

Witness Name: Benjamin Andrew Foat
Statement No.: 0200
Dated: 21 June 2023

THE POST OFFICE HORIZON IT INQUIRY

Second Witness Statement of Benjamin Andrew Foat on behalf of Post Office Limited in the Post Office Horizon IT Inquiry

1. I, Benjamin Andrew Foat, of 100 Wood Street, London EC2V 7AN, say as follows:

Introduction

2. The facts in this witness statement are true, complete and accurate to the best of my knowledge and belief. Where I refer to my beliefs, these beliefs, and my knowledge contained within this statement, are informed by Herbert Smith Freehills LLP ("**HSF**") and Peters & Peters Solicitors LLP ("**P&P**"), who are both instructed by Post Office Limited ("**POL**"), and colleagues at POL, including in particular POL's Central Investigations Unit ("**CIU**"). I have been assisted in preparing this witness statement by P&P and HSF, who act on behalf of POL in the Post Office Horizon IT Inquiry (the "**Inquiry**").
3. This witness statement has been prepared in response to a request made by the Inquiry pursuant to Rule 9 of the Inquiry Rules 2006, dated 5 June 2022 (the "**Rule 9 Request**") ("**Request No. 44**").
4. Where I refer to specific documents in this statement, copies of those documents are exhibited to this statement (as set out in the index below).

5. I am POL's Group General Counsel. This is my Second Witness Statement to the Inquiry.¹ I am the appropriate person to give this witness statement on behalf of POL, particularly in the light of the fact that:

- a. I made the First, Second, Third and Fourth Interim Disclosure Statements (to which I refer in this statement), and as explained in the above Interim Disclosure Statements, I am ultimately responsible for instructing HSF and P&P in respect of POL's response to each of the requests made to POL by the Inquiry under Rule 9 Requests (or under Section 21 of the Inquiries Act 2005, as the case may be), based on the instructions that I and POL's in-house lawyers, under the supervision of POL's Inquiry Director, receive from our colleagues in the business and ultimately the POL Inquiry executive steering committee and Board; and
- b. POL's CIU is responsible for conducting the internal investigation that I refer to in this statement, and CIU ultimately reports to me in my role as Group General Counsel.

Background to the documents that are subject of Request No. 44

6. On 10 April 2023, POL received the following request for information pursuant to the Freedom of Information Act 2000 from Eleanor Shaikh (FOI2023/00205):²

Please can you disclose documents which detail the Quality and Compliance Assurance processes for Investigations which were implemented by the Post Office Security Team 2008-2011. Please

¹ The First Foat Statement was prepared in response to a Notice dated 16 March 2023 issued by the Inquiry pursuant to Section 21 of the Inquiries Act 2005.

² https://www.whatdotheyknow.com/request/post_office_investigations_compl#incoming-2308208

include reports which evidence any improvement in the quality and professionalism of investigation standards eg Investigations Standards Audits.

7. As part of the process for considering FOI2023/00205, POL identified eight documents, including the documents referred to in paragraphs 1 and 3 of Request No. 44. These documents were previously used by POL's security and investigation team ("**Security Team**") in investigations and the assessment of compliance with case file standards. These eight documents were disclosed in response to FOI2023/00205 on 19 May 2023.
8. On 27 May 2023, POL issued the following public statement:³

Post Office does not tolerate racism in any shape or form. The language used in this historic document is completely abhorrent and condemned by today's Post Office. We fully support investigations into Post Office's past wrong doings and believe the Horizon IT Inquiry will help ensure today's Post Office has the confidence of its Postmasters and the communities it supports.

9. On 30 May 2023, POL produced to the Inquiry the eight documents that were disclosed in response to FOI2023/00205 (together with two other documents in the same document family, namely a cover email and excel spreadsheet which were identified by P&P following the disclosure by POL in response to FOI2023/00205) to the Inquiry pursuant to Rule 9 Request No. 14 dated 15 June 2022 ("**Production 164**").

³ <https://corporate.postoffice.co.uk/en/media-centre#/news/post-office-statement-release-of-historical-document-via-recent-freedom-of-information-request-467497>

10. Production 164 included a document with file name "Appendix 6 – Identification Codes" and production number POL-0115834 [Inquiry URN POL00115674] (which is referred to in paragraph 3 of Request No. 44) (together with earlier versions of the same document, "**Appendix 6**") which contained seven identity codes that described racial origins. Appendix 6 contained racially offensive and outdated terminology.

