

Witness Name: Benjamin Andrew Foat
Statement No: WITN09980300
Dated: 22 August 2023

THE POST OFFICE HORIZON IT INQUIRY

THIRD WITNESS STATEMENT OF BENJAMIN ANDREW FOAT

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

Introduction

1. I have been employed by Post Office Limited ("**POL**") as its Group General Counsel ("**GC**") since 1 May 2019.
2. This witness statement has been prepared in response to a request made by the Post Office Horizon IT Inquiry ("**the Inquiry**") pursuant to Rule 9 of the Inquiry Rules 2006, dated 31 July 2023 ("**the Request**").
3. The facts in this witness statement are true, complete and accurate to the best of my knowledge and belief. It should be noted that given my role as GC a substantial component of knowledge and the information that I have about these matters has been provided to me by others (either colleagues at POL or POL's external lawyers).
4. I have been assisted in preparing this witness statement by the Burges Salmon Fieldfisher team who are instructed on behalf of POL in relation to the Inquiry. Farrer & Co, who act for me in a personal capacity, have also had input into the preparation of the statement.

5. I have previously given two corporate witness statements about disclosure to the Inquiry on 23 March 2023 and 21 June 2023 and four interim disclosure statements (dated 27 May 2022, 18 October 2022, 30 November 2022, and 12 January 2023). I attended a hearing about disclosure at the Inquiry as a corporate witness on 4 July 2023.

6. The Request identifies the following points to be addressed:

“1. Please explain the events which led to the three disclosure issues that have been identified, explaining in detail all relevant decisions and communications that led to the errors, and identifying those involved.

2. Please set out:

a. When the errors were discovered, by whom and in what circumstances.

b. Where you consider responsibility for the errors lies.

c. What steps have been taken since to remediate the errors.

3. Please explain the systems and processes in place to ensure the disclosure will be provided and to avoid future issues of a similar nature.”

7. Following the evidence session on 4 July 2023, Sir Wyn Williams made directions dated 6 July 2023 in relation to late disclosure from POL. At paragraph 5 of those directions, Sir Wyn noted the three issues which are understood to have resulted in POL's failure to disclose the 'Identification Codes' document to the Inquiry prior to 30 May 2023, namely:

(a) search terms;

(b) family documents; and

(c) de-duplication.

8. Where the Request refers to *"the three disclosure issues that have been identified"*, I understand these refer to the three issues identified in the 6 July 2023 Directions.
9. In my capacity as GC, my role involves me providing advice to the Board, its Group Executive ("**GE**") and POL generally about matters relating to the Inquiry. POL has previously waived legal privilege for the purposes of this Inquiry in the terms set out in its Note of 15 November 2021, but that waiver does not extend beyond February 2020, so I am unable to disclose certain information or the specific advice I have given.

Background

10. As GC, I am responsible for supporting POL to manage its legal and regulatory obligations through the legal, compliance and company secretary teams (though I am not the Company Secretary) and, more recently, the assurance team. Specifically, my role is to support and facilitate the business to manage and comply with its legal and regulatory obligations through (second line of defence) operational processes, the drafting of legal instruments and the provision of legal and regulatory advice. In addition to those duties, I am the Chairman of First Rate Exchange Services Limited, which is joint venture travel currency business between the Post Office and the Bank of Ireland.
11. When the Inquiry was established on a non-statutory basis, Declan Salter was Director of the Historical Matters Unit ("**HMU**") (now known as the

Remediation Unit), which at that time was responsible for delivering compensation under the Historic Shortfall Scheme and to Postmasters whose convictions are overturned as well as delivering POL's support to the Inquiry. Declan Salter had decision-making authority, and dual reporting lines into POL's CEO and the Chairman of its Board. The purpose of this was to separate the compensation and Inquiry from the Business Areas Units ("**BAU**") part of Post Office.

12. In accordance with the terms of s.15 Inquiries Act, the Government gave notice to convert the Inquiry into a statutory inquiry under the Inquiries Act 2005 on 1 June 2021.
13. After Declan Salter left POL in July 2021 the Board decided to separate the functions previously undertaken by the HMU into what is now known as the Remediation Unit and, separately, the Public Inquiry Team. New directors were then appointed for each programme and were authorised to make day to day operational decisions by virtue of their appointments with some matters reserved to the GE and the Board. Fintan Canavan was appointed as Director of the Public Inquiry Team in October 2021. In December 2022, Diane Wills was appointed to lead the Public Inquiry Team with effect from January 2023. Simon Recaldin was appointed as Historical Matters Director from 10 January 2022. I was the GE sponsor of the Inquiry programme from September 2021 until June 2023. This role was to be the executive representative of the programme reporting to the CEO and the GE and to provide line management of Fintan Canavan and Diane Wills. This was always a temporary role.

