

Witness Name: Ian Rutherford HENDERSON

Statement No.: WITN00420100

Dated: 20 May 2024

POST OFFICE HORIZON IT INQUIRY

FIRST WITNESS STATEMENT OF Ian Rutherford HENDERSON

I, Ian Rutherford HENDERSON, will say as follows...

BACKGROUND

1. I am currently a director of both Second Sight Investigations Ltd and Second Sight Support Services Ltd. In 2012 I was engaged as a consultant / contractor to Second Sight Support Services Ltd.
2. I hold the following professional qualifications:
 - a) Fellow of the Institute of Chartered Accountants in England and Wales;
 - b) ISACA Certified Information Systems Auditor.
3. In 2012 I was also a member of International Society of Forensic Computer Examiners ("ISFCE") and an ISFCE Certified Computer Examiner. I no longer hold that qualification.

4. I have a long history of investigations and regulatory work. Prior to moving into the private sector in 1998, I was Head of Investigations at the UK's largest Financial Services Regulator. Immediately before this, I was Manager of the Investigations Department of Lloyd's of London with responsibility for investigating fraud and misconduct world-wide.

5. Before starting training to become a Chartered Accountant in 1980, I served nine years in the British Army in a wide variety of roles. Between 2001 and 2005 I was appointed on a part-time basis, as a special adviser to the Criminal Cases Review Commission. This provided me with an extensive insight into issues relevant to criminal appeals.

6. I regularly provide evidence as an expert witness in cases involving suspected fraud, digital evidence and the disclosure of electronic documents. I was also selected as a contributing author to the Association of Certified Fraud Examiners "Fraud Casebook".

7. Cases where I have been instructed as an Expert Witness include:
 - a) R v Lee Williamson (Northern Ireland Court of Appeal)
 - b) Rebecca Vardy v Coleen Rooney (RCJ – Queen's Bench Division)
 - c) Dr Craig Wright v Marcus Granath (RCJ – Queen's Bench Division)
 - d) R v Roger Allen (Court of Appeal - Criminal Division)
 - e) R v Wendy Cousins (Court of Appeal - Criminal Division)
 - f) K v K (Central Family Court)

- g) Republic of South Africa v Jacob Zuma and Thint - instructed jointly with Peter Sommer Esq.
 - h) Sienna Miller v News Group Newspapers and Others (RCJ – Chancery Division)
 - i) Kelly Hoppen v News International and Others (RCJ – Chancery Division)
 - j) Chris Cairns v Lalit Modi (RCJ – Queen’s Bench Division)
 - k) R v Baines & Baines (Isle of Man – High Court)
 - l) MIS Ltd v Google Inc (RCJ - Queen’s Bench Division)
 - m) R v Samantha Jeffcoat (Maidstone Crown Court – instructed by the Crown Prosecution Service)
 - n) Sir Martin Sorrell v Benatti and Others (RCJ – Queen’s Bench Division)
 - o) Martha Greene v Associated Newspapers and Peter Wright (Court of Appeal - Civil Division)
 - p) GE Commercial Finance v Messrs. Gee and Others (RCJ – Queen’s Bench Division)
 - q) R v Mustapha Taleb and Others (Central Criminal Court)
8. Lee Williamson, Roger Allen and Wendy Cousins (above) are all Post Office Horizon appeal cases.
9. I would also add that I come from a post office family. My parents ran a rural post office for many years and I fondly remember earning pocket money during school holidays by delivering urgent telegrams using a “sit up and beg” Post Office bicycle. This of course was long before computerisation and Post

Office Horizon, but it gave me an in-depth understanding of the relationship between a rural post office and the local community.

10. I would also mention that I have a formal diagnosis of high functioning autism (autism spectrum disorder). This probably explains my somewhat obsessive interest in data and documents and my relatively poor social communication skills. I am also a member of MENSA.

11. 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 3 April 2024 (the "Request")

REQUEST FOR INFORMATION

12. On 3 April 2024 the Post Office Horizon IT Inquiry wrote to my then Recognised Legal Representative (Hudgell Solicitors) with a "*Request for information pursuant to Rule 9 of the Inquiry Rules 2006*".

13. I was requested to:

... set out how you first became instructed in relation to the issues being investigated by the Inquiry including, but not limited to, relevant dates and the names of individuals who instructed you, how and why you were approached, and any initial briefing or information that was provided to you.

14. Detailed guidance was provided together with copies of 64 “*relevant documents*” that I was asked to consider.

15. I have been asked to provide a detailed chronological account of my involvement in matters relating to Post Office Ltd (“POL”) and the issues being investigated by the Inquiry and to set out in detail, with reference to relevant documents, my involvement in (at least) the following (“Relevant Events”):

- a) *The Second Sight Inquiry [POL00000218].*
- b) *Interim Report of 8 July 2013 [POL00099063].*
- c) *Complaint Review and Mediation Scheme of 2014 [POL00000213], [POL00043353].*
- d) *Part 1 Report of 25 July 2014 [POL00004439].*
- e) *Part 2 Report of 21 August 2014 [POL00030160].*
- f) *Part 2 Report of 9 April 2015 [POL00029849].*

16. On 18 April 2024, I was notified that Hudgell’s had identified a conflict of interest and were unable to continue acting as my Recognised Legal Representative. In view of the imminent deadline for my witness statement set by the enquiry (Initially 1 May 2024 but then extended to 8 May 2024) I felt that I had no choice other than to continue without the assistance of a Recognised Legal Representative. I notified the Inquiry accordingly.

LIMITATION OF SCOPE

17. As I explain further below, in 2015 I was instructed by POL to destroy all of the documents relating to my previous work for POL. This was after delivering to POL the original or master copies of those documents. I was permitted to retain a list of the approximately 34,000 documents returned to POL. I have provided a copy of this list of documents to both the Inquiry and to the Metropolitan Police [**POL00065985**].

18. I do not know whether my original 34,000 documents have been made available to the Inquiry. I do recall that POL contacted me sometime in 2015 or 2016 because they had lost the password needed to access these documents. I provided the password to POL again, but I subsequently became aware that POL had not maintained the directory or folder structure of documents, which meant that the documents were very difficult to access.

19. This witness statement has been prepared without being able to review the documents deleted in 2015 and is based primarily on my recollection of the work performed for POL between 2012 and 2015.

20. I have found preparing this witness statement to be quite difficult as so few documents have been made available to me, just 64 documents out of the over 34,000 documents previously held by me. The Inquiry has not provided me with access to the Relativity database which may hold some of these

documents. (Nor have I requested access due to the time constraints on preparing this witness statement.)

21. My normal practice in a witness statement is to ensure that every element of my statement is supported by documentary or other evidence. I would normally prepare an audit file cross-referencing each element of my statement to a source document. I have not been able to do that in this case.

MY INVOLVEMENT IN THE RELEVANT EVENTS

The Second Sight Inquiry

22. The Second Sight Inquiry started in about July 2012. Ron Warmington submitted a business proposal to POL dated 1st June 2012 [**POL00096576**].

A document [**POL00096575**] prepared by Susan Crichton (POL Head of Legal) described the objectives as:

- a) *Carefully review all company-held documentation focussing heavily on probable reasons why shortfalls occurred or built up;*
- b) *Interview company investigators to gain insights and to verify fairness of findings;*
- c) *Review defence submissions focussing on evidence of innocence (consider separately False Accounting and Theft);*
- d) *Try to establish why the shortages arose (assign each case to a Probability Category such as: Skill shortfall; Diversion to Failing*

Business; Straightforward Theft (by whom?); Mysterious Disappearance; etc.)

- e) Review all materials from the viewpoint of the Defence (seek Proof of Innocence and test evidence indicative of guilt);*
- f) Study and selectively test, the 'Horizon ' system in order to find any 'Black Hole', Program Bug; etc. that might have caused mysterious shortages;*
- g) Reach conclusions on each case and identify any systemic issues/concerns.*

23. Our appointment was not straightforward. Alan Bates and the Justice for Sub-postmasters Alliance (“JFSA”) were concerned that we would not be truly independent and would say whatever Post Office wanted us to say. Post Office needed to be assured that we had the necessary skills for the task. MPs did not want to support something that wasn’t going to work.

