

Witness Name: Lord Neuberger of Abbotsbury
Statement No.: WITN10650100
Dated: 10th May 2024

POST OFFICE HORIZON IT INQUIRY

FIRST WITNESS STATEMENT OF LORD NEUBERGER OF ABBOTSBURY

I, **LORD NEUBERGER OF ABBOTSBURY**, will say as follows:

INTRODUCTION

1. This is my statement following a Rule 9 request by POL Horizon IT Inquiry (“the Inquiry”) contained in a letter to me dated 9th February 2024. The structure of this statement is framed by reference to the specific questions raised in Annex 1 to that Letter. The statement covers a period between around 10th March and 21st June 2019, and it deals with advice which I gave POL, discussions which I had and views which I expressed to POL, POL’s solicitors, and/or POL’s counsel in connection with the *Bates* litigation.
2. After searching my computer records, I realised that I had not retained many of the emails which I sent and received in connection with the *Bates* litigation. Accordingly, I asked the IT department at One Essex Court, the chambers from which I practice (“the IT team”), to search for all those emails in the archives. While the IT team seem to have retrieved most of the emails which I sent or received in connection with the *Bates* litigation, it does appear that there are some emails, and some attachments which have not been found.

3. The emails which the IT team have retrieved and forwarded to me are in threads consisting of a number of emails: I am sorry if production of emails in this form does not conform to the Inquiry's requirements, but that is the form in which they have been sent, and are available, to me.

4. I should perhaps add that I had started to prepare this Statement before the IT team had forwarded most of the emails which I had sent and received in connection with this matter, and, on reading them, I realised how much I had forgotten.

5. Unless I say otherwise, all dates mentioned in this witness statement are in 2019.

BACKGROUND

6. I was called to the Bar of England and Wales in 1975, became a QC in 1987, and was appointed a High Court Judge in 1996. I was promoted to the Court of Appeal in 2004, and was made a Law Lord in 2007. I became Master of the Rolls in 2009, and was appointed President of the UK Supreme Court in 2012. On retiring from that post in 2017, I started work at One Essex Court in the Temple, as an arbitrator, mediator and legal expert.

7. On a date which clearly must have been before 13th March, one of the clerks (I am pretty sure that it was the senior clerk) at One Essex Court contacted me (I think by telephone) and, while I do not recall his words, he told me that a QC in chambers had just received a draft judgment, which in due course became the "common issues" judgment, and which he said raised some points on which my

view might be urgently wanted. I cannot recall whether he gave any further details. I am pretty sure that I explained that I had some work commitments and was due go on holiday on the 14th March, which would limit the time which I had to do any work on the case, but that, if that was understood and accepted by the solicitors and counsel involved, I would do what I could. I believe that I suggested that if I was to proceed I should talk as soon as possible with the QC involved.

8. I then talked to the QC concerned, David Cavender. I cannot recall the exact date or the details of the conversation, but I am pretty sure that he explained:

- (a) The nature of the *Bates* litigation,
- (b) The basic procedure which the Judge, Fraser J (as he then was) (“the Judge”), had ordered, namely a series of (I think three) almost back-to-back trials each on different specified issues;
- (c) Some of the procedural background;
- (d) The issues arising from the draft judgment as he saw them, namely
 - a. the substantive findings as to the effect of a large number of contractual provisions,
 - b. alleged unfairness on the part of the Judge, and
 - c. a possible application to the Judge to recuse himself from hearing the subsequent trials (“the recusal application”).

9. I believe that Mr Cavender and I agreed that if I was to give a view, I should do so very promptly, as the next trial was due shortly to take place and accordingly any proposed recusal application, should be made as soon as reasonably

possible, and that I explained that, in light of my holiday arrangements, my view would anyway have to be given by the 14th March. I also think that I said that I would need a Note from Mr Cavender which set out the relevant facts so far as the recusal application was concerned.

10. In that conversation (or in a later conversation – if there was one), I recall that Mr Cavender and I discussed the possibility of a different leading counsel presenting any recusal application in court, which seemed to me to be a good idea. I am not sure when I first knew that Lord Grabiner QC had been instructed for that purpose, but it may well have been in an email after I had arrived in South America.

11. I am afraid that I cannot remember if I had any communications at that stage with POL's solicitors, Womble Bond Dickinson ("WBD"). At some point, they must have instructed me, but I cannot recall how or when. They may well have instructed me orally via my clerks to provide a view in writing. It is quite possible that I talked to them, but I do not recall having done so. It may even be that they had asked my clerk prior to his contacting me as described in paragraph 7 above.

12. I am afraid that I cannot put precise dates on the events described in the preceding five paragraphs (save the date I went on holiday as that is the only relevant event recorded in my diary), but they all must have occurred between (i) some time shortly after - presumably a day or two after - the draft common issues judgment was circulated and (ii) 14th March, the date of my Observations

(**POL00025910**) (“the Observations”), and the date when they were presumably circulated.

OBSERVATIONS DATED 14 MARCH 2019

13. I have been asked to consider (**POL00023097**) (Note on background to possible recusal application) (“the Cavender Note”) and the Observations and a series of related questions. I can confirm that the “Note on the background to possible recusal application”, to which I referred in paragraph 1 of the Observations, is the Cavender Note.

14. I am asked to provide details of my discussion with Mr Cavender (referred to in paragraph 1 of the Observations), all oral or written communication between myself and POL’s legal representatives or agents in connection with the instruction, and the information upon which I relied when preparing the Observations

(a) I have already mentioned the conversation with Mr Cavender and have said all that I can recall about it in paragraphs 8 to 10 above. As mentioned, it is possible that I had other conversations with him prior to producing the Observations, but, if I did, I do not recall them.

