

**Witness Name:** Tony Kearns

**Statement No:** 2

**Ref:** WITN06370200

**Dated:** 09 May 2024

## POST OFFICE HORIZON IT INQUIRY

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### SECOND WITNESS STATEMENT OF TONY KEARNS

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#### Background

1. My name is Anthony Kearns, and I am currently employed in an elected position as Senior Deputy General Secretary of the Communication Workers Union.
2. Between late 1997 and early 2002 I was employed by the CWU as an Assistant secretary of the Communication Workers Union, this position is known as a “national officer” position and my main area of responsibility was for our members employed by POL.
3. I need to add that my own personal involvement as a CWU employee (elected official) with the Post Office and in turn with the Horizon Project as it impacted CWU members ended over 22 years ago.
4. The statement and answers I will provide reflect my position as I am able to recall. For the period from early 2002 onwards these issues were not my responsibility within the CWU and as such as I was not involved. Accordingly, I may be unable to assist in answering specific questions. Where I am able to

recall events and thus able to assist I will, where I am unable to do so I will say so.

**CWU Activities and membership**

5. Currently the Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing over 170,000 members in the postal, telecoms, technology, financial services and related industries.
6. At this point in time, we are the recognised trade union for non-managerial employee grades in Royal Mail, BT and the Post Office Limited (POL) where we have members in all sections of the business. We also have a national CWU subpostmasters branch, established in 2014, with over 350 subpostmaster members.
7. I must add that The CWU has long called for union recognition for collective bargaining purposes for subpostmasters, but POL has consistently refused to grant this.
8. With regard to documents CWU00000112 (Draft CWU Rule Book 2001) and CWU00000120 (CWU Rule Book 2004), both of which I have read, I would say that the CWU's Rule Book is subject to revision via internal processes but that in general the objectives of the union have remained largely unchanged during that time, including:
  - a. To unite and organise all those entitled to be members. To protect and promote members' interests and maintain and improve their working lives;

- b. To regulate the tensions between members and their employers, and between members.
9. The methods used by the CWU to represent our members are longstanding, they have been in place before 2002 and continue following 2019, however they can best be identified as follows. These are a well-known (inside the CWU) set of methods and they set out how most people would approach trying to answer this question.
10. We aim to maintain strong, democratic representative structures that members are represented at every level from individual workplaces through their local branch, up to national level through the National Executive Council and national conferences.
11. We engage in collective bargaining processes with several employers on issues such as pay, terms and conditions of employment.
12. We aim to provide individual representation in the workplace, including on disciplinary or grievance cases.
13. We offer legal advice and representation, including in Employment Tribunals, mainly through the CWU's owned law firm UnionLine.
14. To further our members aims we have continuous political engagement with several levels of authorities i.e. Metro Mayors, the Labour Party and the Government on many areas of policy, including workers' rights and industrial matters. As stated, we do this to try to ensure our members' interests are represented at every level.

15. As an affiliate to the TUC, we are constantly involved in campaigning matters for and on behalf of our members and the wider trade union movement both industrially and politically on a wide range of issues, from employment rights to health and safety related concerns.
16. Regarding rule 11.2.1 of the CWU Rule Book 2001 (CWU00000112) and rule 4.1.7 of the CWU Rule Book 2004 (CWU00000120). I would say that between 2000 and 2019, the CWU provided a broad range of legal services to our members, and this continues through to today as we do today. These services are well known throughout the organisation and so the services we offer and how they are provided should be able to be set out in a standard manner.
17. In 2014, the CWU jointly set up trade union law firm UnionLine alongside the GMB in response to changes in the regulatory environment for the personal injury claims market. Prior to 2014, the CWU delivered legal services in conjunction with employment law firms such as Simpson Millar and others.
18. The creation of UnionLine changed the structure and organisation of CWU legal services, but the scope of the union's legal services offering has remained fundamentally the same since 2000. This includes legal advice and representation on:
  - a. Employment matters such as unfair dismissal, working time and payment issues.
  - b. Personal injury cases, helping individuals to win compensation if they suffer an accident or injury that wasn't their fault.

c. Road Traffic Accidents (RTA's) The CWU may, dependant on circumstances offers legal advice on other issues e.g. consumer disputes and motoring offences.

19. The rule changes in or around 2004 made no difference to the legal representation provided to members.

20. The CWU represented Post Office employees who used the Horizon IT system in a range of non-managerial grades working in Crown Post Offices and Administrative Functions. This includes, for example, Financial Specialists in Crown Offices, and Postal Assistants and Postal Officers in Administrative Functions.