Request for information on productions

11. The first three paragraphs of Request No. 44 request information about POL's previous productions in response to Rule 9 Requests. These are addressed in turn in this section. The information in this section has been provided to me by HSF and P&P who were involved in the relevant productions to the Inquiry.

The Rule 9 No. 11 and Rule 9 No. 14 productions

12. Paragraph 1 of Request No. 44 requests the following information:
 1. *Please explain why the version of the Guide to the Preparation and Layout of Investigation Case Files apparently dated from 2008 (disclosed under FOIA 2023 0025 and reported in the Times on 27 May 2023) wasn't disclosed under Rule 9(11) or Rule 9(14) until 30 May 2023?*
13. I have assumed that question 1 of Request No. 44 seeks clarification in respect of the entire suite of eight documents disclosed under FOIA 2023/0025 and produced to the Inquiry in Production 164.
14. I am informed by HSF and P&P that copies of two of the eight responsive documents in Production 164 were previously disclosed to the Inquiry:

- a. Appendix 3 is a guide to the preparation of suspect offender reports. A copy was disclosed to the Inquiry on 14 April 2022 with the document reference: POL-0027763 [Inquiry URN POL00038452], and a near final version of it was disclosed to the Inquiry on 22 August 2022 with the document reference: POL-0080841 [Inquiry URN POL00105216]; and
 - b. Appendix 7 is a circular advising Security Team managers on changes in the requirements for summarising taped recorded interviews. A copy was disclosed to the Inquiry on 2 December 2022 with the document reference: POL-0094323 [Inquiry URN POL00094200].
15. I explain in the following paragraphs, based on the information provided to me by HSF and P&P, why the other six documents disclosed under FOIA 2023/0025 were not disclosed under Rule 9 No. 11 or Rule 9 No. 14 until 30 May 2023. In doing so, I also explain why versions of Appendix 3 and Appendix 7 were disclosed, but the other appendices (that appear to belong to the same suite of documents) were not disclosed.
16. Requests No. 11 and No. 14 sought POL policy and procedure documents relating to POL's conduct of criminal investigations and prosecutions. To identify such documents, P&P and HSF ran search terms across a Relativity database which I will refer to as the CCRC database. Those searches were designed to identify responsive documents in a database that contains millions of documents. The CCRC database is hosted on Relativity by POL's eDiscovery provider, KPMG, together with other databases that hold POL documents. The CCRC database contains materials collated for the purposes of the criminal appeals. Searches were and are run across this database for the purposes of disclosure in accordance with POL's post-conviction disclosure

obligations, to conduct document reviews, and to identify and produce documents to the Inquiry (amongst other purposes).

17. POL-0027763 [Inquiry URN POL00038452] (Appendix 3) was responsive to the search terms run by HSF across the CCRC database for the purpose of Request No. 11. The other appendices were not produced for the following reasons:

- a. Copies of Appendices 1, 2, 4 and 5 (disclosed in response to FOIA 2023/0025) belonged to the same "family of documents" as POL-0027763 [Inquiry URN POL00038452] (i.e., appendices 1 to 5 were all contained in a zip, along with other documents, that was attached to an email dated 7 March 2013 that was sent by a POL Security Team manager). Although they belonged to the same "family of documents", Appendices 1, 2, 4 and 5 were not produced at the same time as POL-0027763 [Inquiry URN POL00038452] because they were not responsive to the search terms and so they were not reviewed for the purpose of responding to Request No. 11; and
- b. Appendices 6, 7 and 8 were not responsive to the search terms and were not within the "family of documents" and it was not apparent at the time that they belonged to the suite of documents.

18. POL-0080841 [Inquiry URN POL00105216] (an earlier near final version of Appendix 3) was responsive to the search terms run for P&P across the CCRC database. None of the other documents disclosed in response to FOIA 2023/0025 were responsive to these search terms. POL-0080841 [Inquiry URN POL00105216] was a standalone version of the document and did not have

any family documents. Copies of Appendix 3 exist in duplicate, and near duplicate form in the CCRC database. Unlike POL-0080841 [Inquiry URN POL00105216], some of those duplicate versions of Appendix 3 have family documents (including the other appendices disclosed in response to FOIA 2023/0025). The duplicate versions of Appendix 3 were tagged as “Duplicate” by POL's eDiscovery provider, KPMG, and so they were considered unnecessary to review.