24. Ron Warmington and I attended a selection interview at Portcullis House on 12 July 2012. I recall that we spent some time discussing the appropriate approach to this matter. Rather than attempt a code review of the Horizon software, I said that my approach would be to treat Horizon as a “sealed black box” and look at inputs and outputs, rather than try and work out exactly what the software was doing. We did briefly discuss the feasibility of a code review, but the cost of this was likely to be prohibitive and of limited benefit.

25. It was unclear at this stage how many cases would be submitted for review.

Some cases came directly from MPs and others from the Alan Bates and the Justice for Sub-postmasters Alliance (“JFSA”).

26. Ron Warmington and I discussed our approach to this work and in general terms we agreed that I would focus on the data and documents held by POL together with the technical evidence and Ron would lead on the interviews of sub-postmasters.

27. Our appointment was unusual. We were appointed by a small group of Members of Parliament at the request of the Justice for Subpostmasters Alliance (‘JFSA’) but with the support of POL. Our professional fees were paid directly by POL. JFSA had been pressing for some form of independent inquiry for many years and had gained the support of influential MPs representing constituents who had suffered mysterious shortfalls in branch accounts.

28. I regarded that our terms of appointment were quite clear. They included:

- a) unrestricted access to documents held by Post Office (including documents subject to confidentiality and legal professional privilege);
- b) no limitation in the scope of work determined necessary by Second Sight.

29. In the course of our work, over more than 3 years, we investigated approximately 140 individual cases. We reviewed the sub-postmasters' own assertions; the cases put forward on their behalf by their professional advisors together with Post Office's reports prepared in response. We examined thousands of documents and established which were significant. We created a structured, evidential database of over 34,000 individual documents. We identified 19 thematic issues that were common features to many of the cases under examination. We were then able to cross-reference each case to others having similar characteristics.

30. Our work started in the summer of 2012. My main contacts at POL in 2012 were Simon Baker and Susan Crichton. Initially, POL were co-operative and appeared committed to the agreed goal:

"to seek the truth, irrespective of the consequences".

31. I can't remember when we first used this phrase, but it reflected a concern first raised by Ron Warmington quite early on in our work, that we may uncover facts that would either embarrass POL or may have serious financial consequences. POL confirmed to us that they accepted this risk.

32. To start with I spent a few days working in the legal department of POL headquarters London. I had a desk in the open-plan office used by the legal department and sat just outside the office used by Susan Crichton, the then

Head of Legal for POL. My main day-to-day contact was Jarnail Singh, who was the POL senior prosecution lawyer.

33. I started by asking to see all of the POL files relating to criminal prosecutions.

Only about 10 case files were provided initially. This surprised me, as I was aware that they were potentially hundreds of prosecutions. I was told that the reason for only 10 files being held by the legal department was:

- a) a 7-year file destruction policy; and
- b) prosecutions generally, were outsourced to legal firms all over the UK and case files were not held centrally.

34. Within a few days of our appointment, we asked for 3 actions to be taken:

- a) issue a POL wide "litigation hold" that would prevent any further relevant documents being destroyed;
- b) collate all of the then available prosecution files, including those held by third-party law firms, in one place; and
- c) send all of the prosecution files then held by POL, to a third-party scanning bureau. This ensured that these vital documents would be preserved and made more readily available. This comprised approximately 4,000 documents and was known as CD1.

35. In July 2012 the office of the Rt. Hon. James Arbuthnot MP was co-ordinating possible cases from other MPs. **[POL00096834]**

36. I was surprised at the small size of the legal department within POL, approximately 10 members of staff. I also noticed the difficulties the department had in getting case files under control. I discussed this in general terms with Susan Crichton and formed the view that this is what POL inherited following the split from Royal Mail Group in 2012 and that there had never been a proper assessment of what was really needed to function effectively. Susan Crichton told me that she had no background in criminal law and relied on Jarnail Singh in terms of criminal procedure and administration.

37. The main focus within the Legal Department was paper based files rather than electronic files. It had the air of a rather old-fashioned department with secretaries or personal assistants typing letters or memoranda, which were then placed on the file.

38. One of the case files made available to me quite early on, was the prosecution of Jo Hamilton. I read this file quite carefully before it was sent to the bureau for scanning and was surprised to see a POL Security Report **[POL00044389]** that stated:

“Having analysed the Horizon printouts and accounting documentation I was unable to find any evidence of theft or that the cash figures had been deliberately inflated.”

39. I could also see that Jo Hamilton had been charged with theft and false accounting which did not seem to be supported by the internal POL Security

report. I raised this apparent inconsistency with Susan Crichton and was told to speak to Jarnail Singh, which I did. Jarnail, told me that everything that needed to be disclosed had been disclosed and that there was nothing to worry about.

40. Notwithstanding this assurance from an experienced POL criminal lawyer, I was left feeling uncomfortable and felt it was even more important to make sure that all of the relevant files were sent to the scanning bureau and made accessible for the purposes of our investigation.

41. I spent some time researching the legal position whilst I was working in the POL legal department. From memory, I established that Royal Mail Group ("RMG") was a prosecuting authority in its own right, but that following the split from RMG, POL was conducting private prosecutions. I was not aware of any POL prosecution that had been referred to, or taken over by the Crown Prosecution Service, which is always an option when conducting a private prosecution.

42. It took some time for POL to gather all of the available prosecution files that we had requested. From memory, the CD containing the scanned files was made available to us towards the end of October 2012.

43. In September 2012 I met with Gareth Jenkins, the lead engineer for Post Office Horizon, at the head office of Fujitsu in Bracknell. He told me that

approximately 10 members of staff from Post Office were permanently based in Bracknell, dealing with various issues including bugs, errors and defects.

44. Gareth Jenkins told me that Fujitsu routinely used remote access to branch terminals for various purposes. This was often without the knowledge or specific consent of individual sub-postmasters. He also told me that members of his team could connect remotely to branch terminals and generate keystrokes that were indistinguishable from a sub-postmaster accessing the terminal directly. They did this for various purposes, including collecting log files directly from branch terminals.

45. In my opinion, this facility (if confirmed) had major implications for the safety of criminal convictions, as it meant that the sub-postmaster was no longer in sole charge of data entries being input on his terminal.

46. I subsequently shared this information with Alwen Lyons (POL Company Secretary) and Lesley Sewell (POL Head of Information Technology) and was told quite firmly, that I was mistaken and that POL had received assurances about this in various audit reports. This point was made very firmly to me, and I recall telling Ron Warmington shortly afterwards, that I felt that if I made an issue of it there was a significant risk of Second Sight being sacked.

47. I also discussed the issue of POL employees working at Bracknell with Simon Baker. He told me that he had researched the issue and was surprised to find

that he in fact, was their line manager, something that he had previously been unaware.

48. It was at about this point, that I decided the best way to resolve the issue was to request the full email archives for the POL employees at Bracknell, as this would shed light on what they are actually doing.

49. In the light of this unexpected response by POL, I decided to treat this issue as a potential conflict of evidence and to continue to gather evidence in order to investigate the relevant issues and ultimately to form an evidence-based view on this matter.

50. Shortly after my meeting with Fujitsu, Gareth Jenkins provided me with some sample data from the Horizon system. I subsequently established that POL routinely relied on various reports from Fujitsu including the so-called ARQ reports – (“Audit Request Query”). However, I established that a more detailed report was in fact available. This was called the XML report (“Extensible Markup Language”), that provided a greater degree of detail, than the ARQ reports typically provided by Fujitsu to POL.

51. There were however financial consequences of requesting these more detailed XML reports, or even excessive numbers of ARQ reports. POL was entitled to a small number of ARQ reports free of charge each month. I

subsequently became aware that POL was not supplying reports to sub-postmasters in some cases, due to the extra cost of doing so.