14. In or around mid-June 2021, I took on a caretaker role until the appointment of the Inquiry Director but material decision making remained with GE Inquiry Steering Committee (known as SteerCo or ISC) and Board. As part of a review of the Inquiry programme recommendations were made including:
 - 14.1 Formal acknowledgement that disclosure needed to be on time and in accordance with Inquiry protocols (being part of POL's success criteria for the programme);
 - 14.2 Strengthening of governance with terms of reference and delegation authority between board, GE, SteerCo, and the Inquiry programme team;
 - 14.3 Approval of an Inquiry Director to take decisions and Chair the SteerCo;
 - 14.4 Additional FTE approved including appointment of Head of Legal and additional legal roles as well as other operational roles; and
 - 14.5 Workstreams would include document management, information requests, and legal workstreams.
15. The approach to disclosure at that time required POL to ensure that all relevant documents be provided without delay and that providers of documents conduct comprehensive, thorough and rigorous searches in response to a request for documents.
16. It was anticipated that POL would receive more document requests from the Inquiry once it had finalised the Provisional List of Issues. Herbert Smith

Freehills ("HSF") and POL undertook an exercise to identify the 'document universe' of repositories and types of documents that POL holds that may be responsive to the Inquiry's areas of interest. I understand that regular weekly calls on the disclosure workstream (also known internally as 'information requests' and Rule 9 requests) were commenced and attended by HSF, POL Legal, and POL's disclosure and data protection team, KPMG and other parties. There was also a separate document management workstream, with a data workstream lead.

17. Under Fintan Canavan's leadership, the Inquiry Team expanded further and refined operational processes. This included having a process for the management of Rule 9 requests. At Annexure 1 of this statement [WITN09980302] I include a diagram titled 'Inquiry High-Level Process Flow (v5 2023)', which depicts an overview of the current workflow process. However, it is important to note that the process has evolved over time and will continue to evolve. Given his previous role as Director of the Public Inquiry Team, I anticipate Fintan Canavan will be better placed to talk to the details of those matters. An Inquiry Operations Director also commenced in role in October 2022.
18. SteerCo is a GE Subcommittee, previously chaired by Fintan Canavan now chaired by Diane Wills, and comprises multiple GE members myself included (although I do not have voting rights). This committee is authorised to make certain types of decisions, such as approving plans for each phase of the Inquiry and approving recommendations to the Board in respect of matters reserved to the Board. Its terms of reference have been reviewed and

expanded as the Inquiry has progressed. The current version of the terms of reference is appended at Annexure 2 [WITN09980301]. Ultimately, the Board of POL has authority over the most material matters, for example on the question of waiver of legal privilege or change of legal representation, which would be outside the scope of the day-to-day operational decision-making authority of POL Inquiry Director and SteerCo. Delivery of POL's day to day responsibilities for the Inquiry sits with the Public Inquiry Team.

How the errors were discovered (Request 2(a))

19. Throughout my involvement, I have explained the importance of Post Office complying with its legal obligations and that disclosure obligations should be considered mandatory and were important to the success of the Inquiry programme.
20. On 11 May 2023, I received an email from POL's Senior Information Rights Manager, concerning a request made to POL under the Freedom of Information Act 2000 ("**the FOIA request**"). That email explained a request had been made in the following terms: *"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 include reports which evidence any improvement in the quality and professionalism of investigation standards eg Investigations Standards Audits."*
21. That email contained documents that were to be disclosed in response to the request.

22. The email raised that the identification codes contained in document 'Appendix 6 – Identification Codes' ("**Appendix 6**") used what was described as unacceptable language. When I received that email, I replied on the same day copying in the Public Inquiry Team noting that it would be helpful to crosscheck the documents being disclosed in response to the FOIA request against what had been disclosed to the Inquiry.
23. One of the Heads of Legal at POL then emailed HSF to make those enquiries and it was subsequently discovered that those documents had not been disclosed to the Inquiry. I understand those documents were then disclosed to the Inquiry on 30 May 2023.
24. POL (via HSF) received a request pursuant to Rule 9 of the Inquiry Rules 2006, dated 5 June 2023, seeking a witness statement from an appropriate person within POL to provide responses to 5 questions concerning the late production of the documents. In response to that request, I was asked to provide a corporate witness statement, (ultimately the one dated 21 June 2023), which was prepared with the assistance of HSF and counsel.
25. Individuals from POL and HSF briefed me about the technical aspects of the disclosure process and what had happened in respect of the failings to disclose those documents via a series of briefing meetings before the hearing on 4 July, using the information that was known and available to them at that time. This was done to enable me to try to explain the issues to the Inquiry in my capacity as a corporate witness for POL.