19. POL-0094323 [Inquiry URN POL00094200] (Appendix 7) was identified as a standalone document through a review of hardcopy materials and it was not apprehended at that time that it belonged to a suite of documents.

Documents previously produced to the Inquiry

20. Paragraph 2 of Request No. 44 requests the following information:

2. *Please explain the following in detail.*

- (i) *whether the identification codes contained in the version that was disclosed under FOIA 20230025 were contained in a full version of the documents disclosed as POL-0080434 [Inquiry URN POL00104794], POL-0027763 and POL-0080841 [Inquiry URN POL00105216]; and*

- (ii) *If they were, why they were not included in the disclosure.*

21. I have assumed that question 2 of Request No. 44 seeks clarification as to whether POL-0080434 [Inquiry URN POL00104794], POL-0027763 [Inquiry URN POL00038452], and/or POL-0080841 [Inquiry URN POL00105216] formed part of a suite of documents that included Appendix 6.

22. I am informed by HSF and P&P of the following:

- a. POL-0027763 [Inquiry URN POL00038452] and POL-0080841 [Inquiry URN POL00105216] (versions of Appendix 3) each contain a reference to "Identification Code" on page 5 but do not set out the identification codes referred to in Appendix 6. The circumstances by which these documents were reviewed and produced to the Inquiry is set out in my response to question one above. Although there were duplicate versions of Appendix 3 that included Appendix 6 as a family document, Appendix 6 is not a family document of either POL-0027763 [Inquiry URN POL00038452] or POL-0080841 [Inquiry URN POL00105216], and it was not apprehended at the time that these documents were produced that they might form part of a suite of documents that included Appendix 6. This was only later apprehended and led to the response to FOIA 20230025 and Production 164; and
- b. POL-0080434 [Inquiry URN POL00104794] does not contain any reference to identification codes and does not have any family documents. It therefore does not appear to form part of a suite of documents that includes Appendix 6.

The production of Appendix 6 to the Inquiry

23. Paragraph 3 of Request No. 44 requests the following information:
 3. *Why was POL-0115834 provided to the Inquiry for the first time on 30 May 2023 and why was no explanation provided for its late production?*
24. With reference to paragraphs 16 to 19 above, the reasons why Appendix 6 was not identified and disclosed to the Inquiry at an earlier point in time is because

Appendix 6 was not responsive to the search terms applied by HSF and P&P to the CCRC database. In addition, I note that Appendix 6 was not a family document of POL-0027763 [Inquiry URN POL00038452], POL-0080841 [Inquiry URN POL00105216] or POL-0094323 [Inquiry URN POL00094200] which were disclosed to the Inquiry.

25. HSF provided to the Inquiry a cover letter with the 30 May 2023 production. I am informed by HSF that this letter did not contain the explanation that is set out above because, as at 30 May 2023, the reasons why these documents had not been previously identified and disclosed were still being investigated, and it was considered preferable to produce the documents without any further delay. No discourtesy was intended in disclosing the documents without any explanation as to why they had not been disclosed any earlier.

POL's fact-finding investigation into Appendix 6 and related issues

The Inquiry's requests relating to Appendix 6 and related issues

26. Paragraphs 4 and 5 of Request No. 44 request the following information:
4. *Please set out, in detail, the product of POL's investigation into the origins of the identification codes contained within that document. This should include, but not be limited to, the following insofar as it is possible to ascertain the information:*
 - (i) *when and why the term "N* Types" first appeared in any guidance documents;*
 - (ii) *who was responsible for its inclusion; and*
 - (iii) *when the term was removed, why and who was involved in its removal.*

5. *If and insofar as the Post Office are aware of any similar language being used in guidance, policy or equivalent documents relevant to the Inquiry's terms of reference, to provide further detail.*

