

Witness Name: Brian Altman

Statement No.: WITN10350100

Dated: 4 April 2024

## POST OFFICE HORIZON IT INQUIRY

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### FIRST WITNESS STATEMENT OF BRIAN ALTMAN

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I, **BRIAN ALTMAN KC**, barrister, of 2 Bedford Row, London, WC1R 4BU, will say as follows:

#### **Introduction**

1. I am a barrister practising from Chambers at the above address. I was called to the Bar by Middle Temple in July 1981. I was appointed Junior Treasury Counsel in 1997, Senior Treasury Counsel in 2002, and I was appointed First Senior Treasury Counsel between 2010 and 2013. I have been a Recorder of the Crown Court since 2002, I am a Bencher of Middle Temple, and I am the current joint Head of Chambers at 2 Bedford Row, London.
2. This witness statement is made to assist the Post Office Horizon IT Inquiry (the "**Inquiry**") with the matters set out in the Rule 9 Request dated 31 October 2023 (the "**Request**").

### **Legal Professional Privilege**

3. Following my confirmation of the receipt of the Request by email on 31 October 2023, on the same day I emailed the Inquiry Legal Team for express confirmation that Post Office Limited ("**POL**"), my client, had waived Legal Professional Privilege as regards the matters with which I am asked to deal in the Request. On 7 November 2023, I received an email from the Inquiry Legal Team "that POL has waived privilege over matters which you have been asked to deal with in your rule 9 request". The email from the Inquiry Legal Team also drew my attention to the extent of POL's agreed waiver and the Chair's response to it of 16 November 2021.

### **Background**

4. I have been asked to set out how I first became instructed by POL in relation to the issues being addressed by the Inquiry, including but not limited to relevant dates, names of individuals who instructed me and the nature of any initial instructions. Before I do that, it is important to explain that from between 2013 and 2021, different firms of solicitors acting for POL instructed me as an independent member of the Bar to advise on a number of discrete topics on which my advice was sought on areas of law and practice within my field of practice and expertise.
5. I was first instructed on behalf of POL in July 2013 by Gavin Matthews, then a partner of the Southampton office of Bond Dickinson ("**BD**"), later Womble Bond Dickinson ("**WBD**"). I later received instructions from Herbert Smith Freehills ("**HSF**") to advise on various discrete areas.
6. Between 2020 and 2021, I was instructed by Peters & Peters ("**P&P**") to

represent POL's interests before the Court of Appeal Criminal Division ("**CACD**") as leading counsel in a series of references brought by the Criminal Cases Review Commission ("**CCRC**") in respect of 42 subpostmasters.

7. I do not specially recall the nature of the approach to my clerks or of any initial instructions at that early stage. However, by reference to point 2 in paragraph 4 of the Altman General Review document [**POL00006803\_0003**], on 23 September 2013, I received from Gavin Matthews the final Terms of Reference for [**POL00006803\_0004**] by email. I believe these had been drafted by BD. I reviewed and agreed them by return email the following day, having, on 2 August 2013, refined an earlier draft in writing. The reference in [**POL00006803\_0004**] is, I believe, a reference to my observations document - Terms of Reference for the Appointment of Brian Altman QC [**POL00006804**]. I have taken the final Terms of Reference for the Appointment of Brian Altman QC for this workstream to be [**POL00040044**], albeit these Terms of Reference are undated. I set out below the nature of the Terms of Reference and my instructions.
8. I inserted those Terms of Reference into the body of the Altman General Review [**POL00006803\_0001-0003**] and they formed my instructions for that first workstream.
9. The second but allied workstream at that time resulted in the Altman Review of the Prosecution Role [**POL00006802**] dated 19 December 2013. I note the Terms of Reference in the index of documents to this Request [**POL00040036**], which are in draft. The final Terms of Reference which formed my instructions for this workstream were inserted into the body of the Altman Review of the Prosecution Role [**POL00006802\_0001-0002**].

10. I am asked to what extent, if any, I was instructed, asked or encouraged to provide general advice to POL in respect of Horizon issues (i.e., outside of specific instruction for advice to be produced within a particular period on identified issues). My attention has been invited, by way of example, to **[POL00065929]** which is an email in which I provided my views on the content of a Panorama Programme.
11. The Request dates the programme as in 2016. The programme was, I believe, broadcast on 17 August 2015. My email to Andrew Parsons (then a managing associate of the Southampton office of BD), which is dated 28 August 2015, **[POL00065929]**, was sent in a thread of emails bearing the subject line “Post Office Balancing Transactions”. The email indicates I had been alerted to and had viewed the programme, and volunteered views on it in the email in which, in the first line, I responded to Andrew Parsons’ request in his email to me of 27 August 2015. I now have no recollection of how or why I was alerted to the programme. To the best of my knowledge, I was never asked or encouraged to provide general advice to POL in respect of Horizon issues outside of specific instruction for advice, and I cannot now recall any other specific examples of my having done so.

**Altman Interim Review [POL00006801] and Altman General Review [POL00006803]**

12. I have already outlined how the instruction for this workstream came about. My substantive instructions for the Altman Interim Review **[POL00006801\_0001]** were “to provide an interim review of Cartwright King’s current process”. My substantive instructions for the Altman General Review **[POL00006803\_0001-0002]** were, in summary: (1) by 5 August 2013, to

prepare an interim review of Cartwright King's ("CK") current review process (this was the interim review); (2) to review, and advise, POL, in writing, on or by a date to be agreed but then intended to be no later than 15 October 2013, on (a) its strategy and process for reviewing past and current criminal prosecutions in light of Second Sight's Interim Report of 8 July 2013 and/or on the role of Gareth Jenkins and his impact on any possible appeals; (b) its response to the CCRC, and any subsequent action required by it in dealing with, or responding to, any actual or potential appeals and/or in reaching the appropriate resolution of any CCRC investigation, and to advise POL about any further steps that may be required as regards any actual or potential appeals against conviction; and (3) the identification of any flaws in the process of, or from the evidence arising from, the review of a statistically significant number of past prosecutions in which Horizon had been an issue in the proceedings.

13. My instructions as outlined in the Terms of Reference were also to meet, or personally report to, the Post Office Audit Committee or the Board, at the first available opportunity, to (1) explain the background to the criminal appeal process including appeals, and how I intended to fulfil my remit; and (2) on the efficacy of the process set out above; and (3) on or by a date to be agreed, but then intended to be no later than 15 October 2013, to report on the efficacy of past prosecutions including the preparation and conduct of past prosecutions set out above.
14. I had delivered the Altman Interim Review [**POL00006801**] by or on 2 August 2013 and I had delivered the Altman General Review [**POL00006803**] on or by the date intended by the final Terms of Reference (15 October 2013) which are set out in [**POL00006803\_0001-0003**]. The first draft of those Terms of

Reference, which I take to be the Draft Terms of Reference for the Appointment of Brian Altman QC [POL00021982], has been supplied to me in the index of documents to this Request. Those Draft Terms of Reference are dated 9 August 2013 in the index to the Request, albeit the document itself is undated. [POL00021982] gives the date by which I was to prepare the Interim Review as 5 August 2013, and it gave an unspecified date in October 2013 as the date by which I was to review and advise POL in writing on the matters thereafter set out.

15. I am asked to explain any delays between instruction and finalisation of the Terms of Reference. I set out my observations on the Terms of Reference as early as 2 August 2013 (see my observations document on the Terms of Reference for the Appointment of Brian Altman QC [POL00006804]). In footnote 4 to [POL00006804\_0003], I queried the precise focus of my instruction.
16. I have been provided with an email dated 9 August 2013 from Gavin Matthews to Susan Crichton, Rodric Williams, Hugh Flemington and others [POL00021980], to which I was not joined, and which I do not believe I have seen previously. The email shows that Gavin Matthews and Simon Richardson (a former partner of BD, I believe) advised POL that I should not report on the safety of past convictions, because it would, in their view, delay my report and potentially blur the boundary between my and CK's respective roles. It appears from [POL00006803\_0004] that I received the final Terms of Reference on 23 September 2013 from Gavin Matthews.
17. Thus, albeit there was some delay between instruction and finalisation of the Terms of Reference, the work I was commissioned to do was delivered by the due date.

18. I am asked to detail meetings I had with POL as part of my investigations and who I met.

- (1) There was a meeting on 9 September 2013, at my Chambers, which from POL included Susan Crichton, who I believe was the General Counsel at that time, Rodric Williams and Jarnail Singh, who were POL lawyers, as well as lawyers from CK and BD. The Note of Conference with Brian Altman QC [POL00006769] has assisted me in recalling the meeting. This meeting is also referred to at [POL00006803\_0003, \_0035 and \_0052]. Those references also detail some of what we discussed.
- (2) I undertook Horizon training between 10am and 2pm on 19 September 2013 at Guildford Counter Training Office. There I met Chris Gilding (Network Support team Leader) who trained me and Andy Holt (Business Relationship Manager). The training is referred to at [POL00006803\_0004]. I would not otherwise have had any recollection of who I met there. I believe, but could be wrong about it, that Gavin Matthews was in attendance.
- (3) My work record (i.e., time sheet) [WITN10350105\_0005] shows that there was a telephone conference on 4 October 2013 with Gavin Matthews, CK and POL lasting 30 minutes. This meeting is also referred to at [POL00006803\_0027 and \_0042]. These references show that I spoke to Rodric Williams and Jarnail Singh, together with Simon Clarke of CK and Gavin Matthews, to discuss issues surrounding the start date for CK's review and the extent to which CK should be involved in exercising a supervisory function over the criminal cases going to mediation (as to which, see paragraph 26(6))

below).

