the Inquiry to consider and determine (either under the Inquiries Act 2005 and any relevant data protection legislation). We note that the submissions on this topic by BEIS ignore the broad discretion given to data controllers in general, and inquiry chairs in particular.
- (8) Additionally the Inquiry has a redaction protocol, which it routinely utilises, affording affected persons the opportunity to comment on or make representations on when redactions are/are not proposed in relation to statements and other evidence.
- (9) Indeed the Application acknowledges that ‘*Decisions about the necessity of disclosure of an individual’s personal data demand an individualised and fact specific approach*’ (paragraph 27). That submission cannot, as a matter of logic, be consistent with the generality and vagueness of its application. The proper approach, on BEIS’s own case on decisions about disclosure, is as the Chair proposes; that is for BEIS to make applications for case and/or fact-specific reasons for disclosure as stated in paragraph 17 of the ‘minded to’ note, however administratively convenient it may be.

- (10) This application is plainly premature, as the Applicant will be afforded an opportunity to make applications/submissions on redactions or anonymity of a specific witness at the appropriate time.

Necessity

- (11) In terms of the necessity, it is clear to our clients that the processing and disclosure of the information which BEIS seeks to restrict is not only necessary, but vital, to ensure that the Inquiry can conduct a thorough and proper investigation and that our clients can meaningfully contribute to the Inquiry's work, as they are entitled to do.
- (12) The information which the Application seeks to limit disclosure of is critical for identifying relevant witnesses and evidence, developing lines of questions for witnesses, and identifying and following patterns and commonality in documents. Both the Application and the minded-to note acknowledges the importance of those processes for core participants.
- (13) In our submission, the role of those processes cannot be overstated; if core participants are prevented or restricted in these matters it risks fundamentally undermining not only the Inquiry's ability to fulfil its terms of reference, but the legitimacy of the Inquiry as a whole. This is particularly acute in this Inquiry. As the Chair acknowledges in the 'minded to' note, the depth of knowledge and personal experiences of victim subpostmasters is invaluable to the Inquiry's investigative role, but will be seriously weakened if the Application is granted.
- (14) We agree with the concerns expressed in the 'minded to' note regarding the artificiality of limiting the restriction order to 'junior civil servants', a vague and potentially very broad category of person.
- (15) This Inquiry covers an exceptionally broad period of time, which in many cases will be sufficient for 'junior civil servants' to have been promoted to senior and important positions. It may be that the reason for any promotion is by dint of the work which that individual has undertaken in the matters to which this Inquiry relates. That is plainly a relevant fact, and one which goes to the heart of the Inquiry's Terms of Reference (for example the extent to which 'organisational and cultural changes' have been made or, indeed, are possible).

The Inquiries Act 2005

- (16) We note that the Application is predicated on the notion that the disclosure of the information it seeks to restrict is not necessary. For the reasons set out in these submissions, and for the reasons which the Chair identifies in the ‘minded to’ note, we consider that the disclosure of the identities of all relevant civil servants is necessary.
- (17) In circumstances where the Application does not set out why the order applied for satisfies s.19 of the Inquiries Act 2005, should the Chair determine that the processing is necessary, the application should be refused.
- (18) Whilst these submissions do not address each of the relevant subsections in s.19, it is not clear to our clients how the Application satisfies or could satisfy s.19(3)(b) of the Inquiries Act 2005, or the relevant factors set out in s.19(4) and (5).

Howe + Co

4 July 2022