The establishment of Project May

27. Following the identification of Appendix 6 as part of responding to FOI2023/00205, and in recognition of the very serious nature of the content and the issues arising from the document, POL took steps to set up a fact-finding investigation to look into the key concerns arising from the document and the racially offensive terms contained in it. The fact-find was commissioned on 30 May 2023 and is referred to as Project May. POL has instructed external counsel, Jeremy Scott-Joynt of Outer Temple Chambers, to assist and advise on, and oversee, Project May.
28. The CIU is responsible for conducting sensitive or complex internal investigations within POL and it has been tasked with the conduct of Project May. The information about Project May set out in this statement has been provided to me by CIU, including John Bartlett, the Head of CIU, and other members of his team.
29. A group has been established that is made up of representatives from various teams within POL to ensure Project May and all related action is coordinated. POL is in the process of formalising an arrangement with a non-profit organisation, ETICA Global, to act as an independent monitor to Project May.
30. I set out in this section of my statement:
 - a. Project May's current terms of reference;

- b. A summary of the investigative steps Project May has already taken as at the date of the deadline for responding to Request No. 44 (i.e., 13 June 2023) and its preliminary findings; and
 - c. The further investigative steps that are in train.
31. Project May remains ongoing. It is due to report its first set of findings by 23 June 2023. The preliminary findings set out in my statement are based on the information that has been gathered to date. They are therefore subject to the further investigative steps that are in train and may be subject to revision/change.

Project May's terms of reference

32. The period under examination in Project May currently starts from 2012 when POL was established as a separate entity from the Royal Mail Group ("**RMG**") through to the present. It may be necessary to look back before 2012 and, in this regard, to liaise with RMG as appropriate.
33. In relation to Appendix 6, Project May's terms of reference are:
- a. To determine how Appendix 6 came to be created and/or how this description of identification codes was present in POL's document library;
 - b. To determine when and why the term "N* Types" first appeared in any guidance documents, who was responsible for its inclusion, and when the term was removed, why and who was involved in its removal;
 - c. To determine if the descriptors used in the document originated from the Home Office or other department of State and if so when they were in use in public services; and

- d. To understand, if the descriptors were once provided by the State, why changes in the language used by external public sector investigators during the relevant period to describe racial identification codes were not reflected in POL's investigation team document library.
34. In relation to the use of identity codes (such as those contained in Appendix 6), Project May's terms of reference are:
- a. To determine whether any similar language is being, or has been, used in guidance, policy or equivalent documents relevant to the terms of reference of the Post Office Horizon IT Inquiry;
 - b. To establish a time period during which identity codes were present and/or used from the establishment of POL in 2012 to date;
 - c. To establish whether the identity codes were actively used on POL investigation or prosecution documentation and to what purpose;
 - d. To identify the rationale for using identity codes if they were used;
 - e. To identify any legislative purpose or requirements for the use of identification codes e.g., under Section 95 Criminal Justice Act 1991;
 - f. To establish whether there were any additional investigative or prosecution documents used by POL during the relevant time that contained race identification codes; and
 - g. To establish what training on the use of identification codes was provided to POL investigation and prosecution staff.
35. Depending on the findings of the investigation, the terms of reference may be amended/expanded as appropriate, and the timeframe for reporting findings will

be updated accordingly. In formulating the terms of reference set out above, the CIU has had specific regard to paragraphs 4 and 5 of Request No. 44 to ensure that these requests fall within scope.

Investigative steps and preliminary findings

36. Initial investigative meetings with current POL employees who were former Security Team members suggest that RMG possessed a version of Appendix 6 prior to the formation of POL. Following separation from RMG, it is believed that RMG transferred investigation documents to the newly established POL Security Team for use in investigations and the assessment of compliance with case file standards by the Security Team members.
37. The review of emails to date (see below at paragraph 44) tends to corroborate the hypothesis that Appendix 6 was (along with seven other documents) imported from RMG and then disseminated to members of the investigation compliance team. However, this is not yet clear and is still being tested. Of the eight documents in question, seven were rebranded as POL documents, while Appendix 6 remained as a plain Word document.
38. Unlike most POL forms, Appendix 6 does not contain reference to the version of the document that was used which can usually be found at the bottom of each page for forms in use at the time.
39. Several of the other descriptors used in Appendix 6 were also outdated, even archaic, as at 2012 e.g., "Siamese" instead of "Thai". This tends to indicate that the content of Appendix 6 is archaic in nature.
40. Email searches have so far identified 23 occasions on which Appendix 6 was sent as an attachment within the Security Team between 2012 and May 2019.