(4) At [POL00006803\_0004], I wrote “at the time of writing I have not identified (or had identified to me) any other persons to meet and interview as part of a fact-finding exercise as relevant to the process of the investigation and commencement of prosecutions.”

19. I am asked what, if any, discussions I had with Gareth Jenkins during this period, and, if no discussions took place, whether this was something I considered. I am asked to set out any discussions I had or advice I gave in this regard.

20. In my observations document on the Terms of Reference for the Appointment of Brian Altman QC [POL00006804\_0003], I see I wrote:

“Paragraph 2 of the ‘Process’ section of the overarching Terms of Reference (and in paragraph 2 of the ‘Process’ section of the abbreviated Terms of Reference for the shorter report, albeit bracketed) includes the possibility of my meeting Dr Jenkins. I note this is queried.

Not meeting and hearing him, where there may be questions potentially impacting on non-disclosure by him, and his role as an expert, risks exposing the final report to criticism. However, this is not a judicial or public inquiry with the formal receipt of evidence. This is something I shall need to think about carefully; at this very early stage I am not unnaturally undecided. For now it may be better for the Terms of Reference to remain silent about him.”

21. It is clear from this that early on in my instruction I did consider whether to meet Gareth Jenkins. I do not have a copy of the document I am referring to here which must be an early iteration of the draft Terms of Reference, and I

do not know now what was “queried”, how it was queried or by whom. In the event, I did not meet Gareth Jenkins and I cannot find any record that I had further discussions about it or any record of my reasoning for not doing so.

22. I am also asked what, if any, discussions I had with any other individuals from Fujitsu during this period, and, if no discussions took place, whether this was something I considered. I had no discussions with anyone from Fujitsu and I do not recall now if I considered it. However, given the nature and scope of my instructions and role, I doubt I would have considered meeting anyone from Fujitsu.
23. I am further asked to set out any information I received (whether formally or informally, at this time or earlier) from BD (or WBD as they became) in respect of any previous cases that they had been involved in where issues of bugs, errors or defects in Horizon had been raised. I do not recall receiving any such information at this time or earlier.
24. I am requested to set out the names of all lawyers at BD/WBD with whom I discussed issues of the reliability of Gareth Jenkins (during this period or at any other time) and to set out my recollections of those discussions. I have no recollection of discussions with anyone from BD/WBD about Gareth Jenkins in this period or at any other time.
25. I am asked about the extent to which I was aware of: (1) bugs, errors or defects in Legacy Horizon; (2) the Helen Rose Report; (3) the Second Sight Interim Report; (4) the August Clarke advice; and (5) the Detica report, and insofar as I was not aware of them, to set out if (and if so, when) I later became aware of them. I deal with each in turn:

- (1) I was aware of the Callendar Square/Falkirk bug as to which I had been given to understand a software fix had been distributed into the

system by March 2006 (see [POL00006803\_0042]). Certain other concerns and problems were suggested in Harry Bowyer's Response to the Interim Review of Cartwright King's Current Process by Brian Altman QC [POL00066807\_0002] but, as I understood it, these were in Horizon Online, as they arose in the summer of 2013. Apart from this, I do not believe in this period of time I was aware of the existence of any other bugs, errors or defects in Legacy Horizon. I became aware of them much later, I believe, following the 2019 Horizon Issues Trial (see Note on the Horizon Issues Judgment at [POL00026461\_0001-0003]).

- (2) I was aware of the Draft Report by Helen Rose on Horizon Data for Lepton SPSO 191320 [POL00030214]. Reference to it may be found at [POL00006801\_0004-0005 and \_0010 and POL00006803\_0005, \_0008, \_0020, \_0031, \_0046, \_0049 and \_0054].
- (3) I was aware of Second Sight's Interim Report into the Alleged Problems with the Horizon System [POL00029650]. Reference to it may be found at [POL00006801\_0003-0005, 0006 and \_0010 and POL00006803\_0001, \_0005, \_0008, \_0009, \_0015-0018, \_0021, \_0023-0024, \_0027 and \_0031].
- (4) I was aware of the August Clarke Advice on Disclosure and the Duty to Record and Retain Material. Reference to it may be found at [POL00006803\_0036-0037].
- (5) I was not aware of the Draft Report on Fraud and Non-conformance in the Post Office; Challenges and Recommendations by Detica dated 1 October 2013 [POL00029677]. I received what I believe to be the final version of the report dated 28 October 2013 at some time in

March 2020 in the course of my work on the criminal appeals.

26. I am asked to detail any reflections I have on the advice that I gave including (but not limited to) in respect of each of the following: (1) the start date for cases reviewed as part of the CK Sift Review; (2) any other limitations in scope of the CK Review; (3) the independence of the CK Sift Review; (4) the test that had been applied by Cartwright King reviewers in respect of the safety of the convictions; (5) my reliance on the content of Mr Jenkins' witness statements to inform my review; (6) the "concern that offenders might use the mediation scheme to gain information as a platform from which to launch a fresh or new appeal"; and (7) observations regarding Cartwright King being given complete visibility of civil litigation and its potential impact on decisions made in criminal cases. While I address each of those questions below, it is important for me to observe that the advice that I gave in each instance was dependent on the information that was available to me to at the time. I now deal with each question in turn:

- (1) Second Sight had arrived at the preliminary conclusion in their Interim Report that they had so far found no evidence of system wide (systemic) problems with Horizon, and they were aware of two incidents where "defects" or "bugs" in Horizon Online had affected branches [POL00029650\_\_0005-0006 and \_0008]. At [POL00006803\_0024-0027] I set out at some length the basis upon which I arrived at the view (which I still hold) that 1 January 2010 was a "logical and practicable" start date for the review. The rationale was that this date was the earliest date of the Horizon Online rollout and that, prior to each branch rollout, a cash audit was performed so that each branch balanced. However, I also made clear that if POL was

approached by individuals convicted before the start date, it would need to make *ad hoc* case-specific decisions about the need for disclosure and that the case of Mrs Misra was one case I had in mind where similar issues had been raised (see [POL00006803\_0025]).

- (2) As for my reflections on the existence of any other limitations in the scope of the CK review, I set out at [POL00006803\_0023-0033] my understanding of the disclosure process CK had embarked on and the system they were employing. I set out my conclusions about the scope of the CK review in the Executive Summary at [POL00006803\_0005].
- (3) I identified certain issues regarding the independence of the review at [POL00006803\_0032-0033] and concluded that lawyers should not sift or review their own cases. It was and remains my view that advising a review that was wholly independent of CK was unnecessary. I had raised concerns about the independence of the CK review in my Interim Review at [POL00006801\_0002 and \_0006-0007]. I returned to this theme in the General Review [POL00006803\_0005 and \_0032-0033]. At [POL00006803\_0033], I wrote “I have considered this issue with some care and, having met with representatives of CK, and having considered the many Advices and other material I have seen emanating from CK representatives, I have seen no evidence other than a professional and independent approach to this review. Consequently, on the material available to me, I would reject any suggestion that CK's solicitors and counsel cannot act, or have not acted, with an independent and professional approach to the Horizon issues, which have arisen, and to their review.”