52. An examination of a small number of XML reports provided to me, established, as some sub-postmasters had suspected, there were in fact out of hours transactions being generated by the Horizon system and not directly input by sub-postmasters at branch terminals.

53. Within days of being provided with CD1 in late October 2012, we realised that we may be looking at a significant number of miscarriages of justice. There was a lack of effective investigation, multiple disclosure failures and conduct by prosecutors that needed to be considered by experts in criminal law and prosecutions.

54. Rather than just rely on the relatively small number of potential cases notified to MPs we agreed with POL that a letter would be sent to all known sub-postmasters and former sub-postmasters inviting them to submit cases direct to Second Sight. This letter titled "*Raising Concerns with Horizon*" was sent out in late December 2012 [**POL00000218**]. It requested responses to be sent to either JFSA or direct to Second Sight by 28 February 2013.

55. The remit of the Inquiry [**POL00000218**] was described as:

“The remit of the Inquiry will be to consider and to advise on whether there are any systemic issues and/or concerns with the "Horizon" system, including training and support processes, giving evidence and reasons for the conclusions reached.

The Inquiry is not asked to investigate or comment on general improvements which might be made to Horizon, or on any individual concern raised (see below) save to the extent that it concludes that such investigation or comment is necessary to address the remit.

The Inquiry is not a mediation or arbitration. It is not intended to resolve or affect any dispute there may be between any individual Horizon user and Post Office Limited.”

56. We then started to receive individual notifications either direct from sub-postmasters or via the JFSA. These responses were then analysed and “thematic issues” identified. This approach had the advantage of creating a limited number of discrete issues to be investigated. The agreed thematic issues were eventually established as follows:

- a) Transactions or Transaction Corrections not entered by the Sub-postmaster or staff;
- b) Transaction anomalies associated with CASH or STOCK Remittances;
- c) Transaction anomalies associated with Pensions and Allowances;
- d) Transaction anomalies following telecommunication or power failures;
- e) Transaction anomalies associated with ATMs;

- f) Transaction anomalies associated with Lottery Terminal or Scratch Cards;
- g) Transaction anomalies associated with MVL;
- h) Transaction anomalies associated with Foreign Currency;
- i) Transaction anomalies associated with Bank / GIRO / Cheques;
- j) Transaction anomalies associated with Stamps, Postage Labels, Phone Cards or Premium Bonds;
- k) Hardware issues e.g. printer problems, PIN pads, touch screens and PayStation;
- l) Failure to follow correct procedures or mis-advice by POL's HelpLine;
- m) Training and Support issues including HelpLine and Audit;
- n) Limitations in the Transaction Audit Trail available to Subpostmasters;
- o) Process issues at the end of each Trading Period;
- p) The contract between the Post Office and Subpostmasters;
- q) The lack of an outreach investigations function;
- r) Improper behaviour on branch closure; and
- s) Abuse of Criminal Prosecution Process.

57. Ron Warmington and I continued to investigate the 49 submissions received by 28 February 2013. It was at this point that we developed the concept of "spot reviews". A "spot review" was defined as:

"a narrowly focussed review looking at a specific issue over a limited time scale that is potentially capable of corroboration by 3rd party evidence and also where full Horizon data for the incident remains available"

58. This had the advantage of being quicker and more focused than an in-depth investigation into every case submitted.

59. Document **[POL00184716]** highlights a key issue that was central throughout our work for POL. This was the question as to whether or not POL (or Fujitsu) could alter or inject transactions without the knowledge or approval of sub-postmasters. My developing view on this was that as a result of my meeting with Gareth Jenkins, it was in fact possible to inject transactions without the knowledge or approval of sub- postmasters, but this was a position not accepted by POL.

60. Document **[POL00097589]** is an internal briefing note prepared by POL that I have not previously seen. It accurately describes the recently agreed concept of “spot reviews.”

61. Document **[POL00105631]** is described as “*Agenda for meeting re Post Office cases*” but appears to be a file note / summary of the meeting with MPs that took place on 25 March 2013. It was probably prepared by the personal assistant to James Arbuthnot. It confirms that 49 cases are under active investigation but that the investigations were still at the evidence gathering stage and that POL had not yet submitted their assessment of any of the cases being reviewed.

62. Document **[POL00097864]** is an email from James Arbuthnot to Susan Crichton raising concerns about my file note of the meeting with MPs on 25 March 2013. James Arbuthnot is a very experienced parliamentarian and I was happy to accept his comments on my file note. I would probably describe the differences as being points of emphasis, rather than substance. Document **[POL00097883]**, not previously seen, is a POL commentary on this issue.

63. Document **[POL00090358]** is a 327-page document that appears to be a scanned copy of a POL hardcopy file titled: "*Complaint Review and Mediation Scheme (Chronology and Supporting Documents) File 2 of 5 from April 2013 to October 2015*". I note that this is only 1 file out of a set of 5 files. I do not know if the remaining 4 files have been made available to the Inquiry.

64. Document **[POL00090358]** includes many documents not previously seen by me, but also many documents that are difficult to read due to the scanning process.

65. Document **[POL00122393]** is a POL generated document dated April 2013, not previously seen by me. It is a discussion document that explores various options designed to speed up our work. It was critical of the work performed by Second Sight and proposed a new remit: "*to determine if sub-postmasters had been wrongly convicted due to defects in the Horizon system*".

66. Whilst this accurately describes what MPs wanted, Paula Vennells was increasingly attempting to steer us away from considering the safety of convictions.
67. Document **[POL00098354]** not seen previously by me, is believed to be dated 1 May 2013. It is a proposed briefing note for a telephone call between Paula Vennells and James Arbuthnot. It makes a number of suggestions about streamlining the work being carried out by Second Sight.
68. Document **[POL00098208]** highlights the not inconsiderable challenges that we all were facing in progressing the agreed spot reviews.
69. Document **[POL00098377]**, not previously seen, is a POL file note of a telephone conversation between Paul Vennells and James Arbuthnot on 23 May 2013. It refers to the desirability of an interim report probably in July 2013 and a full report by the end of October.
70. It is clear at this point, that Second Sight had established a satisfactory working relationship with Alan Bates and JFSA and had earned their trust. It is also clear to me, that there was something of a breakdown of communication and possibly trust as well, between Second Sight and POL.

71. To the credit of POL, they did not try to directly interfere with or influence Second Sight's reports (other than by withholding potentially relevant documents), but this was probably at the expense of the effectiveness of the overall project. With hindsight, the views expressed in these documents now disclosed to me, probably should have been shared with Second Sight at the time and a more collaborative approach adopted.

72. What POL did do, to the detriment of our work, was to limit access to relevant documents. For example, many years later I heard about the Detica Report and the Swift Advices, both of which are highly relevant to what we were being asked to do, but these important documents were not disclosed to us.

73. Second Sight continued investigating the agreed thematic issues and issued its Interim Report on 8 July 2013. **[POL00099063]**

INTERIM REPORT 8 JULY 2013

74. By this stage, Ron Warmington and I were becoming increasingly concerned about potential challenges from POL if they didn't like what we said. We decided the best way to deal with this was to avoid expressions of opinion and to prepare a report that was fact based and where we had an audit trail to source documents, evidencing every significant issue covered in the report.

75. From memory, an advanced draft of this report was disclosed to POL on 5 July 2013 and a signed copy of our Interim Report released on 8 July 2013. Page 8 described our Preliminary Conclusions:

“8. **Preliminary Conclusions**

8.1. *This is an Interim Report and there is much work still to be done. Any conclusions reached at this point will need to be updated in the light of new information that arises as the Investigation continues.*

8.2. *Our preliminary conclusions are:*

- a) *We have so far found no evidence of system wide (systemic) problems with the Horizon software;*
- b) *We are aware of 2 incidents where defects or ‘bugs’ in the Horizon software gave rise to 76 branches being affected by incorrect balances or transactions, which took some time to identify and correct;*
- c) *Occasionally an unusual combination of events, such as a power or communications failure during the processing of a transaction, can give rise a situation where timely, accurate and complete information about the status of a transaction is not immediately available to a SPMR;*
- d) *When individual SPMRs experience or report problems, POL’s response can appear to be unhelpful, unsympathetic or simply fail to solve the underlying problem. The lack of a ‘user forum’ or similar facility, means that SPMRs have little*

opportunity to raise issues of concern at an appropriate level within POL;

e) The lack of an effective 'outreach' investigations function within POL, results in POL failing to identify the root cause of problems and missing opportunities for process improvements;

f) The end of Trading Period processes can be problematic for individual SPMRs, particularly if they are dealing with unresolved Transaction Corrections ('TCs'). The lack of a 'suspense account' option means that it is difficult for disputed TCs to be dealt with in a neutral manner.