(b) I do not recall talking to anyone else (other than clerks) about the case prior to producing the Observations, but it is possible that I spoke to WBD and it is also possible that I spoke to Mr Cavender’s junior counsel.

(c) Apart from the Cavender Note, the draft judgment, and a number of authorities (mostly on recusal, but one or two on “relational contracts”), I

do not now recall whether I looked at any other documents, but I may have done so. Interpreting a document one has written is not always a reliable exercise, but paragraph 1 of the Observations suggests that, at least essentially, I based my conclusions on the two documents there referred to, which in turn indicates that they were the documents which I solely or mainly relied on, and there is nothing I can see in the Observations to call that into question.

15. I am directed to paragraph 14 of the Observations, where I state "I have not had the opportunity of considering all transcripts". I am asked to set out which transcripts I had available and those I read in preparing the advice, and why I considered it appropriate to advise on the application for recusal without reviewing all of the transcripts:

- (a) I am not sure whether the transcripts of the common issues trial were available to me at that time, but I suspect that they were;
- (b) I would therefore be speculating as to whether, and if so to what extent, I knew what was in the transcripts beyond what was quoted from them in the Cavender Note;
- (c) I am reconstructing rather than recalling, but the circumstances described in paragraph 9 above inevitably restricted the amount of reading I could do, as often happens when a view is needed urgently;
- (d) I clearly believed that I had read enough to form the view which I expressed in the Observations in the terms in which I expressed it: if I had felt otherwise, I would not have expressed myself as I did.

16. I am asked to set out details of any oral discussions or other written communications between myself and other Counsel representing POL in the Bates litigation prior to providing the Observations, and whether I had any oral discussions with any representative of POL (also prior to preparing the Observations). As already mentioned, prior to circulating the Observations, I do not recall any conversations or other communications with counsel acting for POL or with WBD, other than the conversation I have referred to with Mr Cavender, but there could have been other conversations.

17. I am asked to describe any further communications between POL's legal representatives or agents when I was initially approached to advise to the call with the POL board of directors on 18th March 2019. ("the March call"). As far as I can recall I had no oral conversations about the case with counsel acting for POL or with WBD before I went to South America on 14th March, and I do not believe that I had any conversations on the telephone with counsel acting for POL or with W before I joined the March call from Argentina.

18. However, before the March 2019 call, I did have some email exchanges with Lord Gribner and with Mr Beezer of WBD (as well as Rob Smith, one of the clerks at One Essex Court). These email exchanges are **WITN10650101** to **WITN10650106**", and I would summarise their basic effect as follows:

- (a) On 16th March (a Saturday) I received an email which included some earlier emails which showed that on 15th March (i) the common issues judgment had been handed down, and (ii) Lord Gribner had been

instructed, and that he was going to read the papers over the weekend; I replied saying that I would be interested to know what Lord Grabiner made of the judgment; **WITN10650101**.

(b) Later the same day, I received an email in which Lord Grabiner said, in answer to the clerks telling him that WBD had asked for “2 calls on Monday” one at 1.00 pm and the other with the POL board at 5.15 pm, that he could make the former but not the latter; **WITN10650102**.

(c) On 17th March, I received an email from Lord Grabiner, who indicated that he was reading the common issues judgment, and attached to that email was an email exchange between Mr Beezer of WBD and the clerks at One Essex Court raising, among other things, the possibility that, if Lord Grabiner could not attend the 5.15 call, I could do so; **WITN10650103**.

(d) Later the same day, I had an email exchange with Lord Grabiner, in which I expressed the view that the Judge had gone wrong in his analysis of the law in the common issues judgment; **WITN10650104**.

(e) On 18th March, I was told by the clerks that Lord Grabiner, Mr Cavender and his junior Gideon Cohen (“the counsel team”) were meeting in chambers with POL at 2.00, and WBD, and that I was due to talk on the telephone with POL and Mr Cavender and Mr Cohen at 5.15. I asked to be emailed following the former meeting if there was anything I should know for the latter meeting; **WITN10650105**.

(f) Following the meeting at 2.00 pm on 18th March, Lord Grabiner emailed me saying that he had advised POL that it had “strong grounds” for making an application to the Judge to recuse himself (a “recusal

application”), but that there were “board members who were nervous of the publicity consequences”, that Mr Cavender and Mr Cohen might not be attending the 5.15 meeting as the POL thought they would thereby “get a more detached view” from me, and expressing the view that if the recusal application was not made, POL would be “in an even worse position than they are now”; **WITN10650106**;

(g) I replied to Lord Grabiner saying that, a “normal’ organisation faced with this nightmare would make the application”, and that the risk was that, if the Judge did not recuse himself “and the CA don’t remove him (which is possible, though I think they ought) then we will have antagonised him even further than we apparently have already”. I went on to say that while “making the application has its risks”, it should be made as “we have a good chance of removing him”. I also asked if he would be on the call as I was anxious not to give advice which was inconsistent with that of Lord Grabiner as he “would be presenting the case and [was] the ultimate adviser”. **WITN10650106**;

(h) Lord Grabiner replied saying that he agreed with me and that “there’s no difference between us”; **WITN10650106**.