- (4) The test that had been applied by CK reviewers in respect of the safety of the convictions was that which I identified at [POL00006803\_0041]. The test was there was a duty to disclose where material came to light after the conclusion of the proceedings “which might cast doubt on the safety of the conviction”. I advised that the letter that was sent out should reflect that test (see [POL00006803\_0043-0044]). My advice included at [POL00006803\_0029] that CK “should be alive to changing circumstances ... and must not therefore adopt an over-rigid approach; each case must be approached on a case-by-case basis.” I re-emphasised this at [POL00006803\_0054].
- (5) I was reviewing CK’s disclosure process as a result of the revelations made to CK by Mr Jenkins, as set out in Simon Clarke’s Legal Advice on the Use of Expert Evidence [POL00006798\_0011]. Why Mr Jenkins had failed to reveal in his witness statements or evidence the bugs or defects he knew about was not a matter for my review. However, it was the impact of those failures on his future role as an expert and more importantly the effect of those failures of disclosure on past convictions and current prosecutions that were the focus of attention (see [POL00006803\_0001-0003, \_0018-0019, \_0044-0049]).
- (6) I am asked about the “concern that offenders might use the mediation scheme to gain information as a platform from which to launch a fresh or new appeal” (see [POL00006803\_0042]). This was something CK had raised during the meeting of 9 September 2013 [POL00006769]. At [POL00006769\_0003], the note reads, “BA advised considerable caution in relation to mediation cases involving previously convicted

individuals (Seema Misra has already indicated an intention to be within the scheme). The concern is that lawyers acting for those individuals may be using the scheme to obtain information which they would not normally be entitled to in order to pursue an appeal.” According to the note, my view was that CK should review the information being given to individuals by Second Sight so CK were not “blindsided” by evidence of which they were unaware, and that the information being sent out to individuals should be audited by CK. This had been the main topic of conversation during the 4 October 2013 telephone conference, as to which, in the General Review (at [POL00006803\_0042]) I reported, “There is understandable concern that offenders might use the mediation scheme to gain information as a platform from which to launch a fresh or new appeal, and so CK wish to exercise a measure of control over the dissemination of information and material during the process.” However, I went on to advise at [POL00006803\_0042-0043] that “CK must consider the approach it is to take with applicants. Mediation is not a formalised court process and the CPIA [Criminal Procedure and Investigations Act 1996] rules of disclosure do not apply. However, the mediation process in a particular case could give rise to the view that, mindful of its common law duties, case-specific disclosure ought to be made, and POL and CK must keep an open mind to this. The mediation process might even give rise to consideration of making further general disclosure within the current review, depending on the nature of the new information.” Thus, the advice was not about withholding material but about CK supervision of the process and the “possible uncontrolled

dissemination of information and material” (see [POL00006803\_0043]). Indeed, in the Executive Summary, I concluded, “Cartwright King should exercise supervisory control over the dissemination of information and material during the mediation process, and should remain alive to the possibility of having to make case-specific disclosure in the course of that process, or even making additional general disclosure in the course of its current review depending on the nature of any new information.”

(7) The observations I made regarding CK being given complete visibility of civil litigation and its potential impact on decisions made in criminal cases [POL00006803\_0007 and \_0055] was, I felt, and continue to feel, an obvious one. My view was that without visibility of any Horizon-related civil litigation, CK might be denied information that bore on their review of criminal cases. By this, I meant the disclosure decisions they were making.

27. Despite the Terms of Reference, I was not invited to meet, or personally report to, the POL Board or the Audit Committee as regards my review or my findings.

28. I am asked the extent to which I consider my review was limited to conducting “a review of the process.” My attention is invited to paragraph 14.2 of the Submissions on behalf of the Respondent in relation to the Application for Access to Papers in the Proceedings [POL00158692]. The date of the document is 30 November 2020. This was POL’s response to an application made by Nick Wallis to the CACD for access, in particular, to the “Clarke Advice” (see [POL00006798]), which was the focus of the application and the submission document (see [POL00158692\_0002]). The submission at

paragraph 14.2 was that I had been instructed “among other things, to conduct a review of the process (although not the individual decisions in reviewed cases).” That formulation does not suggest there was any limitation to my review.

29. I am asked to what extent I considered my review to be an independent investigation and to what extent, if any, did I understand those who received the review to have considered it to be an independent investigation. The Terms of Reference show that my instructions on behalf of POL were, in essence, to review Gareth Jenkins' role as an expert witness in future POL prosecutions, given the disclosure failures which had been revealed by him to Second Sight, and, more importantly, to advise on the impact of those disclosure failures on past convictions and current prosecutions and review the disclosure process CK had then embarked upon. I did not consider it to be an independent investigation as such, and the words “independent investigation” do not appear in my Terms of Reference for the review. Indeed, as was stated in the Terms of Reference at [POL00006803\_0001], while there was a fact-finding element to my work, I was instructed to “review, and advise POL in writing ...” on those matters set out in the Terms of Reference. I thus regarded my work as advisory in nature and not in the nature of an independent investigation. The views I arrived at were, however, independent of my professional and lay clients. I have no insight into the extent to which those who received the review considered it to be an independent investigation.
30. I am asked about the extent to which drafts of my reports were amended after discussion with POL or others before being finalised and to describe this process and the nature of the comments that were received in respect of

drafts. The review document [POL00006803] went through various drafts, which is the normal course of events in any advisory or review work as thoughts and findings emerge. It is possible that previous drafts of [POL00006803] were sent to Gavin Matthews for comment. I would not have discussed or sent any drafts to POL. I am unable to find any record of comments Mr Matthews might have provided me, and I cannot at this distance in time recall any. However, my work record for 14 October 2013 [WITN10350106\_0002] indicates that I made final revisions to my General Review “following telephone con with GM (16:30 for 26 minutes)”.

31. I invite the Inquiry’s attention to the Executive Summary [POL00006803\_0005-0007] which summarises my conclusions in the General Review. Based on the information I had at that time, in particular, as to how CK were conducting their review, and exercising my professional judgement, I was of the opinion that the review was “fundamentally sound” and I had not detected any “systemic of fundamental flaws” in the process of the review, or in the evidence arising from it, but I added that, because the review was a continuing process, and POL had a continuing duty of disclosure, in current and, in practice, past conviction cases falling within the review, POL and CK “must be prepared to keep under review, and reconsider, past case reviews and disclosure decisions” At [POL00006803\_0053-0054]), I explained this further by saying CK’s review was organised and efficient, it was being considered at the right level in CK, and it was addressing the right tests. I emphasised the need to keep an open mind to reconsidering past disclosure decisions.
32. I am asked to what extent, if any, did POL implement my recommendations (insofar as I am aware). I believe I had no insight into this. I am asked if I saw

responses to my recommendations by CK. My attention is drawn to Observations and Analysis of the Cartwright King Prosecution Review Process dated 5 December 2013 [POL00040194]. I am unable to say now if I had seen this document previously and I have no recollection now of seeing any other documents of that nature.

33. I did not attend any Wednesday Hub Meetings and so I cannot provide any view about their effectiveness and approach.
34. I am asked whether I consider that I was provided with sufficient information to conduct my review and to detail the reasons for my answer. The information I had at that time regarding bugs, errors or defects in Horizon Online was the Helen Rose Report [POL00030214], the Second Sight Interim Report [POL00029650], the information about the Callendar Square/Falkirk bug in Legacy Horizon, which I understood had been fixed by March 2006, as well as some other possible concerns or issues identified in Harry Bowyers' Response to my Interim Review (see [POL00066807]). Second Sight's report [POL00029650] was interim, and it had expressed its conclusions as "preliminary", and it made clear there was "much work still to be done", as I repeated in the General Review at [POL00006803\_0017-0018]. I also advised that "the conclusions I arrive at in this document are necessarily subject to further consideration of any additional or different conclusions SS might reach in the future." (I had made much the same point in my observations document on the Terms of Reference for the Appointment of Brian Altman QC at [POL00006804\_0004].) In its interim report, Second Sight said they had so far found no evidence of system wide (systemic) problems with the Horizon software. That was the basis on which my review necessarily proceeded. I was not in any position to detect, far less foresee, the

catastrophic problems with Horizon that were later laid bare in the Horizon Issues Trial.

**Altman Review of the Prosecution Role [POL00006802]**

35. I have outlined above how the instruction for this particular workstream came about and who instructed me. The nature of my instruction was, in essence, to review, and, if appropriate, to recommend changes to the existing investigations and conduct of future POL prosecutions, including, if appropriate, POL's investigative and prosecutorial role being undertaken by another authority. The Terms of Reference for the Appointment of Brian Altman QC [POL00040036], which appear to be a draft, are the genesis of this workstream. The Terms of Reference were, it seems, revised, as is evident by the final Terms of Reference I inserted into [POL00006802] at [POL00006802\_0001-0002].
36. My observations document on the Terms of Reference for the Appointment of Brian Altman QC [POL00006804\_0002] appears to show that, originally, this had been envisaged to be part of one workstream. I cannot now remember how or why this work was separated into two parts.
37. My work record [WITN10350106\_0004] shows that, on 17 October 2013, there was a telephone conference lasting 30 minutes with Rob King and Andy Hayward both of POL, together with Gavin Matthews, in order to discuss issues regarding POL's investigation structure and function (see [POL00006802\_0002 and \_0028]). This was followed by a telephone conference alone with Gavin Matthews of 10 minutes. The work record also shows that there was a meeting in my chambers on 22 October 2013 with

Chris Aujard of POL and Gavin Matthews of one hour and 45 minutes' duration. I have no note of what we discussed and cannot now recall the content of the meeting. The work record (at [WITN10350106\_0004-0005]) shows too that there was a 20 minute telephone conference call with Rodric Williams on 12 November 2013, and a telephone conference with Gavin Matthews on 18 November 2013 lasting 15 minutes, followed by a telephone conference with Rodric Williams, Jarnail Singh, Gavin Matthews and Andrew Parsons, which lasted one hour and 15 minutes. I have no notes or independent recollection of these meetings.