76. Contrary to the public position taken by POL, that Horizon operated without problems, our Interim Report stated:

"6.4. In the course of our extensive discussions with POL over the last 12 months, POL has disclosed to Second Sight that, in 2011 and 2012, it had discovered "defects" in Horizon online that had impacted 76 branches.

6.5. The first defect, referred to as the "Receipts and Payments Mismatch Problem", impacted 62 branches. It was discovered in September 2010 as a result of Fujitsu's monitoring of system events (although there were subsequent calls from branches). The aggregate of the discrepancies arising from this system defect was £9,029, the largest shortfall being £777 and

the largest surplus £7,044. POL has informed us that all shortages were addressed at no loss to any SPMR.

6.6. The second defect, referred to as the "Local Suspense Account Problem", affected 14 branches, and generated discrepancies totalling £4,486, including a temporary shortfall of £9,800 at one branch and a surplus of £3,200 at another (the remaining 12 branches were all impacted by amounts of less than £161).

6.7. POL was unaware of this second defect until, a year after its first occurrence in 2011, it re-occurred and an unexplained shortfall was reported by an SPMR.

6.8. POL's initial investigations in 2012 failed to reveal the system defect and, because the cause could not be identified, the amount was written off. Fujitsu looked into the matter early in 2013 and discovered, and then corrected, the defect.

6.9. It seems however, that the shortfalls (and surpluses) that occurred at the first occurrence (in 2011) resulted in branches being asked to make good incorrect amounts.

6.10. POL has informed us that it has disclosed, in Witness Statements to English Courts, information about one other subsequently-corrected defect or "bug" in the Horizon software."

77. The "Receipts and Payments Mismatch Problem" and "Local Suspense Account Problem" were disclosed to us by POL in June 2013, just a few days before we published our Interim Report. I subsequently noticed that a copy of

"Receipts and Payments Mismatch Problem" was included the hard copy file relating to the Seema Misra prosecution. In 2024, as a result of seeing the evidence of Simon Clarke to the Inquiry, I realised that this document was not disclosed at her trial and had been subject to a Public Interest Immunity certificate exemption.

78. My overall conclusion at this stage (July 2013) was that Post Office Horizon was not the robust, error free system claimed by POL. I was also concerned about the potential loss of integrity caused by working practices within Fujitsu, such as remote access without the knowledge or consent of individual sub-postmasters. I was beginning to form the view that no prosecution relying on Horizon evidence could be safe.

Complaint Review and Mediation Scheme of 2014

79. This scheme started very soon after the publication of our Interim Report, however the formal notification about the Scheme was not sent out until 27 August 2013. The deadline for applications to the scheme was 18 November 2013.

80. As far as I can recall, I attended all of the meetings of what became known as the "Mediation Working Group" ("MWG"). Meetings were held at various locations including the London Headquarters of POL, but occasionally also the London office of Bond Pearce and Matrix Chambers. We also had telephone conference calls.

81. The main purpose of the MWG was to act as a “gatekeeper” for applications to the Complaint Review and Mediation Scheme (“the Scheme”). Attendees included representatives from POL, JFSA and Second Sight. Secretarial support was provided by POL and documents were shared using an online facility known as Huddle. The Scheme Chairman was Sir Anthony Hooper.

82. It took some time for the Scheme to get going and to prepare application packs. The way the scheme worked was that each applicant submitted an application to Second Sight or the JFSA and if confirmed as suitable for investigation, the applicant could engage a professional adviser on a fixed fee basis, paid for by POL.

83. There was no limitation on the type of case to be considered by the Scheme, although it was recognised that either current criminal or civil proceedings would have to be completed, prior to a case being accepted.

84. The applicant would submit a completed Case Questionnaire Report (“CQR”) and at the same time POL prepared a Post Office Information Report (“POIR”). Second Sight would then review all of the information and prepare a Case Review Report (“CRR”), which was then considered by the MWG. Once accepted, the Scheme administrator liaised with the applicant in order to arrange mediation.

85. The Scheme operated on a confidential basis, with very limited information about outcomes being provided to the MWG. About 150 applications to the scheme were received, of which approximately 136 were approved for mediation.
86. The preparation of the various reports to the MWG took quite a long time. I became aware that approximately 20 POL employees were involved in the preparation of the POIR responses. I also became aware, that even these POL employees did not necessarily have full access to POL legal files, which was a major concern to me.
87. I became aware during the operation of the Scheme that POL probably regarded me as a troublemaker, as I was constantly pressing for access to the POL legal files and this was being resisted. I felt quite strongly that unrestricted access to all of the documents held by POL relating to prosecutions, particularly the legal files, was necessary if the Scheme was to operate fairly and successfully.
88. I remember that at the conclusion of one of the MWG meetings, the acting POL Head of Legal (Chris Aujard) warned me to be careful about what I said. He told me that if I said anything that harmed POL, POL would not hesitate to take legal action against me under the terms of my Non-Disclosure Agreement (“NDA”) and that I would not be able to afford the legal fees. I took this as a thinly veiled threat to bankrupt me if I continued causing trouble.

89. There were three areas that POL seemed to be particularly sensitive about.

These were:

- a) access to the full legal files held by POL relating to prosecutions;
- b) an analysis of the suspense accounts held by POL; and
- c) disclosure to POL by Fujitsu of known problems involving Horizon.

90. Towards the end of the Scheme, POL disclosed to us details of some of the credits taken to its Profit and Loss account ("P&L") from a centrally held suspense account [**POL00022773**]. POL was unable to give us a breakdown of these transactions. The credits taken were:

Suspense Account Balances credited to POL	
Profit & Loss Account	
Year released to P&L	£
2014 / 15 year to date	£8,000
2013 / 14	£104,000
2012 / 13	£234,000
2011 / 12	£207,000
2010 / 11	£612,000

91. I felt that a possible explanation for these balances was that they represented credit transactions due to individual sub-postmaster branch accounts, where alleged losses were charged to sub-postmasters. Shortly after we started investigating this possibility, our contract with POL (and the Scheme) was terminated.

Part I Report of 25 July 2014

92. In parallel with our work supporting the Scheme, we published a number of reports. The Part I Report of 25 July 2014 [**POL 00004439**] was designed to provide background information about POL and the Horizon system generally. Much of the content of this report was provided directly by POL.

93. The report covered the following areas:

- a) General information about Post Office, its branches and the role of Subpostmasters;
- b) A description of the training and support functions as well as the Post Office audit and investigation processes;
- c) An overview of the Horizon system and associated equipment;
- d) An introduction to the application of double entry accounting in Horizon;
- e) A description of significant branch operating and reporting procedures and the associated processing of transactions;
- f) An outline of the treatment of losses and surpluses; and
- g) An analysis of typical errors.

94. As far as I can remember, the report was agreed with POL before it was published. It was designed to provide non-contentious standing information about the POL Horizon system.

Part 2 Report of 21 August 2014

95. By August 2014 we were coming under increasing pressure from both POL and MPs to publish an interim report on our findings to date. We were now investigating the 19 discrete thematic issues we had identified, rather than individual cases.