26. The preparation of the corporate statement and these briefing sessions was the first point at which I became aware of these three issues. Through being briefed and reviewing the draft witness statement I became clearer on the issues as they were understood at the time, but I should note for completeness that, as the three firms involved in the disclosure process – HSF, Peters & Peters and KPMG – have been carrying out further investigations following the 4 July hearing, more information about the errors has come to light which I understand is being communicated to the Inquiry.
27. More generally, the three disclosure issues are highly technical and detailed. I did my best to understand what the problems were and have continued to ensure I keep up to date with what the external firms consider to be the issues and the steps to remediation.
28. The process of facilitating disclosure to the Inquiry has evidently been complex and, notwithstanding the preparation I undertook before giving evidence, there were still points of technicality and detail during my evidence which I could not fully speak to. Following the hearing, both the GE and Board were given advice and kept up to date on the status of the issues and remediation work.
29. The content of my second witness statement reflected the understanding of those involved in the disclosure process of the issues at that point. To the best of my knowledge, save for the points which have been communicated separately to the Inquiry, that witness statement remains an accurate explanation of the disclosure issues.

The events which led to the three disclosure issues (Request 1)

30. Due to the scale of documentation that may be relevant to this Inquiry, fulfilling POL's obligations to the Inquiry required specialist expertise in the management, identification and disclosure of relevant documents. Accordingly, POL instructed three principal firms of external advisers to facilitate it fulfilling its obligations to the Inquiry, namely: Peters & Peters, KPMG and HSF.
31. Peters & Peters is a law firm with expertise in business crime, investigations and fraud. They have supported in respect of disclosure that relates to the criminal issues.
32. KPMG have been formally instructed by POL since 2021 to provide eDisclosure services on behalf of POL in relation to the Inquiry.
33. I have had no direct involvement with KPMG regarding the work being undertaken by them. Within POL, the Operations & Strategy Director of POL's Public Inquiry Team is responsible for the Public Inquiry Team's relationship with KPMG. I understand updates are provided to Diane Wills on key strategic issues.
34. POL first instructed HSF to act for it in respect of specific tasks relating to the Inquiry on 11 November 2020. On 8 September 2021, following a decision from the Board, POL formally instructed HSF as its appointed legal representative of POL in the Inquiry. HSF is an international law firm which specialises in, amongst other matters, complex litigation and therefore has significant experience of managing large-scale disclosure exercises.

35. The responsibility for liaising with external law firms in relation to Inquiry issues such as Rule 9 disclosure is a matter for the Public Inquiry Team, primarily the Inquiry Director but also POL Inquiry lawyers working under Diane Wills or, when he was in post, Fintan Canavan.
36. In my capacity as GC, I have responsibility for POL's overall legal, compliance and company secretary teams. This necessarily spans a wide range of issues and as such it is neither possible nor appropriate for me to be directly involved in granular issues concerning disclosure.
37. In general, I am not sighted on all of the specific requests that come from the Inquiry and the discussions between the Inquiry team and HSF. I was not involved in either advising or giving approval on the:
- (a) search terms used in order to respond to disclosure request from the Inquiry;
 - (b) approach taken to family documents; or
 - (c) approach to deduplication.
38. In broad terms, my understanding is that (a), (b) and (c) were decided by POL's external advisers. As stated above, I was briefed on the events which led to the disclosure issues following the discovery of the issues. Accordingly, I am able to explain what led to the discovery of the problems namely, the FOIA request, but as to the nature of the problems and how they arose, I am dependent on what I have been told by others. I understand that HSF and KPMG will be in the best position to discuss in granularity the events which led to the three disclosure issues.

Steps take to remediate the errors (Point 2(c))

39. My impression from the updates that I receive, is that everyone directly involved, has taken (and continues to take) all steps they can to get to the bottom of the issues and to remediate the errors. I am not personally involved in remediation work but, upon being informed, have provided support to the GE and Board in my capacity as GC. POL has not waived and does not waive any legal professional privilege in this respect.
40. Following the identification of the disclosure issues, POL has engaged on multiple fronts with HSF, Peters & Peters and KPMG on the disclosure processes that are ongoing and already undertaken, quality assurance and remediation. As part of that continuing process and prior to the Request of the Inquiry, POL requested these advisers to provide initial reports on disclosure aspects including, but not limited to, the three disclosure issues. Reports or draft reports were received which have in part fed into POL's understanding of the current position and ongoing review of wider disclosure matters. HSF and KPMG have been asked to give evidence to the Inquiry directly on the relevant issues. POL does not waive any privilege in respect of the HSF and Peters & Peters reports.
41. I understand meetings between POL's CEO and the respective CEO/Senior Partner of HSF and KPMG have taken place but I was not present at those meetings.
42. After I gave oral evidence on 4 July 2023, I requested regular updates to be provided to track progress on remediation, which remain ongoing, and reporting to GE and Board has been taking place. I have been told, based on

information provided by HSF, that the 'family document issue' is now fully remediated and additional significant work is being undertaken by POL and its advisors to address the other disclosure issues, including reviewing resources, processes and systems. I understand Diane Wills' statement will provide further information on these aspects.