38. As I wrote at [POL00006802\_0003], "Further to these conferences, I have not identified (or had identified to me by POL) anyone else I should meet or speak to as relevant to the issues I am asked to review. I have however received written answers to a variety of questions I have asked or issues I have raised by email in the course of my review."
39. I am asked why this advice contains a curriculum vitae at the end of my Review (see [POL00006802\_0040]). It is not typical of advisory work I did at the time. At this distance in time, I cannot recall why I included a short CV, or why, by comparison, I did not do so for my General Review [POL00006803].
40. I am asked when carrying out this review the extent to which I was aware of the information/reports identified in paragraph 25 above (and if and insofar as my answer is that I was not yet aware of such information, whether I had become aware of them by this time). My answer remains the same for items (1)-(4). Insofar as item (5) is concerned, I must also make clear that I had also not received the final Detica report. I make no reference to the draft Detica report dated 1 October 2013 [POL00029677] or the final Detica report dated 28 October 2013 in my Review [POL00006802].

41. I am asked to detail any reflections I have on the advice I gave including (but not limited to) in respect of each of the following: (1) POL's conduct in carrying out its investigations and prosecution function; (2) the focus on Horizon Online; and (3) the appropriateness of the steps that POL had taken to address potentially affected cases. I deal with each in turn:

(1) I note that at [POL00006802\_0039], I wrote "It may be thought that POL's prosecution role is anachronistic, and highly problematic in light of recent events." However, the information I had and relied upon in December 2013 in order to arrive at my views about POL's own conduct of its investigations and prosecution function led me to understand and write at [POL00006802\_0039], "the recent events have to be seen in their proper context. The serial non-disclosure of relevant material occurred in circumstances in which POL asserts that it and its advisers were wholly unaware that there might be disclosable material or information, and so, whatever the reason, were not placed in a position whereby they knew of its existence and could deal with it appropriately", "POL was, inevitably, in a position where it was wholly dependent on FSL [Fujitsu] and/or the expert to reveal material so that POL could perform its prosecution duties, which in the event it was unable to do" and that "POL, with its unique commercial arrangement with its IT supplier, also became somewhat hostage to it." Later events proved my then information and understanding to be wholly incorrect. The information I had led me also to the view that POL's investigations and prosecution function was "well-organised, structured and efficient" (see [POL00006802\_0040]).

(2) I have set out at paragraph 26(1) above the rationale underlying the

focus on Horizon Online. Insofar as this review is concerned, it was about POL's prosecution function and so it was forward-looking. It was, therefore, inevitable that the focus was on Horizon Online.

(3) I am asked also to reflect on the appropriateness of the steps that POL had taken to address potentially affected cases. These steps (as I understand the question) were the subject of [POL00006803].

42. I am asked to what extent I considered my review to be an independent investigation and to what extent, if any, did I understand those who received the review to have considered it to be an independent investigation. I did not consider it to be an independent investigation as such and the words "independent investigation" do not appear in my Terms of Reference for the review work (see [POL00006802\_0001-0002]). Again, I regarded my work as advisory and not in the nature of an independent investigation. The views I arrived at were, however, independent of my professional and lay clients. I have no insight into the extent to which those who received the review considered it to be an independent investigation.

43. I am again asked about the extent to which drafts of my report were amended after discussion with POL or others before being finalised and to describe this process and the nature of the comments that were received in respect of drafts. The review document [POL00006802] went through various drafts, which, as I mention at paragraph 30 above, is not unusual as thoughts and findings emerge. It is possible that previous drafts of [POL00006802] were sent to Gavin Matthews for comment. I would not have discussed or sent any drafts to POL. I am unable to find any record of any comments Mr Matthews might have provided me, and I cannot at this distance in time recall any. However, my work record for 20 October 2013 [WITN10350106\_0003] shows

I submitted a draft of this review document to BD, and, on 21 October 2013, I noted, "Further revising review document [2] & submitting it to BD, following telecom (sic) with GM (14:15 for 17 mins)". The work record for 25 October 2013 [WITN10350106\_0003] notes "Further consideration & revision of review document in light of additional comments" and that for 19 December 2013 [WITN10350106\_0004] notes "Final edit as per requests and submission".

44. Despite the Terms of Reference, I was not invited to meet, or personally report to, the POL Board or the Audit Committee to give them my recommendations, either by 31 October 2013 (see [POL00006802\_0001]), or at any time after the delivery of the written review.
45. I am asked to what extent, if any, POL implemented any recommendations I made (insofar as I am aware). In answering this question my attention has been drawn to Bond Dickinson – Personal Attendance Note re: POL's Policy including Enforcement Policy to Prosecute SPMs [POL00125442]. In [POL00006802\_0005-0007] I made a series of recommendations as regards POL investigation and prosecution policies and as regards a protocol or memorandum of understanding with Fujitsu covering POL's duties and obligations of disclosure and seeking their understanding and agreement to revealing "any and all material or information that might undermine the integrity of the system, and to the requirement for the disclosure of such material or information in the course of criminal proceedings, as may be required." As [POL00125442] shows, in 2014 I was asked to assist with POL's prosecution policy. Indeed, in [POL00006802\_0018-0029] I had commented upon a series of different POL enforcement and prosecution policy documents that had been sent to me, and remarked at [POL00006802\_0028], that "The

current state of affairs is unsatisfactory. POL separated from RMG in April 2012, yet, despite the recently CK draft policy document Post Office Prosecution Policy – England and Wales (document (xii)), and the Conduct of Criminal Investigation Policy document (document (xiii)), emanating from POL's Security Department, the position in late 2013 is that there exist several enforcement and prosecution policy documents, whose precise status, origin and currency are uncertain, and there is none still that is official POL policy." Beyond this, I am unaware of the enforcement and prosecution policy documents, if any, that POL finally settled upon. Equally, I do not believe I was told anything more about the protocol or memorandum of understanding with Fujitsu, referred to above.

46. Finally, I am asked whether I consider I was provided with sufficient information to conduct my review and to detail the reasons for my answer. In terms of POL's investigation and prosecution function, I think I did have adequate information in general terms to make recommendations about POL's future role. But it is, I think, clear in light of later events, that the information I had been given that POL was "wholly unaware" that there might be disclosable material or information, and that POL was "wholly dependent on FSL [Fujitsu] and/or the expert to reveal material so that POL could perform its prosecution duties" was incorrect.

**Altman Advice on Board Papers [POL00105068]**

47. I have no recollection of the background to this workstream, but my Advice Report on Papers for Post Office Ltd Board [POL00105068\_0001] reveals that, at the end of January 2014, I was asked to consider two papers and

appendices that were sent to me, titled Project Sparrow - Paper on Stacked Cases and Project Sparrow - Paper on Prosecutions Going Forward. As I say there, "In essence I was asked to conduct a fatal flaw analysis of the proposals and propositions contained in both papers". I cannot recall now if the instructions came through BD/WBD or POL itself. However, the telephone conference set out below suggests Gavin Matthews was involved in my instruction.

48. The information I was provided with for this advice is set out at [POL00105068\_0001]. The advice appears to have been self-contained. Therefore, the information appears to have been sufficient for the purpose.
49. I am asked to detail who I met from POL to gather information for this advice. My work record [WITN10350107\_0001] shows that there was a telephone conference with Gavin Matthews on 29 January 2014 lasting 15 minutes, which related to advising the Board on so-called "stacking cases" and future prosecutions. The work record [WITN10350107\_0004] also shows that there was a telephone conference with Rodric Williams and Gavin Matthews on 30 January 2014 lasting 45 minutes, which I have assumed was related to the same topic, given its proximity in time. I have been unable to find any note of either conference.
50. I am asked when drafting this advice the extent to which I was aware of the information/reports identified in paragraphs 25 and 40 above (and if and insofar as my answer is that I was not yet aware of such information, whether I had become aware of them by this time). My answer remains the same for items (1)-(5).
51. I am asked for my reflections on this work. As I have said, the advice was a self-contained piece of work. It sets out what I consider to be appropriate

advice on the material with which I was provided, such as my advice about elderly and vulnerable alleged victims (see [POL00105068\_0003-0004]); the issue of delay and abuse of process (see [POL00105068\_0004-0007]); and financial thresholds and the two-stage test in the Code for Crown Prosecutors (see [POL00105068\_0010-0014]).

52. I was not invited to meet, or personally report to, the POL's Board or the Audit Committee or any other committee in respect of this advice.
53. I do not know if, or the extent to which, my recommendations were implemented.