18 MARCH 2019 CALL WITH THE BOARD OF DIRECTORS

19. I remember the March call, as I was telephoning in from Argentina where I was on holiday and found it hard to get through. However, I cannot pretend to remember much of what was said in that call. I have considered the Note of the March call (**POL00021562**) (“the March Note”), and have no reason for thinking

that the March Note in Items 3 and 4 is significantly inaccurate, although there are three aspects which I should comment on. Apart from those aspects, I suspect that I may have expressed myself slightly differently the way in which some of my remarks were reported.

20. As just mentioned, I should say something about three passages in the March Note (**POL00021562**). Two of those passages are in Item 4.1.3. First, it is noted that I said that I “did not yet know Lord Grabiner’s view of the case”. From his email earlier that day, I knew that he thought that a recusal application had good prospects and should be made, and I am sure I would not have said that I did not know that. Secondly, I am noted as saying that I had not seen “the evidence from the other side”: I suspect that I said I had not seen the evidence and arguments on which the Claimants would be relying. Thirdly, the point which I think I was making in Item 4.3 of the March Note (**POL00021562**) was that unfairness was not really a free-standing ground of appeal, but it was relevant to the argument both on the common issues and the recusal, as, if POL was right in contending that the Judge’s adverse findings as to the evidence of some of POL’s witnesses were irrelevant to the common issues, and therefore unnecessary, that was unfair, and the point could be said to bolster the recusal application.

21. I do not recall any question raised or point made by the other people attending the March call over and above those recorded in the March Note (**POL00021562**).

22. I am asked if a passage in the March Note **POL00021562** (starting “we had a good prospect ...” and ending “...the evidence from the other side”) accurately reflected my view and why I considered the application to have such merit. I cannot positively confirm that the passages quoted precisely reflected what I advised, but they are consistent with the general thrust of my recollection of the advice which I gave. In an email (part of **WITN10650106**) sent to the counsel team very shortly after the March call (namely at 18:36), I said that I had told the POL Board “that I thought that they would win on recusal, but couldn’t guarantee it, and that, if we were to run recusal we had to grasp the nettle”. I also mentioned that I had explained that unfairness “was not a free-standing point”. I said further that “the only reason not to go ahead is fear of the judge getting more anti- if we lose and fear of bad publicity”, and added that I thought that “the Judge is a lost cause and if he isn’t he may react better if we stand up to him” and that “bad publicity [is] seldom a convincing reason”.

23. I do not recall having had the opportunity to consider any material ahead of the March call other than that which I had considered when preparing the Observations, so I am pretty confident that my views expressed on the March call would have been based on what I knew and had read when I prepared the Observations.

24. My independent recollection of what was said in the March call is very slight. I do not recall any views being expressed by anyone else while I was on the March call. If there had been any unusual concerns expressed, or if there had been any expressed divergence of views between members of the board, there

is a reasonable chance that I might have recalled it, and I have no such recollection. I had no reason to doubt that the POL board members were genuinely concerned about the issues which they are recorded as having raised in paragraphs 4.1 to 4.8 of the March Note (**POL00021562**). I wrote in my 18:36 email that day (in **WITN10650106**) that the questions which I was asked on the March call “were mostly well-judged and all understandable, but they are very concerned about the risks, which, bearing in mind they are a public body which has just had a very nasty, and I think unfair, shock, is scarcely surprising”.

25. On 20th March (while I was still in Argentina) I was informed by email that POL had decided to make the recusal application – email exchanges **WITN10650107** and **WITN10650108**. Subsequently, on the evening of 22nd March, I received an email from Lord Grabiner telling me that the hearing of the application had been fixed, attaching his speaking note for the hearing of the recusal application, and asking if I had any comments on it. I replied later that evening, making a few suggestions in an email which Lord Grabiner acknowledged a few minutes later - email exchanges **WITN10650109**. Following those email exchanges, I am practically certain that I had no further involvement in the preparation for the recusal application.

INVOLVEMENT FOLLOWING 18 MARCH 2019 MEETING

26. I returned from South America at the end of March, and, to the best of my knowledge, the next time I heard anything substantive about the *Bates* litigation was when I was informed in an email on 9th April by Lord Grabiner that the

Judge had given judgment that day rejecting the recusal application (“the recusal judgment”) - email exchanges **WITN10650110** - and Lord Grabiner and I had further brief exchange about the recusal judgment, **WITN10650111**.

27. Meanwhile on 8th/9th April, WBD instructed me to consider the question of an appeal against the common issues judgment (“the common issues appeal”), and in particular to “review the judgment and draft grounds of appeal”, to discuss with Mr Cavender the grounds of appeal, how best to avoid the sort of criticism POL had received from the Judge, and to “attend a Post Office Board meeting to advise” on those matters; **WITN10650112**.

28. There was some further email traffic involving the counsel team between 9th and 12th April which are exchanges **WITN10650113** to **WITN10650116**. The effect of these emails, in summary terms, is as follows:

(a) On 9th April, Lord Grabiner wrote criticising the Judge’s finding of waiver in the recusal judgment, and I replied more fully with “some disjointed and very preliminary thoughts, referring to “two bad decisions” of the Judge, namely “not to shut out irrelevant evidence” and “not to control himself to making only necessary findings” and suggesting “we can probably only complain about the second”. I described the recusal judgment as “a bit of a curate’s egg”, with “some silly points” (“e.g. the waiver argument and the point that he made some findings in favour of the PO”), but adding that “some of his points have force – especially our cross-examining and/or making submissions on some of the points we

now complain about". I concluded by saying that "My feeling is that he has an arguable defence on some of the findings we complain about, but not on others", but how many findings that applied to and "how good his defence is on the ones where he has a defence, I have not had the time to study properly or to think about" - **WITN10650113**;