96. This report [**POL00030160**] dealt with the following thematic issues:

- a) the contract between the Post Office and sub-postmasters;
- b) automated teller machines (“ATMs”);
- c) motor vehicle licences;
- d) National Lottery;
- e) training support and supervision;
- f) the helpline;
- g) limitations in the transaction audit trail;
- h) transactions not entered by the sub-postmaster or their staff;
- i) transaction reversals;
- j) cash and stock remittances (“REMs”) in and out of the branch;
- k) missing cheques;
- l) pensions and allowances;
- m) surpluses;

- n) cash withdrawals accidentally processed as deposits and other counter errors that benefit customers at the expense of the sub-postmaster;
- o) error and fraud repellency;
- p) one-sided transactions;
- q) hardware issues;
- r) Post Office audit procedures; and
- s) Post Office Investigations.

97. As far as I can remember, POL were invited to comment on our draft report before it was finalised.

Reporting of concerns to Members of Parliament

98. Notwithstanding the terms of our appointment to the Scheme, Second Sight was originally appointed by a small group of MPs, not POL. By February 2015, I no longer had confidence that POL was taking our concerns seriously or dealing with them in an appropriate manner. I felt we were dealing with a cover-up by POL and possibly a criminal conspiracy.

99. I was concerned about the various threats that had been made to me by POL concerning alleged breaches of my NDA and my duties of confidentiality. Accordingly, I had to find a way of communicating my concerns, but which limited the risk of a legal action against me, or Second Sight, by POL. The most likely threats appeared to be an action for defamation, breach of confidence or breach of contract.

100. I was advised that evidence provided to a Parliamentary Select Committee attracted Parliamentary privilege and therefore provided a degree of protection from the risks that I was concerned about.

101. On 19 February 2015 I sent the following to all members of the Business and Industrial Strategy Select Committee **[JARB0000108]**:

“BRIEFING NOTE TO BIS Select Committee

1. Introduction

1.1. The purpose of this Briefing Note is to provide Members of the BIS Select Committee with confidential information supporting my oral evidence to the Committee.

2. Access to the complete legal files

2.1 In my evidence to the Committee I referred to the need for Second Sight to have access to the complete, i.e. not redacted, legal files held by Post Office. Ms. Vennells also referred to Post Office’s commitment to identifying “Miscarriages of Justice”.

2.2 However, Post Office’s true position on this point was set out in a letter from Post Office to Second Sight, dated 21 January 2015:

“Post Office does not accept that an analysis of the evidence in the Applicant’s criminal case, whether served during the course of that case or not, is either within the scope of the mediation scheme or something which is within Second Sight’s remit.”

2.3. *It would appear that concern about Second Sight investigating previous prosecutions by Post Office, is the real reason behind Post Office's continuing refusal to provide us with access to the complete legal files.*

2.4. *When Second Sight was first appointed by Post Office and Members of Parliament in July 2012, a number of undertakings were given by Post Office in order to satisfy MPs that Second Sight would be able to conduct a truly independent investigation into the matters of concern.*

2.5. *Those undertakings included the following:*

Unrestricted access to documents held by Post Office (including documents subject to confidentiality and legal professional privilege);

No limitation in the scope of work determined necessary by Second Sight.

2.6. *Those undertakings were reflected in the "Raising Concerns with Horizon" document signed by Post Office on 17 Dec 2012 and sent to the JFSA and Mediation Scheme Applicants. A key paragraph was:*

"In order to carry out the Inquiry, Second Sight will be entitled to request information related to a concern from Post Office Limited, and if Post Office Limited holds that information, Post Office Limited will provide it to Second Sight."

2.7. *This statement was intended to accurately reflect the undertakings mentioned in Paragraph 2.5 above.*

2.8. *It would appear that many Subpostmasters and Applicants to the Mediation Scheme will have relied on that paragraph, when reporting matters to Second Sight. Post Office is clearly no longer meeting its commitment to provide Second Sight with the documents requested.*

3. *The importance of access to the complete legal files*

3.1. *In a small number of cases we have requested and been provided with access to the complete legal files. This was before the policy referred to in Paragraph 2.2 above, was adopted by Post Office.*

3.2. *The following represents anonymised extracts from a single complete legal file held by Post Office, regarding a case that has been accepted for Mediation. This case involved a charge of Theft that was withdrawn at trial. "REDACTED" represents the name of the former Subpostmaster.*

a) On 17 May 2006 the Post Office Investigator reported:

"Having analysed the Horizon printouts and accounting documentation I was unable to find any evidence of theft or that the cash figures had been deliberately inflated." (My emphasis)

And

"The prepared statement seems to intimate that she didn't receive adequate training at the time

and that the manuals were old and out of date. It also suggests that she didn't receive any training in respect of other matters.

It also refers to an alleged £1,500 error, which doubled to £3,000 when attempts were made to correct it and another error of £750. No dates are supplied in respect of these alleged errors. It also suggests that 'The Post Office systems are shambolic' and details alleged problems encountered. It states that all staff use the same Horizon user name, again citing lack of training as the reason for this." (My emphasis)

In my opinion, this indicates that a charge of Theft would be likely to fail, because Post Office's own Investigator found no evidence to support such a charge. In addition, the admitted password sharing created a situation where it was not possible to link any loss or theft to a named individual, an essential element in proving a charge of Theft. No more detailed investigation was ever carried out by Post Office.

b) On 26 June 2006 the Principal Lawyer of the Criminal Law Division of Royal Mail (the Prosecuting Authority on behalf of Post Office at the time) stated:

"In my opinion the evidence gave rise to offences of theft / false accounting"

c) *On 15 November 2007 the Principal Lawyer of the Criminal Law Division of Royal Mail advised:*

“As you know there has been some discussion as to whether or not pleas to false accounting would be acceptable. I note this would be agreeable providing that REDACTED were to repay the full amount.”

d) *REDACTED was subsequently charged with 1 count of Theft and 14 charges of False Accounting*

e) *On 16 November 2007 the Principal Lawyer of the Criminal Law Division of Royal Mail stated:*

“I have forwarded the memo to Counsel. I have informed him that whilst there is no outright objection to proceeding with False Accounting, there is a concern as to recovery of Money. We have to date been able to recover where False Accounting only is charged though on one or two cases the Defence will argue against. Whilst a plea to Theft would be preferable, in the event of non-payment the intent would be to proceed to confiscation.”

f) *The forwarded memo stated:*

“I am never confident with False accounting charges in relation to recovery under POCA 2002 and the theft charge makes life so much easier. The defendant has General Criminal Conduct under the proposed charges and this would be so with just the false accounting however we have been challenged once before when proceeding to POCA where only false accounting was

charged, and I would probable be more inclined to except Particular Criminal Conduct when dealing with confiscation in that scenario. I fully understand the balance of cost in court time against recovery and if the charge of theft was dropped for a guilty plea then I would still believe it appropriate to follow to confiscation..."

g) On 19 November 2007 REDACTED pleaded guilty to 14 counts of False Accounting. The Prosecution agreed to leave the count of Theft on file, providing prompt repayment of the losses by REDACTED was made.

A letter dated 19 November 2007 from the Principal Lawyer of the Criminal Law Division of Royal Mail stated:

"it has been made clear to the Defence that there must be some recognition that the Defendant had the money short of theft and that a plea on the basis that the loss was due to the computer not working properly will not be accepted." (My emphasis)

3.3. This new evidence causes me a number of concerns, all or most of which would appear to be in breach of the Crown Prosecution Service ("CPS") Guidance to Prosecutors, which Post Office and Royal Mail are required to comply with.

- a) The Prosecution knew that there was insufficient evidence to support a charge of Theft, but proceeded with it nonetheless.*
- b) The offer by the Prosecution to remove the charge of Theft was used to put pressure on REDACTED to plead guilty to the*

False Accounting charges, even though the Prosecution knew that a charge of Theft was likely to fail.

c) The threat of proceeding with a charge of Theft was used to put pressure on REDACTED to agree to pay the losses identified and to avoid a custodial sentence, normally associated with a charge of Theft in these circumstances.

d) The threat of proceeding with a charge of Theft was primarily to assist in the recovery of losses, and not in the interest of Justice.

e) The Prosecution insisted that as part of the agreement to drop the charge of Theft, that no mention of alleged problems with the Horizon computer system would be made.