**Altman Advice on Mediation [POL00006368]**

54. It appears from the material that has been drawn to my attention, namely, Email Chain from Rodric Williams to Claire Webb and Johnny Gribben re: FW Call with Brian Altman QC of 16 and 17 July 2014 [POL00061549] and Email Chain between Gavin Matthews, Rodric Williams, Andrew Parsons and others re: Advice from Bran Altman QC on Suggested Approach to Criminal Case Mediation [POL00040254], as well as the Advice on Criminal Case Mediation [POL00006368], that following conferences on 16 July 2014 and on 31 July 2014, I was asked to provide the advice by Gavin Matthews on behalf of POL. The advice I was instructed to provide related to the approach POL should adopt to criminal cases falling within the mediation scheme.
55. I am asked to detail who I met from POL to gather information for this advice. My work record [WITN10350108\_0003] shows that there was a telephone conference with Gavin Matthews on 15 July 2014 lasting 30 minutes. The work record shows also that there was a telephone conference with POL and Gavin Matthews on 16 July 2014 lasting one hour and 15 minutes (referred to

in [POL00061549\_0001]), and that there was a telephone conference with Gavin Matthews on 30 July 2014 lasting 15 minutes. Finally, the work record [WITN10350108\_0004] shows that there was a telephone conference with Gavin Matthews and Rodric Williams on 31 July 2014 lasting one hour (which is referred to in [POL00040254\_0001] and [POL00006368\_0001]). I have been unable to find that I made any note of those telephone conferences, but I see that detail of the conference of 16 July 2014 is set out in an email of the same date [POL00061549\_0001], to which I was not joined. I note too that detail of the telephone conference of 31 July 2014 is set out in an email of 7 August 2014 [POL00040254\_0002], to which I was also not joined.

56. I am asked when drafting this advice the extent to which I was aware of the information/reports identified in paragraphs 25, 40 and 50 above (and if and insofar as my answer is that I was not yet aware of such information, whether I had become aware of them by this time). My answer remains the same for items (1)-(5). I am also asked whether by this time I had become aware of (6) the Initial Complaint Review and Mediation Scheme Briefing Report - Part One Second Sight Report dated 25 July 2014 [POL00075178]. I had not become aware of this report by the time I delivered this advice, and it is not referred to in the advice [POL00006368].
57. I am asked for my reflections on this work on the advice I gave including (but not limited to) the concerns that I had in respect of allowing convicted subpostmasters into the mediation scheme, as well the extent to which, if any, I was concerned about the use of the mediation scheme to obtain disclosure relevant to criminal appeals. It is clear from the advice at [POL00006368\_0005] that I had been provided with, and read, CK's advices of 9 and 15 July 2014 on the topic and I did not disagree with their advice in

which they continued to maintain “a wholesale objection to the admission of all criminal cases to the scheme”.

58. As I said also, I had expressed that same view “some months previously” (see [POL00006368\_0005]), which I think must be a reference to the conference on 9 September 2013 [POL00006769]. However, I noted also that I “understood that time had moved on and a practical solution had to be found to deal with those criminal cases that were now within the mediation scheme.” Moreover, in my General Review of 15 October 2013 (at [POL00006803\_0052]), I outlined Sir Anthony Hooper’s suggestion (made “quite firmly”) that it might be more appropriate for cases that had been through the courts to be referred to the CCRC rather than go through the mediation scheme, as well as the views I had voiced during the 9 September 2013 conference (see [POL00006769\_0003]).
59. My advice was based on the information I had received. Additionally, as I wrote at [POL00006368\_0002], “POL has dealt with criminal cases in line with that process [POL’s unadopted Settlement Policy], so that if material is identified that affects the safety of the conviction, the process is suspended, the material is disclosed, and the applicant considers his position as regards any appeal. If the process that POL has been adopting within the mediation scheme is limited in this way then I see no problem with it. The problem arises with the notion that POL should consider its position on any future appeal.” This had been “POL’s standard approach” (see [POL00006368\_0001]). I added “The focus of our discussions on 31<sup>st</sup> July was around the practical utility of such an approach. The view I expressed was that I could not see any advantage to POL in adopting, far less being held to, a position on any criminal appeal during the mediation scheme. In fact, adopting such a course would

be to court an unacceptable level of risk...”

60. I concluded at [POL00006368\_0004] “It is for these reasons POL should only ever consider its position once an applicant has considered the new material and has in fact launched a criminal appeal. There is in my judgment an unacceptable risk to POL in providing or being held to a position on criminal appeal at the early stage of mediation. An indication by POL at such an early stage based on limited information risks inviting an appeal. Also, at this stage the applicant will almost certainly not have even considered whether the new information gives rise to grounds of appeal let alone whether there are any grounds that are reasonably arguable ... POL may find itself prematurely supporting an appeal when upon mature reflection the written grounds of appeal show it ought not to have done so or it may oppose an appeal when events prove it was ill judged to have done so.”
61. As appears above at paragraph 26(6), my original 2013 advice had been about the application of the mediation scheme to those convicted of criminal offences. I note from what I said in my advice (at [POL00006368\_0005]) that those who had pleaded guilty or had been cautioned for an offence were admitted to the scheme.
62. The focus of my advice in [POL00006368] was on POL’s practical approach to what Sir Anthony Hooper had suggested in cases where those who had admitted an offence had been admitted to the scheme.
63. The second issue on the mediation which was the subject of my advice in 2013 was, as I set out at paragraph 26(6) above, about CK having a supervisory function regarding the criminal cases in the mediation and the “possible uncontrolled dissemination of information and material” (see [POL00006803\_0043]). As appears from paragraphs 26(6) and 59 above, I

was not concerned about the mediation scheme being used to obtain disclosure relevant to criminal appeals.

64. To the direct question I am asked in the Request, whether there were any issues relating to my representation of POL in matters relating to criminal appeals and advising on mediation, my response is there was none. The CACD was not examining events post-2013 or the scope of the mediation scheme or whether POL's standard approach to the mediation scheme was fairly applied in those cases before the CACD. The issues before the CACD in 2021 were about the safety of those 42 convictions, on grounds of appeal of abuse of process based on failures of investigation and non-disclosure under the Criminal Procedure and Investigations Act 1996 at the time of prosecution.
65. I was not invited to meet, or personally report to, the POL's Board or the Audit Committee or any other committee in respect of this advice.
66. I do not know if, or the extent to which, my recommendations were implemented.

**Altman Advice on Theft and False Accounting [POL00006588]**

67. I was asked to advise POL on what had been termed the "equality" of the offences of theft and false accounting in light of a letter POL had sent to Second Sight on 24 February 2015. As I said in the advice (see [POL00006588\_0001]), I had been informed that Second Sight had begun to advance arguments that POL was abusing its prosecutorial role by charging subpostmasters with theft when there was no evidence of it in order only to pressure them into pleading guilty to false accounting. The Email Chain from Brian Altman to Andrew Parsons cc'ing Gavin Matthews re: Post Office – False Accounting and Theft on 6 March 2015 [POL0012577] was the origin of

the Advice on Theft and False Accounting: Brian Altman QC dated 8 March 2015 [POL00006588]. The emails show the instructions emanated from Andrew Parsons, and Gavin Matthews was copied in. Those instructions are set out under the heading "Advice required" at [POL0012577\_0003]. A formal advice was not required, but, as my email of 8 March 2015 to BD shows [POL0012577\_0001], I felt it easier to put my advice into a separate document. My instructions were also outlined at [POL00006588\_0003]. The sole focus of the advice I was being asked for was whether statements POL had made in the letter were defensible (see [POL0012577\_0003] and [POL00006588\_0003]).

68. I have no record of meeting anyone to gather information for the purposes of this advice.
69. I am asked when drafting this advice the extent to which I was aware of the information/reports identified in paragraphs 25, 40, 50 and 56 above (and if and insofar as my answer is that I was not yet aware of such information, whether I had become aware of them by this time). My answer remains the same for items (1)-(6).
70. BD's email to me of 6 March 2015 [POL0012577] set out the information I required for this advice which was a self-contained piece of work. Therefore, it seems to me the information appears to have been sufficient for the purpose.
71. I am asked for my reflections on this advice. The dispute was about whether the offence of false accounting was a "lesser" offence to the offence of theft or whether they were "equal". Sir Anthony Hooper was of the view false accounting was a lesser offence. CK disagreed. I was being asked to advise POL about the letter sent by POL to Second Sight on 24 February 2015 and to advise whether the statement the offences were "equal" was defensible. I

made my views clear about that proposition at [POL00006588\_0003-0004] and referred to the examples provided by Sir Anthony Hooper in [POL0012577\_0001] where in certain circumstances false accounting may be more serious than theft. I developed the point at [POL00006588\_0004-0006] and my conclusions were set out at [POL00006588\_0007-0008].

72. I was not invited to meet, or personally report to, the POL Board or the Audit Committee as regards my advice. I do not know what use POL made of my advice. I did not speak to Sir Anthony Hooper about the matter. There were no substantive differences between what I understood to be his views and mine. As I have stated above, the dispute had originated between CK's advice and Sir Anthony Hooper's views about it.

**Altman Review of Criminal Prosecutions [POL00006394]**

73. My instructions here were, essentially, to advise POL as to whether the safety of a conviction for false accounting could be undermined in circumstances where a person was charged with theft and false accounting, but had pleaded guilty to the false accounting charge, following which, and/or in return for which, the theft charge was dropped, and where there was said to be no or no sufficient evidential basis to bring the theft charge. The background to my involvement in this review [POL00006394] was the Review on behalf of the Chairman of Post Office Ltd concerning steps taken in response to various complaints made by subpostmasters dated 8 February 2016 undertaken by Jonathan Swift QC (now Mr Justice Swift) and Christopher Knight ("the Swift Review") [POL00006355]. My formal instructions were from Rodric Williams and dated 18 February 2016 and were set out in Instructions to Brian Altman QC from POL [POL00022765\_0001-

**0003]**. The Swift Review had made the following recommendations on the issue of the sufficiency of evidence (at **[POL00006355\_0038]**):

(1) 113.1: “Legal advice be sought from counsel as to whether the decision to charge an SPMR [subpostmaster] with theft and false accounting could undermine the safety of any conviction for false accounting where (a) the conviction was on the basis of a guilty plea, following which and/or in return for which the theft charge was dropped, and (b) there had not been a sufficient evidential basis to bring the theft charge.”