(b) On 10th April, I was copied into an exchange between Lord Gribiner and Mr Parsons of WBD, in which Lord Gribiner confirmed that he thought that POL had a "strong case" on recusal and that it had "no real alternative choice but to pursue appeals to the Court of Appeal against both the recusal and the common issues judgments". He added that he could "not give a guarantee of success in the Court of Appeal" and that he thought that "Lord Neuberger's view on prospects should also be sought by the clients"; **WITN10650114**;

(c) I was also copied in to emails between the counsel team and Mr Parsons on 10th and 11th April -**WITN10650115**;

(d) On 11th April, I had brief email exchanges with Mr Cavender, in which we agreed to have a meeting the following day at 11.00 am, he referred to a 2-hour meeting which he had with the POL Board "trying to hold their hands and explain the appeal strategy", and I wrote that "their nervousness about possible outcomes in court is unsurprising in the circumstances"; **WITN10650116**.

29. On 12th April, Coulson LJ in the Court of Appeal, made an order recording, as I understand it, that the Notice of Appeal against the recusal judgment had been issued that day, and giving certain directions.

30. I have no doubt that Lord Grabiner and I discussed the potential appeal against the Judge's rejection of the recusal application (the "recusal appeal") and common issues appeal from time to time, but I have no recollection of any specific meetings or specific telephone discussions. It is clear from emails passing between Mr Parsons and Lord Grabiner (which I was copied in on), marked **POL000023208**, and from the emails in **WITN10650117** that Lord Grabiner and I discussed the case on 12th April and again on 14th April. However, as just stated, I am afraid that I cannot recall those discussions, and therefore cannot say what we actually said or agreed, or who else, if anyone, took part. Having said that, I have no reason to doubt the accuracy of what is revealed in Lord Grabiner's emails of 12th April at 17:50 and 14th April at 11.19 (each of which was said to follow on from discussions with the counsel team and me and are included in **WITN10650117**) and my email of 14th April at 11.56 (which is in **WITN10650118**) and which I had put past Lord Grabiner in draft form a few minutes before it was sent at 11.51 in **WITN10650117**.

31. In his email of 12th April at 17:50 (part of **WITN10650117**), Lord Grabiner recommended writing to the Court of Appeal saying that an appeal against the common issues judgment was being prepared, and suggesting that both prospective appeal applications should be considered together, that the preparation of the relevant documentation was "extremely urgent", and expressing concerns about the possible communications

32. In his email of 14th April at 11.19 (also part of **WITN10650117**), Lord Grabiner recorded that the drafting of the documents supporting the bringing of the common issues appeal should be undertaken “as quickly as possible”, that specific instructions were needed to pursue the recusal appeal, which should not be split from the common issues appeal, if both appeals were to be pursued.

33. In my email of 14th April at 11.56 (**WITN10650118**), I said that the common issues judgment gave rise to issues which were legally significant, which I understood to be commercially important to POL, and on which “I believe, ... the Judge has gone badly wrong in a number of ways”. I also said that “an appeal on the recusal aspect raises what I appreciate is a particularly sensitive issue”. I went on to say that “the two aspects are, at least potentially, connected” and so “permission to appeal should in my view be given on both aspects”, although POL could, if they wanted, appeal on only one aspect. I also said that “it would be quite remarkable” if POL did not get permission to pursue the common issues appeal, but it would be “less surprising, but in my view wrong, if permission to appeal on the recusal aspect was refused”.

34. I do not recall my discussion with Lord Grabiner on Sunday 14th April, and so I cannot give any details about it. It does appear that there was such a conversation as it was referred to by Lord Grabiner, in his email that day at 11.19 in **WITN10650117**.

35.. There were further email exchanges on 14th April – **WITN10650119**. The exchanges began at 13:18 on 15th April with Mr Parsons explaining to the

counsel team and me that POL was considering whether to appeal the common issues judgment, and asking Mr Cavender, Mr Cohen and Mr Owain Draper (who was also on the counsel team) when “the Skeleton Argument for the main appeal”, by which I assume he meant the common issues appeal, would be ready. Mr Draper replied at 13:59, making it clear that the drafting was well under way.

36. Mr Parsons then wrote at 19:53 reiterating that POL still had to decide whether to appeal the common issues judgment, and asking for two draft letters to the Court of Appeal be prepared to cover the possibilities of POL (i) having decided to appeal and (ii) not yet having decided whether to appeal, the common issues judgment.

37. Lord Grabiner then emailed at 21:00 saying that, in his view, it was “incumbent on the client to appeal the common issues judgment” as it “contains a number of flawed errors of law” (as well as “reveal[ing] the apparent bias”), and if the Court of Appeal agreed with that, there would be “a good prospect of that conclusion reinforcing, in the eyes of the Court of Appeal, Post Office’s bias arguments”. He also said that it should be decided “as soon as possible” whether the common issues judgment was to be appealed, and that if it was the Court of Appeal should be asked to consider the two applications for permission to appeal together.

38. In the final email in the 14th April **WITN10650119** thread at 22:58, I said that Lord Grabiner and I were “of much the same opinion”, and that “on the common

issues, I think the PO has a strong, and in many aspects a very strong, case that the Judge went wrong in significant respects”, and that “on the recusal issue, I remain of the view that the Judge should have recused himself on grounds of apparent bias”. I then explained that, if POL wanted to have the two applications for permission to appeal heard together, it “should write to that effect promptly” and that such a letter “would carry significantly more weight if it was clear that we were seeking to appeal on the common issues”.