4. Conclusion

4.1. The new facts that have come to light as a result of examining a single complete legal file, have identified a number of issues that indicate:

a) Possible misconduct by a Prosecutor on behalf of Post Office;

and

b) A possible miscarriage of justice.

4.2. In my view, this analysis of a single complete legal file, has demonstrated the benefit of doing so; particularly bearing in mind the stated objective of Post Office to thoroughly investigate possible miscarriages of justice.

4.3. Second Sight will therefore, continue to press for access to the complete legal files and other documents that we believe are

necessary for Second Sight to conduct an independent investigation into the matters of concern.

102. In order to protect the identity of the sub-postmaster I referred to them as REDACTED in this report. However, I can now say that the sub-postmaster referenced here was Jo Hamilton, who became the lead appellant before the Court of Appeal.

Non-disclosure of potentially exculpatory material

103. Out of the approximately 10 cases where we were provided with full access to the POL legal files, there were at least two cases where in my opinion, there was compelling evidence that potentially exculpatory material had not been disclosed to the applicant either at trial, or subsequently. I regarded this as either professional misconduct or potentially, criminal conduct. The two cases were Jo Hamilton and Seema Misra.

104. In the case of Seema Misra, the potentially exculpatory material was referenced in our Interim Report [POL00099063]. (*“Receipts-Payments Mismatch Issue Notes.pdf”* and *“Correcting Accounts for Lost Discrepancies.pdf”*)

105. I have recently learned that at the time of Seema’s prosecution in 2010 (or subsequently), POL made a Public Interest Immunity application to not

disclose these documents. The PII application was granted and the documents were not disclosed to Seema Misra.

106. In the case of Jo Hamilton, the potentially exculpatory material was referenced in our final Case Review Report dated 24 March 2015

[POL00063517].

107. Our report referred to a document titled: "*POL_Security Report_PT_012.pdf*" **[POL00044389]** which was listed on Page 8 of the Post Office Investigation Report ("POIR") prepared by POL **[POL00034551]**. It was described as "Copy of security team report"

108. The Security Team Report stated:

"Having analysed the Horizon printouts and accounting documentation I was unable to find any evidence of theft or that the cash figures had been deliberately inflated."

109. Notwithstanding this potentially exculpatory evidence from a POL investigator, Jo Hamilton was charged with theft and false accounting.

110. One of the reasons that I was confident that it was quite proper to disclose "*M035_POL_Security Report_PT_012.pdf*" to Jo Hamilton, was that it was listed in the POIR prepared by POL **[POL00034551]**.

111. On 2 June 2015 I received a letter from Rodric Williams of POL legal department asserting privilege over the document disclosed to Jo Hamilton **[POL00025188]**. I found this assertion to be absurd and to be immensely worrying. It was beginning to look more like a cover-up than a genuine concern about legal professional privilege.
112. On 3 June 2015 I replied to Roderic Williams **[POL00065542]** stating that the document in question had quite properly been disclosed to the MWG and that no claim of legal professional privilege had been made.
113. At this time POL were responsible for the administration of the MWG and for distributing documents to applicants, including Jo Hamilton. The main person co-ordinating this work was Belinda Crowe, a POL employee or contractor.
114. POL appeared to be determined to avoid disclosing the Security Team Report to Jo Hamilton, notwithstanding the fact that the final Case Review Report **[POL00063517]** disclosed to Jo Hamilton had quoted from the POL Security Team Report.
115. POL's solution to this impasse was to create a new POIR that made no mention of the POL Security Team Report. ("*M035 – POL_Case Review Summary (Revised exec summary)_PT.pdf*") **[POL00034782]** .

116. The previous reference to “*M035_POL_Security Report_PT_012 - Copy of security team report*” was now replaced by “*M035_POL_012_Security Interview_PT - Copy of security team interview*”.

117. I only found out about this because Jo Hamilton contacted me to say she hadn't been provided with a copy of the POL Security Team Report quoted in the *M035_FINAL_CRR_revised.pdf* [POL00063517].

118. I was shocked that a senior POL lawyer appeared to be involved in what appeared to me, to be a conspiracy to pervert the course of justice (or similar criminal offence). My immediate thought was, if POL is prepared to do this with Jo Hamilton, how many other cases have also been treated in a similar way?

119. I was delighted to see a few years later that Jo Hamilton was the lead appellant before the Court of Appeal considering a number of Horizon convictions.

The termination of the Scheme and the termination of Second Sight's appointment

120. On or about 10 March 2015, I was attending a meeting with the POL finance team in their Head Office in Old Street, London. I met briefly with Jane

MacLeod, the POL new Head of Legal, who handed me two letters. She explained that the letters were formal notice of termination of the Initial Complaint Review and Mediation Scheme and also the termination of Second Sight's appointment [**POL00000216**] and [**POL00224327**].

121. Jane explained that notwithstanding the termination of Second Sight's appointment in relation to the Scheme, Second Sight was invited to continue providing services to applicants to the Scheme and we continued to do this for a number of months.

122. Jane told me that the reason the Scheme and our appointment was being terminated was that POL had agreed that all outstanding applications would be mediated.

123. I believed that the real reason for the termination of our appointment was to use James Arbuthnot's words – "*Second Sight was getting too close to the truth*" [**INQ00001127**]. I also believe that POL wanted to stop Second Sight finding the truth about the substantial balances in a centrally held suspense account that were taken to the benefit of the POL P&L account over a number of years and as referred to in paragraph 90 above.

124. In addition to terminating our appointment, POL withdrew their consent for us to discuss our work with MPs including James Arbuthnot. This was increasingly looking like a POL cover-up.

Part 2 Report of 9 April 2015

125. With the termination of the Scheme and of our appointment, it was necessary to publish our updated Part 2 Report as quickly as possible. As far as I can remember, the report was disclosed to POL before it was published and their comments invited. Our investigations into cases being considered by the Scheme had not been completed and about 20 cases were still outstanding as of 9 April 2015.

126. This updated version of our Part 2 Report [**POL00029849**] was much longer than the previous version. It included the following qualification:

2. Limitation of Scope in Work Performed

2.1. *We have experienced significant difficulty in obtaining access to a number of documents we believe are necessary for the purposes of our investigation, notwithstanding Post Office's commitment to make requested documents available to us. The documents requested from Post Office fall into three main categories:*

- a) *the complete legal files relating to investigations or criminal prosecutions commenced by Post Office that relate to Applicants;*
- b) *the complete email records relating to a small number of Post Office employees working at the*

Bracknell office of Fujitsu in 2008; and

- c) *detailed transactional records relating to items held in Post Office's Suspense Account(s) and to disputed transactions in a number of third party client accounts held by Post Office.*

127. On the subject of remote access and unauthorised changes to branch accounts we said the following:

“2.12. We deal with this matter in more detail in Section 14 of this Report. Our current, evidence based opinion, is that Fujitsu / Post Office did have, and may still have, the ability to directly alter branch records without the knowledge of the relevant Subpostmaster. “

128. We also said:

“3.1. The limitation in scope reported above has, in our opinion, significantly restricted our ability to complete our investigation into some of the issues commonly raised by Applicants to the Scheme. It is particularly regrettable that two of the issues raised: access to the complete legal files and to the Bracknell emails, appear to represent a policy decision, taken at a senior level within Post Office, which is contrary to the undertakings previously provided to Second Sight, to Applicants, to the JFSA and to MPs.”

