

IN THE MATTER OF THE POST OFFICE HORIZON IT INQUIRY

SUBMISSIONS ON BEHALF OF POST OFFICE LIMITED

INTRODUCTION

1. These submissions are provided further to the Statement by the Chair on 27 June 2022 (the "**Statement**"), which addressed the Department for Business, Energy and Industrial Strategy's ("**BEIS**") Application for a Restriction Order pursuant to section 19 of the Inquiries Act 2005 dated 24 June 2022 which would result in the redaction or anonymisation of the names of 'junior civil servants' unless, in respect of each or any of them, the Chair determines that disclosure of their identity is necessary in order for the Inquiry to fulfil the Terms of Reference (the "**Application**"). The Statement invited Core Participants to make written submissions in response to the Application after the Chair publishes a 'Minded To' Note, which it proceeded to do on 29 June 2022 (the "**Minded to Note**").
2. Post Office has reviewed the Application, the Statement and the Minded To Note. These submissions accordingly set out Post Office's position in respect of the Application, and address the Minded To Note.
3. The information contained in these submissions reflects the position as at 5 July 2022.

SUBMISSIONS

4. Post Office agrees with the points made by BEIS with regards to the UK General Data Protection Regulation ("**UK GDPR**"). In particular, Post Office supports the submission at paragraph 23 of the Application; that a general policy to disclose the identities of junior members of staff would breach statutory requirements regarding data protection and would therefore be unlawful under both the Inquiries Act 2005 and the Data Protection Act 2018.
5. The Post Office further agrees that, as set out in paragraph 26 of the Application, the onus is not on the data subjects to establish that disclosure of their personal information into the public domain is not necessary to fulfil the Terms of Reference. Rather, the legal onus falls upon the Inquiry to ensure that it acts lawfully in accordance with data protection principles. The Inquiry's Data Protection Protocol recognises the need for a fact-specific approach to individual's personal data.
6. Post Office notes that BEIS suggest that the Inquiry should invite representations and guidance from the Information Commissioners Office ("**ICO**") on this subject matter and to publish such representations on the Inquiry website. Post Office notes that the Inquiry has not indicated in the Minded To Note that it

agrees with BEIS and/or that it shall invite such representations and guidance from the ICO. Post Office agrees with BEIS that it would be appropriate for the Inquiry to seek such representations and guidance from the ICO before reaching a final decision on the Application, given the importance of the issue.

7. The Application is made in relation to 'junior civil servants', which BEIS has defined as being those employees at "Grades 6 and 7, Senior Executive Officer ("SEO"), Higher Executive Officer ("HEO"), Executive Officer ("EO") or Administrative Officer/Assistant levels". That is a distinction that has been recognised in principle in decisions relating to the Freedom of Information Act and data protection rights, in particular (as set out at paragraph 14 of the Application), in *Cox v Information Commissioner and Home Office* [2018] UKUT 119 (AAC) in which the public interest in disclosure of junior civil servants' names was considered. The Upper Tribunal held that there is no general presumption in favour of disclosure of officials' names, for reasons set out at paragraphs 16-19 of BEIS' submissions.
8. So far as Post Office is concerned, it acknowledges that its structures are more complicated than those of BEIS and seniority within Post Office is not capable of being demarcated along the lines of "Grade" or equivalent. Nonetheless, Post Office shares BEIS' concerns about disclosure of the names of junior employees who were not decision-makers and whose identity may well be irrelevant to the Inquiry's Terms of Reference (referred to, for convenience, simply as "junior employees").
9. Post Office's concerns around the disclosure of the names of junior employees are supported by the fact that personnel at Post Office have already received communications containing threats and abusive/harassing language. As a consequence of these communications, Post Office has a real concern that disclosure of the names of junior employees, who may not have any involvement in the issues being considered by the Inquiry and whose identity is irrelevant to the Inquiry's Terms of Reference, would lead to an increase in such conduct.
10. Post Office notes the distinction drawn at paragraph 14 of the Minded To Note between disclosure to other Core Participants and to the world at large, having regard to the fact that all Core Participants have signed confidentiality undertakings. Post Office does not seek to diminish the importance of such undertakings, although it would simply note that there have been several occasions on which there have been breaches of confidentiality in the context of the civil and criminal proceedings in the last few years. Nevertheless, in all the circumstances, subject to the ICO not objecting to the Inquiry's approach, Post Office is content for the time being for documents disclosed by it to the Inquiry to be shared with Core Participants without redactions, subject to the restriction on use provided by the confidentiality undertakings.
11. However, in relation to documents that may subsequently be referred to in a hearing or otherwise made publicly available, Post Office's position is that it will be imperative that it should be provided with sufficient prior notice of any such publication to the world at large to enable it and/or any of the individuals named in such documents to consider whether they should (and subsequently make the necessary

application to) object, seek redactions, or restriction orders as necessary. These steps may also require future input from the ICO.

12. Post Office has made these submission to be transparent with the Inquiry and raise these sensitive data issues as early as possible so that it might be able to assist and help the Inquiry in resolving them as proactively, pragmatically, fairly and efficiently as possible.

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Blackstone Chambers

5 July 2022