39. It looks likely that there was a discussion on 15th April as it is referred to in the emails in **WITN10650119**, but I am afraid that I cannot recall whether I was party to it. In his email on 14th April at 19:53, Mr Parsons referred to “pencil[[ling] in a call at 5pm tomorrow for 30 minutes”, and in my 22:58 email I wrote “If you want to include me in the 5 pm telephone call that would be fine with me”, and there was no apparent response. While that does not mean that I did not attend such a meeting or discussion, unlike discussions between members of chambers which were often not diarised, such a telephone call or meeting would normally have been recorded in my diary (as was the case for the calls/meetings on 12th, 23rd and 24th April 2019, although not for the March call, which conceivably could be because I was on holiday) and it was not.

40. I also note that as part of an email thread, in answer to an email attaching “the Respondents’ Brief Statement of Objections” to the application for permission to appeal the recusal judgment, I wrote on 15th April at 5.00 pm that POL should “get going pdq to have the two PTAs heard together” as otherwise the application for permission to appeal the recusal judgment would be determined

on its own – **WITN10650120**. (For completeness, I should mention that, on 15th April, the counsel team and I also received from Mr Parsons an email attaching a note from criminal leading counsel “on the effect of the common issues judgment on past prosecutions”. I am not sure whether this is relevant or disclosable, so I say no more about it. It played no part in my thinking, as far as I can recollect).

41. On 15th and 16th April, there were (i) emails between WBD, the counsel team and me confirming the view that, as soon as possible, POL should decide whether to pursue the common issues appeal and then to write to the Court of Appeal, followed by (ii) emails between members of the counsel team and me about writing to the Court of Appeal, and commenting on POL’s delay in deciding whether to seek to appeal the common issues judgment; **WITN10650121**.

42. In addition, Mr Draper wrote a draft letter to the Court of Appeal, which I approved – **WITN10650122**.

43. It is clear from emails at **WITN10650123** that I had considered the draft grounds of appeal against the common issues judgment and produced a new draft which had been considered and amended by at least some members of the counsel team by 16th April, and that I was considering that amended version by 17th April. It is also apparent from an email from Mr Draper in that thread that I had written a Note about the grounds of appeal against the common issues judgment. I have tried to track the Note down – so far without success.

However, I have found a copy of what appears to be a near-final draft of the Note attached to an email I sent to myself - **WITN10650144**.

44. I also note that I appear to have been included in an email thread between members of the counsel team and Mr Parsons about a draft letter to the Court of Appeal - **WITN10650124**.

45. Between 18th and 22nd April, I had email exchanges with members of the counsel team, initially about the draft grounds of appeal, and then about the draft skeleton argument, in relation to a possible common issues appeal. These emails are **WITN10650125**, and they do not include the draft grounds of appeal or draft skeleton argument (which were attached in some cases). I doubt that those drafts would be of interest to the Inquiry, but, if I am wrong about that, and the Inquiry wishes to see all or any of the iterations of those documents I will do my best to have them tracked down. So far at least, I think that only some of them have been found by the IT team, but I could ask them to have a further search if the Inquiry so wishes. I should add that it is apparent from the emails in **WITN10650125** that I had oral discussions with members of the counsel team about the grounds of appeal and the skeleton argument, but I cannot recall those discussions.

46. Meanwhile, on 18th and 19th April, Mr Parsons informed the counsel team and me about changes in the POL's solicitor team and about Employment Tribunal proceedings which might interrelate with the *Bates* litigation - **WITN10650126**.

47. I have considered **POL00006513**, **POL00006514** and **POL00006515**, in so far as they refer to advice given by Mr Cavender in an email to WBD on 21st April. That email was copied to me, and I agreed with it in an email the following day (see **WITN10650128** described in paragraph 49 below). Independently of these various emails, I only very dimly recall this advice, but, on reading the emails, the point being made appears fairly clear to me. The point arose in connection with POL's proposed challenge to the Judge's finding in the common issues judgment that it was appropriate to imply a specific term into certain provisions of the contracts between POL and the sub-postmasters and sub-postmistresses ("the contracts"). The point being made by Mr Cavender, and agreed to by me (and apparently by Lord Grabiner) was that, rather than conceding that some specific term had to be implied into each of those provisions, POL should argue that, once one appreciated that there was a duty on the parties to the contracts to cooperate and that the principle in *Stirling v Maitland* applied, there were no need to imply anything further. This could be described as a presentational issue: rather than saying that it was appropriate to imply a term, POL should say that, once one appreciated that the general cooperation/*Stirling* principles applied, there were no gaps that needed to be filled by any implied term, let alone a specifically tailored implied term.

48. There were two email exchanges ahead of the telephone conference at 11.00 on 23rd April. In the first of those exchanges, **WITN10650127**, on 22nd April, Mr Cavender told me that there was to be (i) a conference at 11.00 am on 23rd April with POL "Legal team", WBD "and probably Herbert Smith", and (ii) a meeting at 8.30 am on 24th April with POL Board in Moorgate.

49. In the second exchange of emails ahead of the 23rd April meeting, **WITN10650128**, there was discussion about the projected common issues appeal, and the discussion covered the point discussed in paragraph 47 above. In the last of those emails, I wrote to Mr Parsons about the two projected appeals. I said that “while the recusal application and appeal are unusual (but not by any means very unusual) and could be characterised as aggressive (although I should make it clear that I remain of the view that it is justified)”. I also said that “there would be absolutely nothing aggressive or unusual in the Post Office appealing against the Judge’s conclusions on those common issues in respect of which he found for the claimants”. I then expanded on this in a little detail, which included saying that “I have been around too long to view the outcome of any litigation as guaranteed, but I would be surprised if the Judge’s conclusions against the PO on the common issues were generally upheld”.