(2) 113.2: “If such a conviction could be undermined in those circumstances, that counsel review the prosecution file in such cases to establish whether, applying the facts and law applicable at the relevant time, there was a sufficient evidential basis to conclude that a conviction for theft was a realistic prospect such that the charge was properly brought.”

74. My instructions were to advise POL as to whether the safety of a conviction for false accounting could be undermined in the circumstances set out at paragraph 113.1, and, I was informed once POL had that advice, it could consider the steps (if any) it should take with respect to the prosecution file review referred to in paragraph 11 3.2 (see **[POL00022765\_0003]**).

75. I have read through Email from Rodric Williams to Brian Altman QC: re: instructions for Brian Altman QC **[POL00025755]**. This is an email chain between Rodric Williams and me (with Gavin Matthews copied in) between 29 February 2016 (the date I received the papers in Chambers) and 4 April 2016.

76. Having read the instructions and file contents, and, as asked of me in my

instructions (see [POL00022765\_0004-0005]), I then contacted Mr Williams by email on 20 March 2016 (see [POL00025755\_0002]). As regards the first issue I had been asked to advise upon (the theft/false accounting issue) I offered the view that “The recommendation, as formulated, suggests to me that the only solution would be to proceed to a review of all such affected cases. This is because the recommendation is predicated on the basis that “(b) there had not been a sufficient evidential basis to bring the theft charge”. This second limb to the recommendation is such that I could not advise other than to move to a review. This is because it could never have been appropriate, adopting the Code for Crown Prosecutors, to add a theft charge with no evidence of theft only to secure a plea to false accounting. The suggestion has been that, through CK, POL indicted theft charges without any evidential basis solely to encourage and secure pleas of guilty to “lesser” false accounting charges. The underlying allegation is that POL has manipulated its position as prosecutor as to amount to an abuse of the process. The safety of a conviction based even on a plea of guilty might be undermined by a serious abuse of the process. There is, for example, authority that material non-disclosure might lead to the finding of an abuse even where the defendant had pleaded guilty. This is because the defendant has, by the non-disclosure, been deprived of the opportunity to deploy an argument to stay the indictment. So too here, if there was undisclosed evidence of a deliberate ‘practice’ to do as is alleged (which is what is being said) then that could lead to finding of abuse. Any review would have to be by me alone (rather than one conducted by CK and supervised by me as suggested by Swift (para 109)) because it is CK's decision-making which is under the spotlight.”

77. I did not advise on the second area of concern identified by the Swift Review

[POL00006355], the reasons for which are outlined in the email chain at [POL00025755\_0001-0002] and explained in my advice at [POL00006394\_0004-0005].

78. My work record [WITN10350109\_0004] shows that there was a telephone conference with Rodric Williams on 18 February 2016 lasting 20 minutes. This coincides with the date of my formal instructions, although not the receipt of the papers, which was on 29 February 2016. The work record shows that there was another call with him several weeks later on 5 April 2016 which lasted 45 minutes. This call is referred to in the review at [POL00006394\_0005]. The work record shows also that there was a telephone conference with Andrew Parsons on 31 May 2016, but I cannot tell from the record (which simply characterises the conference as “re way forward”) whether it was related to this workstream. I have no note or independent recollection of these meetings.
79. I am asked when drafting this advice the extent to which I was aware of the information/reports identified in paragraphs 25, 40, 50, 56 and 69 above (and if and insofar as my answer is that I was not yet aware of such information, whether I had become aware of them by this time). My answer remains the same for items (1)-(6). I am also asked whether by this time I had become aware of (7) the Part Two Second Sight Report and (8) the Swift Review.
80. I was aware of (8) the Swift Review [POL00006355], as that review document was the basis for my instructions, and, as Rodric Williams’ instructions to me made clear (at [POL00022765\_0001]), a copy of the Swift Review was provided to me with those instructions (referred to in those instructions as “the Report”).
81. As for (6) the Initial Complaint Review and Mediation Scheme Briefing Report - Part One dated 25 July 2014 [POL00075178] and (7) the Initial Complaint

Review and Mediation Scheme Briefing Report - Part Two dated 9 April 2015 [POL00029849], both were extensively referred to in the Swift Review, in particular at [POL00006355\_0025-0029 and 0034-0037]. I was not, however, provided with copies of either document.

82. I believe the case files and the material sent to me were sufficient for the purposes of the review. I do not know how the case files were selected for my review or who selected them. What is clear to me was that it was necessary to review cases files contrary to "POL's position" (as explained in paragraphs 105 to 109 of the Swift Review (at [POL00006355\_0035-0037]) and in my instructions (at [POL00022765\_0003])). In my email to Rodric Williams on 4 April 2016 [POL00025755\_0001], I wrote "The recommendation, as formulated, suggests to me that the only solution would be to proceed to a review of all such affected cases."
83. I concluded (at [POL00006394\_0051]) by saying that on the basis of my review of cases falling within the remit of the review, that the allegation that there had been a deliberate policy to charge theft, when there was no or no sufficient evidential basis to support it, just to encourage or influence pleas of guilty to charges of false accounting, was misplaced. Neither did I find any evidence in the cases I had been invited to review that theft (or fraud for that matter) was charged without any proper basis to do so and/or in order only to encourage or influence guilty pleas to offences of false accounting. I expressed the view (at [POL00006394\_0052-0053]) that POL could be subject to criticism that it had been using the criminal justice system to enforce repayment from subpostmasters, and it could be argued that, because subpostmasters were contractually bound to repay losses, POL was using (and abusing) the criminal justice process rather than civil litigation to recover

from offenders. However, in the cases I reviewed, I found that where consideration had been given to the making of applications for confiscation and compensation orders, there had been a proper legal and evidential basis for so doing.

84. I was not invited to meet, or personally report to, the POL's Board or the Audit Committee or any other committee in respect of this advice.
85. I do not know if, or the extent to which, my recommendations were implemented.

**Altman Common Issues Advice [POL00022834], Advice on Settlement [POL00006401] and Horizon Issues Advice [POL00026461]**

86. I received my instructions for these pieces of work from HSF who were then acting for POL. I dealt with Alan Watts, a partner, and Catherine Emanuel, who I believe then to have been a senior associate. I am unable to identify the source of the instructions for this work.
87. Two of the advices (The Post Office Group Litigation, Advice on the Common Issues Judgment dated 14 April 2019 [POL00022834] and Note on the Horizon Issues Judgment dated 8 December 2019 [POL00026461]) related to the judgments of Mr Justice Fraser in the High Court, and the Advice on Settlement dated 17 June 2019 [POL00006401] was based on information that had been provided to me (albeit I cannot recollect in what format) as outlined at [POL00006401\_0001-0002]. I believe that what was provided to me was sufficient for the purposes of this work.
88. I am asked if I provided any advice to POL in respect of the use of Gareth Jenkins in further legal proceedings. I did not provide any advice to POL in respect of the use of Gareth Jenkins in further legal proceedings. My only

awareness of the involvement of Mr Jenkins in the civil proceedings was, I believe, from what I later read in the draft or final judgment of Mr Justice Fraser in Alan Bates and Others v. Post Office Limited in paragraphs 508 to 516.

89. The only work record I have of a conference relating to any of these workstreams is for 2 December 2019 (see [WITN10350110\_0002]); this was a telephone conference with Rodric Williams and Catherine Emanuel and William Lord of HSF, and it lasted one hour and 15 minutes. I have no note or independent recollection of this meeting now, but it is clear from the Note on Horizon Issues Judgment that the meeting did relate to the issues later documented in my note on the judgment (see [POL00026461\_0001]).
90. I am asked again about my awareness at the time of drafting these advices of the information/reports referred to previously. I refer to my responses at paragraphs 79 to 81 above.
91. The requests for advice on the two judgments of Mr Justice Fraser were designed to elicit my advice on their possible impact on the safety of past criminal convictions (see [POL00022834\_0001 and \_0038]) and/or of the risk of criminal appeals or the CCRC making references (see [POL00006401\_0002]).
92. The advice in [POL00022834] and [POL00026461] was expressly about the impact of the two High Court judgments on past criminal cases and future criminal appeals.
93. As for the Advice on Settlement [POL00006401\_0002], "Post Office wishe[d] to understand the risk to the safety of a conviction that might be caused by a settlement that directly or indirectly awards some compensation or other benefit to a convicted Claimant."
94. I understood the Horizon Issues Trial was ongoing (see

[POL00006401\_0002]) and I wrote “I am asked to advise Post Office on the risk to the safety of any conviction if Post Office enters into a settlement with any or all of the Claimants.”