### **Knowledge of Horizon**

21. As stated above my responsibility in this area ended in 2002, this is not to say that I wasn't aware, in a general sense, of what was happening within the CWU on a variety of issues but my role in the organisation changed and as such I did not need, nor did I have an in depth and detailed understanding of these matters from that point on.

22. As has been established the CWU was a member of the Horizon Working Group in 1999 and 2000, we knew that this was, at the time, one of the largest IT projects taking place anywhere in Europe, it was viewed as a very complex development. As the documents referred to above show there had been problems as evidenced by the acceptance of the system by the Post Office being delayed (NFSP00000066 - minutes of the Horizon Working Group meeting on 11 October 1999).

23. Further, the CWU General Secretary at the time, Derek Hodgson clearly expressed concern at this (NFSP00000066).
24. I have previously given evidence to the Inquiry and I would repeat what I stated then, the CWU weren't asked to approve or accept the system, that was not our role. We expressed our concerns, as documented by the GS, Derek Hodgson and sought assurances in relation to the Horizon rollout on the Working Group.
25. On the issue of the integrity of the system, between 2000 and 2008, in my original statement – WITN06370100 at paragraph 13, I made the point that the CWU were not involved in the technical design of this system, and from memory and up until 2002 when this ceased to be my area of responsibility I do not recall the CWU being made aware of any problems with the Horizon system integrity.
26. Specifically, and from memory, whilst this was my area of responsibility, I do not recall being aware of (a) the existence of bugs, errors or defects, or (b) the ability of Fujitsu staff to alter transaction data or data in branch accounts without the knowledge or consent of SPMs ("remote access").
27. Prior to 2014, the CWU did not actively recruit or represent subpostmasters. Therefore, we did not have first-hand knowledge or awareness of the difficulties that subpostmasters were experiencing due to Horizon up until that point.
28. As a result those cases that POL took against subpostmasters during the period from 2000 to 2008 (including for example Alan Bates in 2003 and Lee Castleton in 2007) were not our responsibility to deal with.

29. The CWU did not set up a subpostmaster Branch of the Union until 2014, although this was not my area of responsibility the decision to do this was taken at an NEC meeting and I was a member of the CWU NEC at that time.
30. As stated in the section on CWU activities and membership above, the CWU has recognition for directly employed non-managerial grades in Post Office Limited working in Crown Offices and other Directly Managed Branches.
31. The CWU is now aware, from a POL response to an FOI request from Nick Wallis in 2020 (RLIT0000038), that the number of prosecutions brought by POL against its employees which ended in a conviction increased substantially in the year 2000 and remained relatively high for the next decade. There were 12 convictions of POL employees in 2000, compared with 4 in 1999. There were 18 convictions of employees in 2003, which was the year with the highest number of employee convictions.
32. However, I was not aware at that time of the rise in prosecutions and convictions of POL employees. We were also not aware at the time that the integrity of the Horizon system may have been a factor in these prosecutions and convictions.
33. The CWU has always provided strong and effective representation for members accused of accounting discrepancies. CWU collective agreements including the 'Losses and Gains Procedure' have been significant in ensuring a fair hearing for CWU directly employed members. The CWU has no record of any of our directly employed members losing their jobs or being prosecuted due to problems with Horizon. There have been cases of actual theft amongst CWU represented grades, but invariably when people are caught out they are quick

to admit to theft. In these cases, the CWU is generally not involved as people resign before being dismissed.

34. Tracy Felstead was the only case we now know of relating to a direct employee of the Post Office being jailed for theft as a consequence of Horizon failures. Tracy was jailed for a year in 2010 aged 19 after being accused of stealing £11,503. The CWU has no record of Tracy having been a CWU member, we have no knowledge of her approaching CWU for support, and Tracy has never blamed the CWU for a lack of representation.

35. Given that, as stated above, specifically and from memory, whilst this was my area of responsibility, I do not recall being aware of (a) the existence of bugs, errors or defects, or (b) the ability of Fujitsu staff to alter transaction data or data in branch accounts without the knowledge or consent of SPMs ("remote access"). Then I do not recall discussing these matters with others at the CWU

36. Further given that statement and the timelines involved, including my relinquishing responsibility for this role in early 2002 I cannot recall either myself or anyone else at CWU developing a better understanding of the matters referred to as (a) the existence of bugs, errors or defects, or (b) the ability of Fujitsu staff to alter transaction data or data in branch accounts without the knowledge or consent of SPMs ("remote access").