41. Appendix 6 was never formally updated or replaced. Appendix 6 was stored in the Security Team archive on SharePoint.
42. Open-source searches reveal that identification codes used by law enforcement may have historically contained the derogatory/offensive term "n****d" but modern-day identification codes use non-offensive wording and contain additional detail. Enquiries with the College of Policing and three police forces have thus far failed to identify the terminology that was used to describe identification codes between 2008 and 2011. Identification codes are used by law enforcement agencies, amongst other things, to create and conduct Police National Computer record checks. To support these aims, all law enforcement and prosecuting authorities provide an identification code with investigative and prosecuting papers. I am informed by CIU that, as a prosecuting authority, it is possible that POL was required to provide identification codes for persons charged and summoned to the Magistrates Court so as to enable the entry of data relating to these persons into the Police National Computer.
43. Whilst the fact-finding carried out to date has confirmed that numerical identification codes appear in case files, there is currently no evidence that suggests that Appendix 6 itself or the language therein was in fact used by POL. Initial investigative meetings with current POL employees who were former Security Team members (yet to be independently corroborated) indicate that Security Team members were advised as to applicable identification codes by Security Team colleagues, that Security Team members built up knowledge as to the applicability of the numerical codes, and when in doubt about what ethnicity a given numeric code referred to, carried out searches on the internet.

44. An examination of emails obtained from the historic Security Team's archive has been carried out. The following documents have been identified and are exhibited to this statement:

- a. An email dated 23 May 2011⁴ from Dave Posnett (Security Team) to the Security Team attached a zip file of Appendices (including Appendix 6) which were being re-branded from RMG to POL to be used in the assessment or compiling of Security Team investigation case files (the "**Case File Appendices**"). An initial examination of this version of Appendix 6, which as noted above in paragraph 37, was an unbranded word document rather than a form, suggests it was created in 2003 and "modified" in 2011. It is not yet clear what (if any) modification was made. The other Case File Appendices were forms to be used in assessing or compiling case files.
- b. An email dated 31 August 2011 from Andrew Wise (Security Team) forwarding the Case File Appendices to Michael Stanway (Security Team).⁵
- c. An email dated 30 October 2012 from Andrew Wise sending the Case File Appendices to Security Team members.⁶ The email indicates that the Security Team members were to use the Case File Appendices, including presumably Appendix 6, in the preparation of their case files.

⁴ I am informed by CIU that a native version of this email has not so far been collected, but an email which forwarded this email (which is referred to in paragraph 44.b) has been identified and is exhibited to this statement.

⁵ URN: POL00118096

⁶ URN: POL00118110

- d. An email dated 28 July 2016 from Andrew Wise to Helen Dickinson (Security Team) attached 4 investigation standards documents and Appendix 6.⁷ The metadata of this version of Appendix 6 suggests it was amended in 2013.
- e. An email dated 23 May 2019 from Helen Dickinson to Andrew Wise attached a zip file of 14 documents which included investigation standards documents and training material, including Appendix 6.⁸ The email indicates that these documents had been, or were to be, shared with Womble Bond Dickinson (UK) LLP ("**WBD**"), POL's then external legal advisors, possibly for the purpose of conducting a review of the Security Team's investigation documentation.

Further investigative steps in train

- 45. The following further investigative steps are in train as part of Project May:
 - a. The collection and review of documents including (but not limited to) emails and other material held by the Security Team on their SharePoint site.
 - b. Enquiries with the College of Policing and three police forces are ongoing to understand the descriptors that were used across time.
 - c. Further investigative meetings will be held with current POL employees, including those who were former Security Team members, as necessary.