129. Our Conclusions section was as follows:

CONCLUSIONS

26.1) *When we started our work on these important matters in July 2012, we believed there was a shared commitment with Post Office to “seek the truth” irrespective of the consequences. This was reflected in us being provided with unrestricted access to highly confidential and sensitive documents, including legal advice relating to individual cases. This position was recognised and well received by other stakeholders, including the Rt. Hon. James Arbuthnot MP and the JFSA.*

26.2) *However, as time progressed, and particularly in the last 18 months, it has been increasingly difficult to progress our investigations due to various legal challenges by Post Office. There have been considerable delays in receiving responses to requests for information and legal issues have been raised, such as Data Protection and Legal Privilege, as being the reason various documents could no longer be provided to us.*

26.3) *We found that types of document, previously provided to us without restriction, were no longer being provided. Some of these documents were also not being provided to Post Office’s in-house team of investigators.*

26.4) *We can only conclude that this represented a policy decision by Post Office at a senior level, possibly based on legal advice. We consider this regrettable, particularly in the light of assurances previously provided to ourselves, MPs and the JFSA.*

26.5) *In expressing our disappointment in finding ourselves unable to complete our independent investigation in the way that we considered necessary, we wish to place on record our appreciation for the hard work and professionalism of Post Office's in-house team of investigators, working for Angela Van Den Bogerd, Post Office's Head of Partnerships.*

26.6) *Our work would have been much harder and taken much longer without the high quality work carried out by this team. We have also received excellent support from the administrative team set up by Post Office to support the Working Group.*

26.7) *We also valued the guidance provided by the Mediation Working Group, chaired by Sir Anthony Hooper, until its abrupt dissolution on 10 March 2015.*

26.8) *We have described in this report the results of our investigations (some of which are incomplete) into the issues*

and concerns raised by multiple Applicants. As we have previously stated, when looking at the totality of the 'Horizon experience' we remain concerned that in some circumstances Horizon can be systemically flawed from a user's perspective and Post Office has not necessarily provided an appropriate level of support.

26.9) We believe that Post Office should be much more alert to possible problems with Horizon and encourage its staff to develop a much greater degree of 'professional scepticism' in this regard.

26.1) We hope that this report, although incomplete in a number of important respects, will shed some light on the important issues raised by the 136 Applicants accepted into the Mediation Scheme.

130. As James Arbuthnot said to Parliament – POL “sabotaged” the Mediation Scheme. He also said he regarded the conduct of POL as “duplicitous”. I agree with those comments.

The instruction by POL to destroy documents

131. On 27 July 2015 POL wrote us in the following terms:

“Demand

For the avoidance of doubt, Post Office demands, pursuant to clause 6.1.4 of your Engagement Terms, that within 7 days of the date of this letter Second Sight:

- 1. delivers up to Post Office all Confidential Information in its original format, including all versions of the same information in any different formats;*
- 2. permanently and securely destroys all copies of that Confidential Information retained by Second Sight; and*
- 3. confirms in writing that it has complied fully with the demands made above.”*

132. Many of the documents held at this stage were in hard copy format and it took some time to get everything packed up and delivered to POL. As far as electronic documents were concerned, I was determined that POL should not be able to airbrush our work out of POL history and it took some time to prepare the master database of electronic documents, prior to transfer to POL.

133. I had in mind, that some of our work and the documents obtained, would be useful to e.g. the Criminal Cases Review Commission (“CCRC”) and I tried to ensure that undertakings were provided by POL to preserve documents. I also believed that the master list of approximately 34,000 documents would be a useful way of holding POL to account.

The use of the term “systemic”

134. The term “systemic” (in the context of our work for POL and the Scheme) was first used by Susan Crichton – see paragraph 23 g) above. I took it to mean “system wide” or “of a whole system” i.e. the Oxford English Dictionary definition.

135. However, as our work for POL and the Scheme progressed, I became aware that Alan Bates and the JFSA were using the term “systemic” to mean “caused by the system”.

136. We tried to clarify the meaning of the term “systemic” in our various reports, but I regret that we were not entirely successful in doing this.

SLAPP type threats by POL

137. Strategic Lawsuits against Public Participation (“SLAPP”) were not widely recognised in 2013, but POL frequently threatened Second Sight (quite falsely) with allegations of breach of confidence and on one occasion threatened to report us to the Institute of Chartered Accountants in England and Wales for an alleged breach of its Code of Ethics because we had provided an update to one of the MPs who had appointed us in the first place.

138. Even now, the NDA waiver (by POL in relation to Second Sight) is qualified and states that POL:

(b) consents to the release of Second Sight from any confidentiality obligations to Post Office Limited for the purposes of disclosing material to the Inquiry, making any submissions to the Inquiry and/or giving evidence to the Inquiry to assist the Inquiry to fulfil its Terms of Reference, subject to seeking Post Office Limited's prior consent in relation to any material that may be subject to legal professional privilege (in order to ensure such material is treated in accordance with Post Office Limited's statement on waiver dated 15 November 2021), as outlined in the letter from Post Office Limited's representatives dated 7 December 2021.

139. This requires Second Sight to seek POL's prior consent in relation to any material that may be subject to legal professional privilege such as the report disclosed to Jo Hamilton and possibly, even correspondence between POL and Second Sight.

Reflections and further observations

140. My work for POL and the Scheme was probably the most challenging in the 40 years of my career as a Chartered Accountant. One of the reasons it was challenging was that POL would say one thing in public, and then do something different in private.

141. An example of this was Paula Vennells (POL CEO) statement to the Parliamentary Select Committee in February 2015 that our work had found *“no evidence of miscarriages of justice”* and

“it was important that we surface any miscarriages of justice”.

142. Paula Vennells frequently and consistently, attempted to steer Second Sight away from investigating potential miscarriages of justice. Another example was POL’s attitude towards criminal convictions and the mediation Scheme.

143. The Scheme documentation made it quite clear that an applicant with a criminal conviction was potentially eligible for the Scheme. POL seemed to disagree with this view and often challenged these applications.

144. When I first met Paula Vennells, she told me that POL was the nation’s most trusted brand with a history of over 400 years. As our work continued, I increasingly formed the view that because of this history, POL somehow felt it was above the law and didn’t need to comply with e.g. the Criminal Procedure and Investigations Act 1996, which set out the disclosure requirements for Prosecutors (including those conducting private prosecutions) as was the case with POL.

145. At one point I was told that there are more people working in the POL Public Relations department than were working in the POL legal department.

This appeared to me to be an inappropriate business priority and one that was probably unsustainable.

146. I formed the view that POL was constantly sabotaging our efforts “*to seek the truth irrespective of the consequences*”. Requests for documents were either ignored or responses were excessively delayed. Unjustified claims of legal professional privilege were used to justify withholding documents from us.

147. Towards the end of the mediation Scheme, some questions asked 12 months earlier had still not been answered. Protecting “the brand” was the priority, not supporting sub-postmasters. I felt POL had lost its way and it needed fundamental overhaul with a new focus placed on supporting sub-postmasters.

148. Many aspects of the individual prosecutions we investigated just didn’t make sense. For example, in none of the cases that we looked at did we find any evidence of personal gain or benefit. This may indicate that the alleged loss was not real and was more likely to have been caused by a faulty computer system. Also, there was extensive vetting of sub-postmasters prior to appointment. POL would have us believe that significant numbers of sub-postmasters had suddenly become career criminals. I found this implausible.

149. In the course of our work, we found that up to 10 POL employees were based in the offices of Fujitsu in Bracknell. We never had a clear explanation of what they were doing and all of our requests for access to full and detailed email records at the relevant time (which could have helped answered this question) were denied.

150. I became aware in about September 2013 that Susan Crichton had left POL. I wasn't briefed about this, but I do recall observing how upset Susan was about the way that she was being treated by POL. I remember one afternoon she was due to present a paper to the Board, but was never called into the meeting. She told me afterwards that she felt like "a naughty schoolgirl". I was therefore not surprised to hear a few weeks later that she had resigned.

151. I have been asked to comment on the various audio recordings obtained by Second Sight. To put this into context, I would say that our work needed to be supported by evidence and that in some cases that evidence was provided orally, either in face-to-face meetings or in telephone calls. In the interest of accuracy, recordings were often made so that a file note could be prepared or evidence of key discussions retained.

152. Ideally, all parties to the conversation would be aware that a recording was being made, but it was not always possible to do this. There was sometimes a significant risk that if a witness was aware that a recording was

being made, this would affect the willingness of person to provide evidence or the veracity of the evidence being provided.