#### **Post Office investigations, criminal prosecutions and civil proceedings**

37. During my time as the Assistant Secretary my understanding of how POL conducted branch audits or investigations into alleged shortfalls in branch accounts would have been in two ways. Firstly, they had an audit team that would arrive at a Crown Office post offices (unannounced) and, quite literally,



conduct an on-site audit to ensure that the information presented as part of the individual till balances and the overall office balance was in fact correct. During my time as the Assistant Secretary and indeed when I worked at Crown Post Offices these unannounced audits would take place on a Thursday morning prior to the office opening for business, this was because the day for balancing was after close of business Wednesday.

38. Where POL suspected wrongdoing and/or theft they would send in members of the Post Office Investigation Dept to interview individuals(s) and present them with whatever evidence they believed they had to support an allegation of wrongdoing/theft. I do not recall any changes in that approach during my time as the CWU Assistant Secretary with responsibility in this area.

39. On the question of any support that CWU offered to SPMs in relation to (a) raising concerns about the Horizon IT System or related training and support services (b) the conduct of branch audits (c) investigations into alleged shortfalls in branch accounts or (d) civil or criminal proceedings against SPMs arising from alleged shortfalls in branch accounts, between 2000 and 2008 (inclusive). As I have stated above, the CWU did not represent SPMs during this period, accordingly the answer is, we provided no support as this group were not represented by us.

40. With regard to the question of our knowledge of or involvement with case(s) in which the CWU provided support or representation to an SPM who was (a) accused of misconduct or incompetence in relation to a shortfall in a branch account and (b) the SPM could not explain the cause of the shortfall or alleged that it was caused by the Horizon IT System, between 2000 and 2008 inclusive.

The answer is the same as given above, the CWU did not represent SPMs during this period, and so we provided no support or representation in this area as it was not our responsibility, it was (or should've been) the responsibility of the NFSP.

**Responding to the emerging scandal**

41. In response to the specific question about when I first became aware of the creation of the Justice for Subpostmasters Alliance ("JFSA") and the allegations made in the 11 May 2009 Computer Weekly article (POL00041564).

42. I simply do not recall being aware of the creation of this group nor of the allegations they made. This was some 7 years after my responsibility in this area (for CWU members only) ended. As such this was not relevant to my day job, and I cannot recall when I became aware of the allegations.

43. I did not take any steps between 2009 and 2019 (inclusive) in raising any concerns regarding the integrity of the Horizon IT System with POL, the government, the Shareholder Executive/UKGI, MPs and peers or journalists, as this issue no longer formed part of my remit to do so.

44. What I do know is that in response to an approach from a group of individual SPMs the CWU established the CWU subpostmasters National Branch to represent the interests of subpostmasters. (As can be seen from documentation)

45. In response to the question "Did you have a meeting with Baroness Neville-Rolfe and / or other government representatives, including from the Shareholder Executive, on or around 5 August 2015? If so, please set out

whether you discussed the Horizon IT System and, if so, your recollection of that discussion.” The answer is, no, I did not.

46. In response to the question “Did you have a meeting with Margot James MP and / or other government representatives, including from the Shareholder Executive, on or around 6 September 2016? If so, please set out whether you discussed the Horizon IT System and, if so, your recollection of that discussion.” The answer is, no, I did not.

47. The only extent to which I or the CWU liaised or communicated with the NFSP and / or the JFSA in relation to the integrity of the Horizon IT System was through our involvement in the Horizon Working Group in 1999 and 2000, I do not recall the CWU liaising or communicating with the NFSP on the integrity of Horizon.

48. I am not aware that the CWU liaised or communicate with the JFSA on the integrity of Horizon. I am also not aware if JFSA have contacted the CWU or our Sub postmasters Branch on this issue.

49. Again, as stated above this was no longer my area of responsibility so I would not have been aware of problems with the integrity of the Horizon system from 2013 onwards.

50. Regarding the question of the nature and extent of any involvement the CWU had, or the support or representation it provided, in relation to claims by SPMs represented by Shoosmiths in 2011, my view is that we would not have been involved as they were not members of the CWU.