Systems and processes in place to ensure the disclosure will be provided and to avoid future issues of a similar nature (Point 3)

43. In a high-level way, I understand that the respective firms are reviewing their approaches to these issues and seeking to agree new guidelines between them. Others with more direct knowledge and technical information will be able to explain the specific remediation steps in more detail and the systems and processes in place to ensure the disclosure will be provided and to avoid future issues of a similar nature.
44. A disclosure remediation programme has been undertaken. Although I am not directly involved in the detail of that programme, which is overseen by Diane Wills, I understand that significant resource is being devoted by all parties to remediate the issues.
45. POL's new solicitors instructed in relation to the Inquiry, Burges Salmon and Fieldfisher, are additionally providing support and advice to POL in relation to Phase 4 remediation issues as necessary, although remediation work itself is being led and carried out by HSF, Peters & Peters and KPMG.
46. A Group Assurance Director was appointed to continue the assurance review of key Public Inquiry Team operations for the remainder of the Public Inquiry

Team programme. It is my understanding that POL is considering what audits should be conducted over this exercise for additional comfort that these matters have been appropriately remediated. I understand that POL's Enterprise Cloud & Data Transformation and Assurance Directors have also been involved in providing additional support to this process.

47. The GE and Board have recently approved additional legal and operational resource within the Public Inquiry Team throughout the Inquiry programme, which should help in assisting in the remediation of these issues.

Where responsibility for the errors lies (Point 2(b))

48. Ultimately, POL is accountable for its disclosure to the Inquiry. Post Office has invested significant resource and time in supporting the Inquiry to achieve its terms of reference. It fair to say that the Post Office's approach has evolved as the Inquiry has evolved including conversion from non-statutory to statutory, expansion of terms of reference, and the maturity of the POL Inquiry programme.
49. POL appointed leading global specialists to carry out disclosure and other activities on its behalf to the Inquiry and has a dedicated team within the POL, headed up by an Inquiry Director, who are responsible for the Inquiry. The SteerCo and Board provided oversight generally and in respect of Rule 9 disclosure at a high level, as well as any material decisions where needed.
50. As I understand it, a Rule 9 process was put in place in which HSF and KPMG carried out most components of the disclosure exercise. Others with more direct involvement in those processes will be better placed to comment on the

granularity of the systems employed to facilitate disclosure and these specific remediations.

51. In relation to the 3 specific issues, I did not give instructions, and I am not aware of any person at POL giving such instructions, that Peters & Peters, HSF or KPMG should adopt the approach that was taken in respect of the search terms, family documents and deduplication that resulted in the non-disclosure of Appendix 6 and related documents.
52. The use of search terms, along with the approach to family documents and deduplication were all matters which POL reasonably considered were matters for the expert firms it had appointed working with the POL Public Inquiry Team. I am happy to assist the Inquiry in any way I am able to, but each firm will be able to give more detailed evidence in response to the Inquiry's Rule 9 Requests, as they have much more direct knowledge and involvement in the issues than I do.
53. Since the issues have been discovered, the focus of POL and its external advisers has been on ensuring the disclosure of relevant documents to the Inquiry. This is still a work in progress. To the question of where responsibility for the errors lies, I do not feel it is possible for me to adjudicate where responsibility lies. However, I acknowledge that in terms of assuring the Inquiry that its requests for disclosure of documents from POL are being met, this ultimately rests with POL. POL is however, given the scale and complexity of the task, necessarily reliant on the support, advice and processes of its expert outsourced providers.

54. I would like to convey my sincere apologies again to Sir Wyn Williams, the Inquiry and the other Core Participants, for the disruption which the disclosure issues have caused to the Inquiry. It has always been the corporate position of POL, and myself, that the Inquiry must be given all relevant documents.
55. Finally, as other witnesses are giving evidence also on the same topic in the forthcoming hearing, I should reserve my right to respond to any points raised by them that relate to me or my role and which may require a response from me, by way of a further witness statement to the Inquiry.

Statement of Truth

I believe the content of this statement to be true.

GRO

Benjamin Andrew Foat

Date: **22 August 2023**

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No.	URN	Document Description	Control Number
1.	WITN09980302	Inquiry High-Level Process Flow (v5 2023)	
2.	WITN09980301	Post Office Inquiry Steering Committee Terms of Reference dated 16 June 2023	