153. Decisions were made on a case-by-case basis, this but we usually ended up recording key conversations, particularly if those conversations were likely to include significant evidence.

154. I only had one meeting with Fujitsu, as mentioned in paragraph 43 above. I then had some limited email contact with Gareth Jenkins. In the course of supporting the mediation Scheme I had frequent contact with POL lawyers, both internal and external. My only contact with Members of Parliament was in public meetings. My only contact with the CWU or the National Federation of Sub-postmasters was in public meetings. My main contact with the Justice for Sub-postmasters Alliance was in mediation Scheme meetings.

155. As far as I can recall, all of our reports were marked "Confidential, not for publication". We recognised however, that due to the public interest in our work, these reports were likely to leak to a wider audience. Somewhat surprisingly, POL decided to publish our Interim Report on a POL website. The JFSA published all of our reports on its website.

156. I have had no contact with POL following termination of our contracts and I have no knowledge as to whether or not our recommendations were implemented.

157. About three years ago I spoke at a legal conference about our work for POL. At the end of my talk, I listed a number of questions that I believed needed to be answered. They were:

- a) *Was prosecution policy within Post Office and Royal Mail influenced by a desire to maximise value prior to an eventual sale or mutualisation proposal?*
- b) *Did Post Office continue to destroy documents after the litigation hold instruction was issued in 2012?*
- c) *Why were key documents such as the Clarke Advices and the Detica report not disclosed to Second Sight by Post Office?*
- d) *When were these documents disclosed to the Board of Post Office?*
- e) *Why did no one take action in 2013 when Second Sight first raised many of our concerns in our Interim Report that was published by Post Office?*
- f) *Why was the Select Committee not more effective in following through on their excellent work in 2015?*
- g) *Was the failed ICL / Pathway project (Horizon's predecessor system in 1998) a contributing factor to the bugs, errors and defects now identified?*

- h) Did the Board of Post Office approve the disastrous litigation strategy, including the recusal application in the Group Litigation Order (“GLO”) trial?*
- i) Did the two Government nominated directors on the Board of Post Office support or approve the approximately £130 million of legal costs incurred by Post Office in the GLO trial?*
- j) Was this regarded as value for money?*
- k) Was there a cover-up within Post Office and or Government of the disastrous decision making within Post Office?*

158. These questions appear to be as relevant now, as when I first raised them more than three years ago.

159. I have been asked to reflect on what I would have done differently in respect of the matters covered in this statement. I think a significant weakness in our relationship with POL (and the Scheme) was the lack of independent oversight. Despite being owned by the Government, POL is treated as an autonomous “arms-length body”. There was little or no external scrutiny of the board or its decision-making. The Government appointed the Chairman of POL and also two non-executive directors. It probably would have been better if Second Sight had had a direct reporting line to the POL Chairman and the POL non-executive directors.

160. There was one other matter that I wish to bring to the attention of the Inquiry. That is the provision of a whistleblowing facility. If I had been an

employee of POL, various protections would have been available to me. However, as a contractor operating under a draconian non-disclosure agreement, no equivalent protections were available to me. I regard this as regrettable, and I do hope that the Government considers legislation to address this omission.

161. I'd also like to say something about accountability. Notwithstanding the fact that many of these matters happened more than 10 years ago, no one has been held to account. I do hope that the Inquiry makes recommendations in this regard, including director disqualifications and sanctions by appropriate professional bodies.

162. Finally, I'd like to say something about to whom we owed a duty. We tried to go where the evidence took us, but increasingly we were finding evidence of questionable conduct by POL, some of which, in my opinion, was probably criminal.

163. In the course of our work, I increasingly felt that our overriding duty was, in a phrase attributed to Alan Bates, to help "*the skint little people*" who didn't have a voice and had been so badly treated by POL.

Statement of Truth

I believe the content of this statement to be true.

GRO

Signed: _____

20 May 2024

Dated: _____

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<u>No.</u>	<u>URN</u>	<u>Document Description</u>	<u>Control Number</u>
1	POL00000218	Raising Concerns with Horizon	VIS00001192
2	POL00099063	Signed Interim Report into alleged problems with the Horizon system	POL-0098646
3	POL00000213	Engagement letter of Ron Warmington & Ian Henderson in relation to Initial Complaint Review & Mediation Scheme	VIS00001187
4	POL00043353	Post Office Complaint Review and Mediation Scheme Report	POL-0039835
5	POL00004439	Initial Complaint Review and Mediation Scheme - Briefing Report - Part One - Prepared by Second Sight	VIS00005507
6	POL00030160	Initial Complaint Review and Mediation Scheme Briefing Report - Part Two prepared by Second Sight	POL-0026642
7	POL00029849	Initial Complaint Review Mediation Scheme: Second Sight Briefing Report - Part Two	POL-0026331
8	POL00065985	Second Sight Mediation Project - Master File List	POL-0062464
9	POL00096576	Post Office Limited: Proposal to carry out an Independent Review of Past Fraud and Theft Cases	POL-0096159
10	POL00096575	Draft - Post Office Limited, Terms of Reference from Susan Crichton to Alice Perkins and Paula Vennells	POL-0096158
11	POL00096834	Email chain from Ron Warmington to Ian Henderson re: Printed SubPostmasters and 2nd Sight	POL-0096417
12	POL00044389	Post Office Ltd Investigation report for Josephine Hamilton - POLTD/0506/0685 (Prepared by Graham Brander, Investigation Manager)	POL-0040868
13	POL00184716	Email from Susan Crichton to Alwen Lyons Fw: Confidential - The Investigation - some real concerns	POL-BSFF-0022779

14	POL00097589	MP Cases Review of Horizon Update March 2013	POL-0097172
15	POL00105631	Agenda for meeting re Post Office cases.	POL-0104620
16	POL00097864	Email chain from Janet Walker to Alwen Lyons, RE: Second Sight note from meeting 25 March.	POL-0097447
17	POL00097883	Email chain from Martin Edwards to Paula Vennells, Alwen Lyons, Susan Crichton, and others re: Second Sight note from meeting 25 March.	POL-0097466
18	POL00090358	Complaint Review and Mediation Scheme (Chronology and Supporting Documents) File 2 of 5 from April 2013 to October 2015	POL-0087327
19	POL00122393	Second Sight Horizon Investigation Discussion Paper April 2013	POL-0127557
20	POL00098354	Briefing for Paula Vennells/James Arbuthnot Call	POL-0097937
21	POL00098208	Email from Simon Baker to Alwen Lyons, re Letter From James re Alan Bates' letter.	POL-0097791
22	POL00098377	Note of Phone Call between Paula Vennells and James Arbuthnot dated May 2013	POL-0097960
23	POL00022773	Initial Complaint Review and Mediation Scheme: Suspense Account - second response	POL-0019252
24	JARB0000108	Briefing Note to BIS Select Committee from Ian R Henderson CCE, CISA, FCA	JARB0000108
25	POL00063517	Jo Hamilton Case study: Post Office Mediation Scheme Second Sight Case Review Report Josephine Hamilton	POL-0059996
26	POL00034551	Initial Complaint Review and Mediation Scheme Post Office Investigation Report M035 - Jo Hamilton	POL-0031486
27	POL00025188	Letter from the Post Office Limited to Ron Warrington and Ian Henderson of Second Sight Support Services Limited	POL-0021667

28	POL00065542	Josephine Hamilton Case Study: Email from 2ndsight to Rodric Williams, Re: M035 - Josephine Hamilton.	POL-0062021
29	POL00034782	Initial Complaint Review and Mediation Scheme Post Office Investigation Report for Josephine Hamilton	POL-0031717
30	POL00000216	Second Sight Termination Notice (2015)	VIS00001190
31	POL00224327	Letter from Jane to Second Sight RE: Initial Complaint Review and Mediation Scheme	POL-BSFF-0062390
32	INQ00001127	Transcript (10/04/2024): Post Office Horizon IT Inquiry - Lord Arbuthnot of Edrom [WITN0002] and Hon. Sir Anthony Hooper [WITN0043]	INQ00001127