95. I added at [POL00006401\_0003] “Because no structure for any settlement has yet been decided, far less whether in principle any settlement negotiations should be commenced, this advice is inevitably in the abstract. The single question is whether settlement risks, or is likely to risk, the safety of past criminal convictions. The nature of this advice may, I understand, even influence the decision whether to attempt a settlement.” Because of this, at [POL00006401\_0004], I made very clear “It is not for me to advise on the strategy of any settlement and when and in what circumstances any offer to settle should be made. That must be a matter for Post Office's commercial law advisors to advise. I am directing my attention solely at the potential risks to the safety of criminal convictions in settling (or even attempting to settle) the 61 convicted Claimants' claims against Post Office.”
96. Finally, at [POL00006401\_0009], I said that “In my opinion, there is some risk to including convicted Claimants in any settlement agreement or package.” I added, “At this stage, and in the abstract, I am unable exactly to define or to quantify the risk. While it has to be a matter for others to advise and decide how far Post Office should go in progressing a differential approach among the convicted Claimants and the rest, my advice must be that reaching any settlement agreement with the convicted Claimants should be a red line for all the reasons given above.” My final conclusion at paragraph 31(e) in [POL00006401\_0010] was “There is therefore in my judgment some risk to the safety of convictions of including convicted Claimants in any settlement agreement or package.”

97. Thus, the advice, which I had characterised more than once as “in the abstract”, was solely about the risk to the safety of past convictions of seeking a settlement with convicted claimants. Consideration of settlement by POL was then “in its early stages” (see [POL00006401\_0001]). I had no involvement in, or discussions about, the conduct of the civil litigation, and I did not consider I was providing advice that impacted on the conduct of civil litigation.
98. I was not invited to meet, or personally report to, the POL’s Board or the Audit Committee or any other committee in respect of these advices.
99. I do not know or remember if, or the extent to which, my views were implemented.

### **Court of Appeal Criminal Division**

100. In about January 2020, following the Horizon Issues Trial judgment, POL instructed Nick Vamos at P&P to deal with the criminal cases. It was therefore through P&P that I was instructed to advise POL in the criminal matters and, following the references made by the CCRC to the CACD in June and July 2020, to represent POL in the CACD.
101. I am asked to set out my views as to the timing of the disclosure of the documents/information referred to at paragraphs 25, 40, 50, 56, 69 and 79-81 above (if and insofar as they were disclosed) to appellants. They are: (1) bugs, errors or defects in Legacy Horizon; (2) the Helen Rose Report; (3) the Second Sight Interim Report; (4) the August Clarke advice; (5) the Detica report; (6) the Initial Complaint Review and Mediation Scheme Briefing Report - Part One Second Sight Report; (7) the Part Two Second Sight Report; and (8) the Swift Review.

102. The Disclosure Management Document (“**DMD**”) dated 19 August 2020 stated in paragraph 1 [**POL00142261\_0001**] that it was “intended to assist in informing the Court and the Appellants of the way in which the Prosecutor has been dealing with the post-conviction disclosure exercise (“**PCDE**”) to date and how it proposes to continue to fulfil its disclosure obligations in a clear, open and transparent way.” At paragraph 8 [**POL00142261\_0003**], the DMD set out the duty of post-conviction disclosure, and the broader approach POL was adopting, and, at paragraphs 12 to 18 [**POL00142261\_0004-0005**] the methodology for the PCDE, involving both the Case Specific Disclosure Review and the Generic Disclosure Review (“**GDR**”).
103. The DMD also set out (at paragraph 19) [**POL00142261\_0005**] the counsel and solicitors’ team responsible for the PCDE. The team consisted of a total of 49 junior counsel who were engaged as first and second level reviewers; one senior associate, two associates and two paralegals were engaged in the administration and collation of review material and in reviewing material; four senior instructed junior counsel were engaged in second level review and oversight of the PCDE process; while one other Queen’s Counsel and I, together with two P&P partners (including Nick Vamos), were involved in the oversight of PCDE processes and procedures.
104. The DMD then set out the sources and repositories of the information reviewed for disclosure purposes, the Case Specific Review, the GDR and other ancillary matters.
105. An Addendum to the Disclosure Management Document (“**ADMD**”) dated 13 January 2021 (incorrectly dated on the document as “13 January 2020”), at paragraph 3 [**UKGI00017849\_0001-0002**], outlined the expansion to the counsel, P&P and disclosure review team since August 2020 and, among

other matters, detailed the progress to date.

106. I set out this background to the PCDE and the functions of individual members of the team in order to explain why I am unable to respond to the question asked of me. While I have no reason to believe that the specific documents/information mentioned were not disclosed at some point in time to appellants, I cannot myself say if and when that happened as regards each document and, to the extent there was any delay in so doing, whether that was agreed to by the appellants and/or sanctioned by the CACD. If the Inquiry requires the detail of the disclosure exercise before and during the CACD proceedings, there are members of the legal team other than me who should be able to assist.

107. The rationale for the cut-off date was set out in the DMD at paragraph 5 [POL00142261\_0002] , which stated “Because the appeals are limited to prosecutions undertaken between the introduction of Horizon and the Prosecutor ceasing to act as a private Prosecutor, the relevant period for the purposes of disclosure is 1999/2000 to 2013 (the “Relevant Period”).”

108. That period was explained further at paragraphs 19 to 21 of the ADMD [UKGI00017849\_0008-0009]: Aria Grace Law (who represented three of the appellants) had requested that the Relevant Period should be extended beyond 2013. From correspondence and submissions, it had been understood that it was suggested that the Relevant Period should cover POL’s conduct during the Second Sight review, evidence being given to the Select Committee and during the PCDE undertaken by CK.

109. Paragraphs 19 to 21 of the ADMD stated:

- (1) 2013 had been selected as the end date for the Relevant Period since it marked the time by which POL had ceased prosecuting. The trials

of all appellants had been conducted and concluded prior to this time.

- (2) The basis for the request had been the contention that POL deliberately misled the inquiries and/or deliberately failed to make proper post-conviction disclosure at the time. Unless a document or an event produced or occurring post-conviction provided evidence of deliberate conduct or misconduct before or during the proceedings as could render an appellant's conviction unsafe on grounds of an abuse of process at the time of trial (such as a later confession to past wrongdoing), then it had no relevance to the issues the CACD had to evaluate on abuse of process.
- (3) Additionally, POL had had particular regard to the fact that extending the Relevant Period would necessitate a very substantial expansion of the PCDE which was not possible within the timetable set down by the CACD. Such an extension to the Relevant Period would therefore have inevitably delayed resolution of the appeals. POL considered that this would be unfair to the overwhelming majority of appellants who had properly and understandably expressed the clear view that they wished their cases to be resolved as soon as possible.
- (4) POL noted that, at the hearing on 17 December 2020, the CACD was not prepared to entertain wide-ranging inquiries into POL's conduct, particularly where that conduct occurred after POL had ceased to prosecute cases involving Horizon in 2013.

110. At paragraph 21 of the ADMD [UKGI00017849\_0009], the document added "For the avoidance of doubt, some material post-dating the Relevant Period has been reviewed (and disclosed where appropriate) where it is relevant to POL's conduct and/or knowledge during the Relevant Period. However, where

such material is relevant only to POL's conduct/knowledge after the end of the Relevant Period, it is not deemed disclosable."

111. In response to the ADMD, counsel for the appellants Scott Darlington, Stanley Fell, Peter Holmes (deceased), Rubina Shaheen and Pamela Lock ("**the five Appellants**") served a Disclosure Management Document on behalf of Edward Fail, Bradshaw & Waterson Appellants dated 1 February 2021 (incorrectly dated 1 January 2021). In it, at paragraph 18, they argued to extend the period of disclosure to post-2013 material, not because they thought material might be relevant to Ground 2 of appeal *per se*, but because they wanted to rely on examples of misconduct as a form of "bad character" evidence.
112. In a Response to Disclosure Request made on behalf of Appellants represented by Edward Fail, Bradshaw & Waterson, dated 11 February 2021 [WITN10350111\_0001-0002], P&P explained again the rationale underlying the Relevant Period and declined to revise it [WITN10350111\_0004]. In their Skeleton Disclosure Argument [POL00167828], dated 25 February 2021, counsel for the five Appellants indicated that on 15 February 2021 they had invited the CACD to rule on the issue and made their argument to extend the period of disclosure [POL00167828\_0001-0002]. In paragraphs 3 to 7 of a Response to Disclosure Skeleton Argument submitted on behalf of Appellants represented by Edward Fail, Bradshaw & Waterson, dated 3 March 2021 [POL00133185\_0001-0002], which were drafted by (then) junior counsel on behalf of POL, those arguments were addressed in full. At paragraph 7 [POL00133185\_0002], counsel for POL noted "that none of the other 37 Appellants in this appeal has submitted that the Relevant Period requires extension, nor that the interests of justice require a delay to the hearing of the

appeals in order properly to advance the grounds for which leave to appeal has been given.”