50. It is clear that there was a discussion with Mr Parsons (and Mr Watts of Herbert Smith) at 11.00 am on 23rd April, and it appears clear from subsequent emails that it was attended by Lord Grabiner, Mr Cavender, and me, and maybe also by Mr Cohen. However, I am afraid that I cannot recall the discussion.

51. In addition to the communications already referred to, there were four email exchanges on 23rd April following the 11.00 am meeting that day. First, **WITN10650129** in which Mr Cavender thanked Lord Grabiner and me for our “help and support” at the 11.00 am meeting and attached some notes of what he intended to say at the meeting next day. Secondly, **WITN10650130**, in which

Mr Parsons informed Mr Cavender and me who would be attending the 24th April meeting. Thirdly, **WITN10650131** an email from Mr Parsons sending Lord Grabiner, Mr Cavender and me the board papers for that meeting. And fourthly, **WITN10650132** an email from Mr Parsons to Mr Cavender and me (and Lord Grabiner) saying that Mr Watts would be “opposing hearing the two appeals together” and attaching email exchanges between Mr Parsons and Mr Watts

52. So far as what I was asked is concerned, there is nothing I can add to what is disclosed by the emails covering that period.

53. The matters which WBD and POL appeared to me to be important when considering whether to appeal the common issues judgment and the recusal application refusal were, as revealed by the email traffic, (i) the prospects of success, (ii) reputational issues, and (iii) on the common issues, the relationship with Employment Tribunal proceedings.

24 APRIL 2019 MEETING OF THE SUBPOSTMASTER LITIGATION

SUBCOMITTEE

54. **POL00006755**, which are minutes (“the April Minutes”) of a meeting on 24th April (“the April meeting”). I recall attending a meeting with Mr Cavender at POL’s offices near Moorgate, and I have no doubt that that was the 24th April meeting. However, I cannot recall much about what was said. I have no reason for thinking that the April Minutes are significantly inaccurate.

55. I am asked to consider if the April Minutes are inaccurate or incomplete, and to provide a full account of the discussions that took place at the April meeting

and the advice I gave, and to describe the questions I was asked by my instructing solicitor or lay client. I may have expressed myself slightly differently from the way in which some of my remarks were reported, but, as just indicated, the substance of the April Minutes appears to me to be likely to be accurate.

56. As I have little recollection of what transpired at the 24th April meeting, I am afraid that I cannot give any further information about what was said at that meeting. However, if there had been any expressed divergence of views between members of the board or legal representatives, there is a reasonable chance that I would have recalled it, and I have no such recollection.

OTHER INVOLVEMENT

57. On 26th April, Mr Parsons instructed Lord Grabiner and me to consider “the appeal documents” in relation to the projected common issues appeal – **WITN10650133**. On 30th April Lord Grabiner and I each gave instructions as to where we should receive the relevant documents – **WITN10650134**.

58. On 8th May, I sent the draft grounds of appeal as edited by me to Lord Grabiner – **WITN10650135**. If the Inquiry wishes to see this document, it is available. On the same day, Lord Grabiner sent an email commenting on the draft skeleton argument (and that email included a pithy summary in the third paragraph of the point discussed in paragraph 47 above), and I followed it up with an email on the same day discussing one or two detailed points about the draft skeleton argument to support the projected common issues appeal – **WITN10650136**.

59. On 11th May, Coulson LJ refused permission to pursue the recusal appeal. As a result, Mr Foat of the POL legal department emailed Herbert Smith and WBD seeking advice on various matters including “further consideration of our approach to the substantive appeal”, and whether Coulson LJ’s reasons for refusing permission to appeal should “cause us to reconsider our approach”. This email was copied to the counsel team and me by Mr Parsons who referred a Note of which I presume that the Inquiry has a copy. I wrote to Lord Grabiner expressing disappointment and disagreement with the refusal of permission to appeal the recusal judgment, and discussing the implications for the application for permission to pursue the common issues appeal – **WITN10650137**.

60. Mr Parsons’s email attaching Mr Foat’s email led to further email exchanges on 11th and 12th May at **WITN10650138**. In the first of those emails, Lord Grabiner responded to Mr Parsons expressing disappointment at the refusal of permission, and confirming that he was unpersuaded by it.

61. I followed up Lord Grabiner’s email by saying, among other things, that “setbacks in litigation come in two categories: (i) those which should make you realise that you are on the wrong track, and (ii) those which should stiffen your resolve”, I said that “on the main interpretation issues, I remain firmly of the view that we are a category (ii) case”, explaining that my reasons were in the grounds of appeal and skeleton argument on the projected common issues appeal. But, I said, “when it comes to the recusal appeal, we are in a more nuanced area of judgment” where there is “a greater risk of this being a category (i) case”. I then

said that, having let “it stew overnight”, “I remain of the opinion that Fraser J should have been recused despite the fact that Coulson LJ and Fraser J disagree”. I then turned to deal with what amendments POL should make to the grounds of appeal and skeleton argument, and any approach to the Court of Appeal in relation to the projected common issues appeal, as a result of the refusal of permission to appeal the recusal judgment.