⁷ URN: POL00118129

⁸ URN: POL00118137

- d. Contact will be made with former POL employees.
 - e. Engagement with RMG in order to ascertain the use of identity codes within RMG, and in particular to seek to establish any knowledge and use of the derogatory term "*n*****d*" – I have been informed by CIU that RMG is conducting searches of its systems for this and the other offensive terms contained in Appendix 6 with a view to understanding if they were used within RMG.
 - f. An external, forensic examination of available metadata of Appendix 6. External counsel will manage this process using an appropriately accredited/experienced digital forensic expert.
 - g. With reference to paragraph 44.e, engagement with WBD in relation to the exercise it undertook and whether it identified and reported Appendix 6 as part of that exercise or otherwise.
46. POL is treating this matter with the utmost seriousness and importance. POL will of course provide an update to the Inquiry on the findings of Project May at appropriate stages throughout the investigation, and at its conclusion.

Other work being undertaken

47. POL intends to instruct an external ethics organisation to use historic prosecution and charge data to assist in considering whether the use of identity codes may have influenced charging or disposal decisions.
48. Separately, in the context of their work for POL on the Inquiry, HSF and P&P have been instructed by POL's Inquiry team to undertake searches across the documents and materials they have collected as part of their work in relation to the Inquiry and the criminal appeals process. It is POL's intention to offer to

produce any documents that are identified to the Inquiry and also to share them with CIU.

POL's approach to Diversity, Equality, and Inclusion ("DE&I") today

49. POL takes DE&I very seriously. I am aware (including from information provided to me by POL colleagues) that DE&I is embedded into POL's organisation and is reflected in:

- a. POL's management structure, where the role of Diversity and Inclusion Manager has existed since at least 2017;
- b. POL's policies, including POL's current Equality, Diversity and Inclusion Policy, which became effective from 19 November 2018, and POL's current Dignity at Work Policy which became effective from 1 October 2018. Since the end of 2022, POL has had an Inclusion Playbook for people managers which was accompanied by inclusion training open to all employees. POL also recently made changes to its Code of Business Conduct and reaffirmed its commitment to DE&I – this makes clear that *"Post Office does not tolerate harassment based on the grounds of race, ethnic or national origin"*; and
- c. POL's culture, not least through POL's current COMPLEXIONS group (first established in 2018 under the name POEM), which champions and advocates DE&I throughout our organisation. POL has also run various training sessions, including unconscious bias and diversity training (particularly in the area of recruitment) and awareness training workshops called 'Let's Talk About Race'.

50. It is in that context that I firmly reiterate POL's public statement referred to in paragraph 8. POL is actively considering, as a matter of urgency, what further steps need to be taken to address the issues and concerns arising from this matter.

Statement of truth

I believe the content of this statement to be true.

Benjamin Andrew Foat

Signed: 

Dated: 21 June 2023

Index to the Second Witness Statement of Benjamin Andrew Foat

No.	URN	Document Description	Control Number
1.	POL00115674	Appendix 6 – Identification Codes	POL-0115834
2.	POL00038452	Appendix 3 – Guide to the Preparation and Layout of Investigation Red Label Case Files – Offender reports & Discipline reports	POL-0027763
3.	POL00105216	Draft version of Appendix 3 – Guide to the Preparation and Layout of Investigation Red Label Case Files – Offender reports & Discipline reports	POL-0080841
4.	POL00094200	Circular advising Security Team managers on changes in the requirements for summarising taped recorded interviews	POL-0094323
5.	POL00104794	Guide to the Preparation and Layout of Investigation Case Files	POL-0080434
6.	POL00118096	Email dated 31 August 2011 from Andrew Wise to Michael Stanway forwarding the Case File Appendices	VIS00012685
7.	POL00118110	Email dated 30 October 2012 from Andrew Wise to Security Team members attaching the Case File Appendices	VIS00012699
8.	POL00118129	Email dated 28 July 2016 from Andrew Wise to Helen Dickinson attaching the Security Operations Team Compliance documents	VIS00012718

9.	POL00118137	Email dated 23 May 2019 from Helen Dickinson to Andrew Wise attaching investigation standards documents and training materials	VIS00012726
----	-------------	--	-------------

Witness Name: Benjamin Andrew Foat
Statement No.: 0200
Dated: 21 June 2023

**THE POST OFFICE
HORIZON IT INQUIRY**

**SECOND WITNESS STATEMENT OF
BENJAMIN ANDREW FOAT**

Herbert Smith Freehills LLP
Exchange House
Primrose Street
London
EC2A 2EG
Ref: 2066/31048180