113. In its Reasons in support of Order of 10.3.2021 regarding Disclosure Applications [WITN10350103], at paragraph 2 [WITN10350103\_0002], the CACD said “we are not persuaded that the abandonment of the 2013 cut-off point would make a material difference to the questions which the court will determine.” At paragraph 3 [WITN10350103\_0002], the CACD added “There is no justification for the suggestion that the Respondent’s large and experienced legal team (which includes a substantial number of barristers led by two Queen’s Counsel) have failed to ensure that proper disclosure has been provided to the Appellants. On the contrary, it appears that the review has been thoroughly and professionally conducted.” The CACD concluded at paragraph 4 [WITN10350103\_0002], “We agree with the Respondent that the disclosure process should not become open-ended. The approach adopted by the Respondent and sanctioned by the court remains proportionate and just.”

114. Moreover, it is axiomatic that misconduct after the event of a conviction cannot render an otherwise safe conviction unsafe. Accordingly, the ADMD made clear that unless a document or an event produced or occurring post-conviction provided evidence of deliberate conduct or misconduct before or during the proceedings as could render an appellant’s conviction unsafe on grounds of an abuse of process at the time of trial (such as a later confession to past wrongdoing), then it had no relevance to the issues the CACD had to evaluate on abuse of process (see paragraph 109(2) above).

115. I am also asked to what extent (if any) I consider the timing of disclosure to appellants and any cut-off date for documentation that was considered to be

disclosable (1) impacted on the decisions of some appellants as to whether or not to pursue Ground 2 of the appeal and (2) influenced POL's approach to the concessions that it made, and what, if any, advice was given in this regard.

116. Insofar as point (1) of the question is concerned, I have no insight into whether the timing of disclosure and the cut-off date for documentation that was considered to be disclosable impacted on the internal decision-making of some appellants to pursue Ground 2 of the appeal. However, I believe that the paragraphs above, not least the CACD's clear reasoning for approving the Relevant Period, demonstrate that the Relevant Period for disclosure as set out in the DMD, and further explained in the ADMD, was correct.

117. In respect of point (2) of the question, POL's concessions to Ground 1 of the appeal in 39 of the 42 cases, and to Ground 2 of the appeal in four of the 42 cases, related directly to the evidence underlying the appellants' cases within the framework of the grounds of appeal, which the CACD was being invited to determine.

118. I am asked to explain why the Disclosure Note in relation to the Context for 'the Clarke Advice' [POL00038814] (as updated at [POL00142409]) does not address the August 2013 Clarke Advice. The context note was expressly designed to accompany the Submissions Document [POL00158692] (and see, in particular [POL00158692\_0001 and \_0004]). The August 2013 advice [POL00006799] covered the duty to record and retain material. It was immaterial to the context for, and the disclosure of, the July 2013 Clarke Advice [POL00006798], which was the advice that was the subject of Nick Wallis's application of 26 November 2020 (see [POL00158692\_0002]).

119. I am asked if I consider the disclosure that was made in the CACD proceedings to have been sufficient and appropriate (including in respect of

the detail and timing). Again, I do not have the detail, or the timing of, the disclosure made before or during the CACD proceedings. But in very broad terms and, given the CACD's view in March 2021 that the review had been "thoroughly and professionally conducted", I have no reason to believe otherwise. Again, if the Inquiry requires to understand the detail of the disclosure exercise before and during the CACD proceedings, there are members of the legal team other than me who should be able to assist.

### **Conclusions**

120. I am asked, whether in hindsight, there is anything I would have done differently in respect of the matters raised in my statement and whether there are other matters I would like to bring to the attention of the Chair.

121. I have considered with great care whether there is anything I would or should have done differently. However, I cannot say there is. I gave my professional advice and arrived at my conclusions at all times based only on the information, knowledge and belief I possessed at the material time.

122. I have sought to help the Inquiry in providing this detailed witness statement in response to the Inquiry's Request. I hope the information I have provided will be of assistance, not only to the Inquiry in fulfilling its Terms of Reference, but also to those affected, as well as enabling the Inquiry to understand my role and the context of my involvement.

**Statement of Truth**

I believe the content of this statement to be true.

Signed:

**Brian Altman**

Dated: 4 April 2024

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<b><u>No.</u></b>	<b><u>URN</u></b>	<b><u>Document Description</u></b>	<b><u>Control Number</u></b>
1	POL00006803	Brian Altman QC's general review of prosecutions	POL-0017620
2	POL00006804	Terms of Reference for the Appointment of Brian Altman Q.C	POL-0017621
3	POL00040044	Terms of reference for the Appointment of Brian Altman QC	POL-0036526
4	POL00006802	Advice by Brian Altman QC on the prosecution role of the Post Office	POL-0017619
5	POL00040036	Terms of Reference for the Appointment of Brian Altman QC	POL-0036518
6	POL00065929	Seema Misra case study: Email from Rodric Williams to Mark Underwood and Patrick Bourke re: Post Office – Balancing Transactions [BD-4A.FID26610170]	POL-0062408
7	POL00006801	Brian Altman QC's interim review	POL-0017618
8	POL00021982	Draft Terms of Reference for the Appointment of Brian Altman QC	POL-0018461
9	POL00021980	Email from Gavin Matthews to Susan Crichton, Rodric Williams, Hugh Flemington and others re: Brian Altman QC - terms of Reference	POL-0018459
10	POL00006769	Note of conference with Brian Altman QC	POL-0017616
11	WITN10350105	Work record [1] for Brian Altman QC – for the period 25.7.13- 4.10.13	WITN10350105
12	POL00066807	RESPONSE TO THE	POL-0063286

		INTERIM REVIEW OF CARTWRIGHT KING'S CURRENT PROCESS BY BRIAN ALTMAN QC	
13	POL00026461	Note on Horizon Issues Judgment	POL-0022940
14	POL00030214	Draft Report by Helen Rose on Horizon Data for Lepton SPSO 191320	POL-0026696
15	POL00029650	Interim Report into the alleged problems with the Horizon system	POL-0026132
16	POL00029677	Draft Report on Fraud and Non-conformance in the Post Office; Challenges and Recommendations	POL-0026159
17	POL00006798	Legal advice on the use of expert evidence	POL-0017590
18	POL00158692	Submissions on behalf of the respondent re application by Nick Wallis for access to papers in the proceedings	POL-BSFF-0014659
19	WITN10350106	Work record [2] for Brian Altman QC – for the period 5.10.13- 19.12.13	WITN10350106
20	POL00040194	Observations and analysis of the Cartwright King Prosecution Review Process	POL-0036676
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22	POL00105068	Advice Report on Papers for Post Office Ltd Board	POL-0080700
23	WITN10350107	Work record [3] for Brian Altman QC – for the period 6.1.14- 20.5.14	WITN10350107
24	POL00061549	Email chain from Rodric Williams to Claire Webb and Jonny Gribben re: FW:	POL-0058028

		Call with Brian Altman QC - Subject to Legal Privilege	
25	POL00040254	Email chain between Gavin Matthews, Rodric Williams, Andrew Parsons and others RE: Advice from Brian Altman QC on Suggested Approach to Criminal Case Mediation	POL-0036736
26	POL00006368	Advice to POL on suggested approach to criminal case mediation, by Mr Altman QC	POL-0017636
27	WITN10350108	Work record [4] for Brian Altman QC – for the period 11.7.14- 6.12.14	WITN10350108
28	POL00075178	Initial Complaint Review and Mediation Scheme Briefing Report Part One	POL-0071741
29	POL00006588	Advice on Theft and False Accounting: Brian Altman QC	POL-0017852
30	POL00125777	Email chain from Brian Altman to Parsons Andrew cc'ing Gavin Matthews RE: Post Office - False Accounting and Theft [BD-4A.FID26231777]	POL-0131385
31	POL00006394	Review of Post Office Ltd Criminal Prosecutions - Brian Altman QC - July 2016	POL-0017699
32	POL00006355	Review on behalf of the Chairman of Post Office Ltd concerning the steps taken in response to various complaints made by sub-postmasters	POL-0017623
33	POL00022765	Instructions to Brian Altman QC from POL	POL-0019244
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35	WITN10350109	Work record [7] for Brian Altman QC – for the period 18.2.16- 29.7.16	WITN10350109
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40	POL00142261	Disclosure Management Document	POL00142261
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44	POL00133185	Response to Disclosure Skeleton Argument submitted on behalf of Appellants represented by Edward Fail, Bradshaw & Waterson	POL00133185
45	WITN10350103	Reasons in support of Order of 10.3.2021 regarding Disclosure Applications	WITN10350103
46	POL00038814	Disclosure note in relation to the context for 'The Clarke Advice' (R v. Hamilton & others)	POL-0027700
47	POL00142409	Updated disclosure note in relation to the context for "The Clarke Advice" – TO	POL-0143641

		BE PROVIDED	
48	POL00006799	Advice on Disclosure and the Duty to Record and Retain Material	POL-0017591