62. On 24th May, an application was made by POL to the Judge for permission to pursue the common issues appeal, and the Judge refused permission. This led to a discussion in email exchanges **WITN10650139** and **WITN10650140** as to how POL should deal with the application which it would now make to the Court of Appeal for such permission, especially given that that application was likely to come before Coulson LJ. This was not considered further by the counsel team, as POL decided to instruct fresh leading counsel, Helen Davies QC, in place of Mr Cavender (and, I presumed and presume, Lord Grabiner and me).

63. On 19th June, it appears that Lord Grabiner spoke to Ms Davies, and sent an email to me to which I replied: **WITN10650141**. I followed up that reply the following day: **WITN10650142**. On 21st June, Lord Grabiner wrote to Ms Davies, copying me in, and she responded, whereupon I replied to her – **WITN10650143**.

64. As far as I can recollect, I never had any involvement in “issues relating to bugs, errors and defects in Horizon”.

GENERAL

65. As to my impression of POL representatives when I spoke to them, I have nothing to add to what I have said in paragraphs 24, 53 and 56.

66. I advised POL on the questions of (i) applying to the Judge to recuse himself (“the recusal application”), (ii) appealing his refusal to do so (“the recusal appeal”), and (iii) appealing the Judge’s common issues decision (“the common issues appeal”).

67. It is difficult to take an objective view of a case where one has advised and the court’s subsequent view has markedly differed from one’s own. However, I have done my best to reconsider as objectively as I can the issues on which I was asked to advise in March and April 2019.

68. So far as the recusal aspect is concerned, I can see the reasons for my advice on the recusal application in the Observations and the March Note (**POL00021562**). However, my recollection of any detailed points or arguments which I considered and discussed on the recusal appeal is very slight and so I have considered the points and arguments afresh, in the light of the relevant judgments, and the emails and other documents discussed above.

69. My views on my advice in relation to the recusal application and appeal are:

- a. Given what is recorded in the March Note (**POL00021562**), I probably should have been clearer about the extent of my reading at the March meeting as WBD were not represented, although POL’s general counsel was present and I assume that she would have read the Observations;

- b. Subject to what I say in (a) above, I am comfortable with the advice I gave in March 2019 in relation to the recusal application;
- c. Following the Judge's rejection of the recusal application, I am comfortable with what I advised in relation to an appeal against that refusal in April 2019, in that, viewing the issue now by reference to the facts as they appeared in April 2019, I am of the view that the Judge should have been recused.

70. My recollection of what I regard as the main arguments of principle raised on the common issues appeal is significantly better (although I had forgotten most of the detailed points). Reconsidering the point now by reference to the position as it was in April and May 2019, I am, as I was then, firmly of the view that permission should have been given to appeal the common issues judgment, and I would expect the appeal to have succeeded to a significant extent.

71. In order to form the views expressed in paragraph 69b and c and in the second sentence of paragraph 70 above, I have reconsidered the issues in relation to the recusal application/appeal and in relation to the common issues appeal, and in that connection I compiled some notes to record my thinking. If the Inquiry wishes to see those notes, I would of course be happy to provide them.

72. Like anyone who has heard and read about it, I have been deeply shocked by the POL's mistreatment over many years of many hundreds of innocent postmasters and postmistresses. I am sure that it is impossible for anyone who has not gone through it, to appreciate the full life-ruining horror of what they have suffered at the hands of POL. And it is particularly shocking for someone

who has worked in the law for many decades to see what so many innocent people have suffered through miscarriages of justice

73. Given that I advised POL in an action brought against it by many of those innocent and infamously treated postmasters and postmistresses, in addition to feeling outrage at the history and great sympathy for the hundreds of victims I feel uneasy when I think, read or talk about the Horizon scandal.

74. However, the topics on which I advised POL were not connected, at least in any direct way, with the appalling history of mistreatment of so many postmasters and postmistresses. I was asked to advise on two legal issues, one procedural, namely whether the Judge should be recused, and one substantive, the effect of the contracts. Although as matters turned out my advice did not accord with the view taken by the courts, I was called on to advise in accordance with my opinions at the time, and that is what I did.

Statement of Truth

I believe the contents of this statement to be true

Signed:



