



LETTER TO BRANCHES

@CWUNews The Communications Union www.cwu.org

No. 234/2019

12th April 2019

Dear Colleagues

POST OFFICE: HORIZON TRIAL – BATES & OTHERS VS POST OFFICE LTD

Background

Branches may be aware of a Group Litigation Action against the Post Office by 557 Postmasters who have been sacked, financially ruined and in some cases imprisoned for what they believe are errors with the Horizon computer system. The Post Office contends there is nothing wrong with the system and that the shortfalls in balancing were caused by and the fault of the Postmaster.

This matter goes back over a period of over 10 years and has finally been brought to trial after the Justice for SubPostmasters Alliance (JFSA) spent many years campaigning for justice. In January 2016 Alan Bates from the JFSA secured the financial funding (through Therium Group, a specialist litigation funder) to take the Post Office to the High Court. Litigation specialists such as Therium cover the costs of a case in return for a proportion of any damages awarded. There will be four trials on this issue in total taking place over a period of around 15 months from November 2018 to Spring 2020.

The Common Issues Trial – Judge Rules Against the Post Office

The "Common Issues" trial (the first of the four trials) concerning the legal construction of the contract between the Post Office and Postmasters took place last November/December. On 15th March 2019, the Honourable Mr Justice Fraser in ruling **in favour of the claimants** stated that the Post Office showed "*oppressive behaviour*" in response to claimants dismissed for accounting errors they blamed on the Horizon system.

The judge also heavily criticised the Post Office's unhealthy relationship with the National Federation of SubPostmasters (NFSP), the representative body recognised by the Post Office (the NFSP is a Trade Association rather than a Trade Union). The judge noted:

"... in my judgment... the NFSP is not remotely independent of the Post Office, nor does it appear to put its members' interests above its own separate commercial interests...The Post Office effectively controls the NFSP"

It was very revealing that the judge also questioned the legitimacy and probity of and the reasons for the financial arrangement agreed between the Post Office and the NFSP:

"...the NFSP put its own members' interests well below its own, and I also find that the NFSP is not fully independent."

The judge also questioned the attitude of the Post Office in the way it conducted itself throughout the trial. Additionally, he also heavily criticised two of the Post Office's main witnesses. In particular he stated the following:

"The Post Office has appeared determined to make this litigation, and therefore resolution of this intractable dispute, as difficult and expensive as it can."

"There are two specific matters in which I find that she did not give me frank evidence, and sought to obfuscate matters, and mislead me."

Post Office Application for Recusal of the Judge - Mr Justice Fraser

Following the Judge's ruling against the Post Office and in favour of the claimants, on 21st March, the Post Office made an application for the sitting Judge to be recused (remove himself from the trial) which would have meant trial two (which began on 11th March) starting afresh with a new judge, which in turn would create further delays to the entire legal process. The Post Office cited "*apparent bias*" as the reason for the request for recusal.

The recusal hearing took place on 3rd April and the 77 page judgment was handed down on 9th April. Mr Justice Fraser, the Judge presiding over the Horizon court case made the decision **NOT** to recuse himself from the second trial and indeed the third and fourth trials. The Post Office's QC asked the Judge for permission to appeal which was not granted. Therefore the Post Office has subsequently gone directly to the Court of Appeal to ask for permission to appeal.

If the Post Office is not successful in their appeal application, the costs are likely to be substantial, especially as they hired a "super QC" in their attempts to get the judge to recuse himself. This is a further set-back for the Post Office. If they continue to seek leave to appeal it would indicate significant desperation. However, tactically in our view they are trying to elongate the legal process and in turn increase costs for the claimants with the aim of making it prohibitive.

Parliamentary Briefing

A parliamentary briefing has been prepared in conjunction with the General Secretary's Department and is being sent to all MPs to bring this matter to their urgent attention.

The briefing paper (attached to this LTB for your information) notes that the CWU is recommending to MPs the following:

- **An investigation should be made into the appropriateness of using a Public Authority Grant to fund the NFSP.**

- **The Government must publish where the money is coming from to fund the POL legal costs and how potential liabilities, that could total hundreds of millions, will be met.**
- **POL's right to prosecute without CPS scrutiny needs to be assessed with a view to revocation, and the POL Chair's conflict of interest needs to be determined and acted upon as appropriate.**
- **An overhaul of POL governance is needed and a review of whether the Government has fully exercised its oversight functions, or whether those powers need to be significantly strengthened.**

Further Details on the Horizon Trials

Finally, a useful website has been set up by the journalist Nick Wallis who has been following the case closely and he provides a concise and clear summary of the events so far. The link to the website is as follows (note parts of the website are free and some sections you have to subscribe to):

<https://www.postofficetrial.com/2018/07/about-me.html>

Further developments will be reported.

Yours sincerely

Andy Furey
Assistant Secretary



Attachment 1 - Post
Office trial- the Horiz