51. The same position is given in answer to the question regarding the efforts by SPMs convicted of theft, fraud offences or false accounting to overturn their

convictions; the CWU would have had no involvement as no CWU members, as far as I was aware, had been convicted due to Horizon problems.

52. With regard to POL's Initial Complaint Review and Mediation Scheme this was not my area of responsibility at the time although I believe that those dealing with this anticipated at the time that this would result in what we would term, normal disciplinary action being taken against those members. (NEC No. 114/15 circular dated 18.06.2015 - CWU00000076)

53. We, CWU had no involvement in the case Bates & Others v. Post Office Limited (the GLO proceedings).

54. During my time as the Assistant Secretary of the CWU dealing with POL the CWU's relationship with the NFSP was that the CWU and the NFSP held equal status as trade unions and would, very occasionally, update our respective Executive Committees on key issues and priorities. We did not collaborate on projects or member representation, because although they had the status of a trade union, I would contend that our respective members interests were not necessarily aligned.

55. However, as has already been described, both organisations were members of the Horizon Working Group in 1999 and 2000. To the extent that this may have changed following the NFSP's conversion to a trade association, is answered in part by the creation of the CWU subpostmasters Branch which meant that they (NFSP) now had a contractual arrangement with POL whilst we remained a stand-alone trade union, independent of the employer.

## Whistleblowing

56. On the question of whether the CWU, between 2000 or 2019 had any practice, policy or procedure to enable members or officials to report wrongdoing in so far as it related to the matters to which this inquiry relates i.e. whistleblowing, I would say the following.

57. We didn't have a specific practice on whistleblowing, as far as I can recall, other than to say we had an extensive reps' structure and with a high density of members at the outset of this timeline (2000) the majority of CWU members employed by the Post Office would be aware of who their rep was or at the very least which CWU Branch they belonged to. This meant that if they fell foul of any internal procedure (disciplinary/losses and gains) they would contact their Rep/Branch. If at any time a member felt that something was wrong, on any issue, it would be common practice to contact a rep/branch official to discuss the matter and/or seek advice or assistance. Such interactions were daily occurrences as a result of a strong union presence in the workplace and the overall state of the industrial relations arena at that time.

58. In reflecting upon the extent to which the support and representation available to SPMs alleged to be responsible for shortfalls shown by the Horizon IT System was adequate or inadequate between 2000 and 2019 (inclusive) it is both my view and a view I believe is prevalent in the CWU that support and representation for SPMs (from the NFSP) has been completely inadequate. This is because the NFSP ceased to be a trade union independent of the employer and whilst I am not aware of the specifics of the contractual arrangement, I am informed, through discussion internally within the CWU over

the years, that the NFSP is appointed and funded by POL and is the main representative body for SPMs. The problem this creates, in my opinion, is that it now has its own commercial interest to consider, and this carries the real risk that this interest overrides those of its members, and thus is the priority for the organisation.

59. Although, as we have established above, the CWU set up its own Sub Postmasters Branch my understanding is that we have been frustrated in our effectiveness in this area by POL's refusal to grant the CWU trade union recognition for postmasters.

60. There is nothing further that is relevant to the Terms of Reference of which I think the Chair ought to be aware that I can add.

**Statement of truth**

I believe the content of this statement to be true.

Signed:

**GRO**

Dated: 09/05/2024

## INDEX TO SECOND WITNESS STATEMENT OF TONY KEARNS

| <b>No.</b> | <b>URN</b>   | <b>Document Description</b>  | <b>Control No.</b> |
|------------|--------------|--|--------------------|
| 1          | CWU00000112  | Draft CWU Rule Book 2001   | CWU00000112        |
| 2          | CWU00000120  | Rules for the CWU (2004)   | CWU00000120        |
| 3          | NFSP00000066 | Minutes and correspondence<br>from Horizon Working Group<br>meeting of 11.10.1999                            | VIS00007514        |
| 4          | RLIT0000038  | POL response to a FOIA<br>request from Nick Wallis<br>regarding numbers of<br>prosecutions – 22.05.2020      | RLIT0000038        |
| 5          | WITN06370100 | First Witness Statement of Tony<br>Kearns dated 12.10.2022   | WITN06370100       |
| 6          | POL00041564  | Bankruptcy, Prosecution and<br>disrupted livelihoods. Article by<br>Rebecca Thompson from<br>Computer Weekly | POL-0038046        |
| 7          | CWU00000076  | CWU Circular NEC No. 114/15<br>re-NFSP, POL and CWU  | VIS00007750        |