GRO

Lord Neuberger of Abbotsbury

Dated: 10th May 2024

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2.	POL00023097	Note on background to possible recusal application	POL-0019576
3.	WITN10650101	Email from Anthony Grabiner to David Cavender, Gideon Cohen, Rob Smith and David Neuberger (CC'd), RE: Post Office=Preliminary thoughts.	WITN10650101
4.	WITN10650102	Email exchange from Anthony Grabiner to Rob Smith, David Cavender, Gideon Cohen and David Neuberger	WITN10650102
5.	WITN10650103	Email from David Neuberger to Tom Beezer, Anthony Grabiner, Rob Smith, Gideon Cohen and David Cavender. RE: URGENT [WBDUK-AC.FID26896945]	WITN10650103
6.	WITN10650104	Email from David Neuberger to Anthony Grabiner and Tom Beezer, RE: DEN 4 Re: URGENT [WBDUK-AC.FID26896945]	WITN10650104
7.	WITN10650105	Email from Anthony Grabiner to David Neuberger, DEN 5 RE: Post Office-Preliminary thoughts.	WITN10650105
8.	WITN10650106	Email from David Neuberger to Anthony Grabiner, Rob Smith, David Cavender and Gideon Cohen DEN 6 RE: Post Office- preliminary thoughts.	WITN10650106
9.	POL00021562	Post Office Ltd Board Minutes of 18/03/2019	POL0000095
10.	WITN10650107	Email from David Neuberger to Rob Smith, Anthony Grabiner, Gideon Cohen and David Cavender, DEN 7 VRE: PO.	WITN10650107
11.	WITN10650108	Email from Anthony Grabiner to David Neuberger, DEN 8 RE: Book	WITN10650108
12.	WITN10650109	Email from Anthony Grabiner to David Neuberger, DEN 9 RE: Speaking note-PO (1). docx.	WITN10650109
13.	WITN10650110	Email chain from Antony Grabiner to David Neuberger RE: DEN 10 Re: Post Office. Concerning Fraser J Judgement of Bates v Post Office number 4	WITN10650110
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15.	WITN10650112	Email from David Neuberger to Rob Smith, DEN 12 RE: Lord Neuberger advice.	WITN10650112
16.	WITN10650113	Email between David Neuberger and Anthony Grabiner, DEN 13 RE: Post Office.	WITN10650113
17.	WITN10650114	Email from Anthony Grabiner to Andrew Parsons followed by an email from Jane MacLeod to Andre Parsons, DEN 14 RE: Recusal judgement [WBDUK-AC.FID26896945]	WITN10650114
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19.	WITN10650116	Email from David Neuberger to David Cavender, DEN 16 RE: PO.	WITN10650116
20.	POL000023208	Email chain from Andrew Parsons to Jane Macleod ccing Rodric Williams, Amy Prime and Tom Beezer re: Appeal - Next steps and call on Monday.	POL-0019687
21.	WITN10650117	Email from David Neuberger to Anthony Grabiner: RE: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS	WITN10650117
22.	WITN10650118	Email from Andrew Parsons to Anthony Grainer: DEN 18 Re: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS [WBDUK-AC.FID26896945]	WITN10650118
23.	WITN10650119	Email between David Neuberger to Andrew Parsons: EN 19 RE: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS	WITN10650119
24.	WITN10650120	Email from David Neuberger to Gideon Cohen and Anthony Grabiner: DEN 20 RE: 2019 0855 Bates v Post Office	WITN10650120
25.	WITN10650121	Email from Anthony Grabiner to David Neuberger: DEN 21 Re: Recusal - Cs Objections [WBDUK-AC.FID26896945]	WITN10650121
26.	WITN10650122	Email from David Neuberger to Owain Draper, DEN 22 RE: Revised letter for the CA.	WITN10650122

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27.	WITN10650123	Email from David Neuberger to Gideon Cohen: DEN 23 RE: Common Issues Appeal Draft Grounds Importance: Normal	WITN10650123
28.	WITN10650124	Email from Andrew Parsons to David Cavender and Owen Draper: DEN 24 RE: Revised Letter for the CA.	WITN10650124
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30.	WITN10650126	Email chain from David Neuberger to Andrew Parsons, David Cavender, CC Tom Beezer and others re: DEN 26 RE: Post Office Group Litigation - concerning further support	WITN10650126
31.	POL00006513	Email from Andrew Parsons to Jane MacLeod c.c. Amy Prime, Ben Foat: Subject 'Catch Up'	POL-0017818
32.	POL00006514	Common Issues List- NTC and SPMC	POL-0017819
33.	POL00006515	Group Litigation Timetable	POL-0017820
34.	WITN10650128	Email from Andrew Parsons to David Cavender.	WITN10650128
35.	WITN10650127	Email chain from David Neuberger to David Cavender, Owain Draper, CC Anthony Grabiner and others re: DEN 27 RE: Post Office - partial draft skeleton - concerning letter for the CA	WITN10650127
36.	WITN10650129	Email from David Neuberger to David Cavender: DEN 29 RE: Meeting with PO Board tomorrow.	WITN10650129
37.	WITN10650130	Email from David Neuberger to Andrew Parsons, Anthony Grabiner and David Cavender: DEN 30 RE: Board Sub-committee meeting	WITN10650130
38.	WITN10650131	Email from Andrew Parsons to Anthony Grabiner, David Neuberger and David Cavender: DEN 31 Fwd: Board GLO Sub-Committee Meeting 24.04.19	WITN10650131

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39.	WITN10650132	Email from David Neuberger to Andrew Parsons: DEN 32 Re: Board Sub-Committee	WITN10650132
40.	POL00006755	Meeting Minutes of the Postmaster Litigation Subcommittee Meeting	POL-0018013
41.	WITN10650133	Email from David Neuberger to Anthony Grabiner and Ben O'Hanlon: DEN 33 RE: Post Office Update	WITN10650133
42.	WITN10650134	Email exchange from David Neuberger to Anthony Grabiner and Ben O'Hanlon, RE: Post Office.	WITN10650134
43.	WITN10650135	Email from Lord Neuberger to Lord Grabiner re DEN 35 Fwd: Post Office, draft grounds FINALDRAFT	WITN10650135
44.	WITN10650136	Email from Andrew Parsons to Lord Neuberger re DEN 36 Post Office	WITN10650136
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49.	WITN10650141	Email chain from David Neuberger to Anthony Grabiner re: DEN 41 RE: Post Office - concerning application to appeal	WITN10650141
50.	WITN10650142	Email from Lord Neuberger to Lord Grabiner re DEN 42 Re: Post Office	WITN10650142
51.	WITN10650143	Email from Lord Grabiner to Lord Neuberger re DEN 43 Re: Post Office	WITN10650143
52.	WITN10650144	PO v Bates: Thoughts on Draft Notice of Appeal of 10.4.19	WITN10650144