

Witness Name: Kay Linnell  
Statement No.:WITN00550100  
Dated: 16/05/2024

## THE POST OFFICE HORIZON IT INQUIRY

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### FIRST WITNESS STATEMENT OF KAY LINNELL

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I, Kay Linnell, will say as follows:-

1. I was appointed as an accountancy and litigation advisor to JFSA ('Justice for Subpostmasters Alliance') and my part in the long running dispute with Post Office Limited is as part of JFSA. All the views in this witness statement are my own and do not represent those of JFSA.
2. This witness statement has been prepared in response to the request made by the Post Office Horizon IT Inquiry (the 'Inquiry') pursuant to Rule 9 of the Inquiry Rules 2006, dated 9 April 2014 (the 'Rule 9 Request'). In this statement I have addressed each of the questions set out in the Appendix to the Rule 9 Request. I have used the headings set out in those questions where appropriate and for ease of reference. I have been assisted by David Enright of Howe & Co in relation to the preparation of this witness statement.

### **Introduction and Personal Background**

3. In summary, I am a Chartered Accountant, having qualified with the ICAEW in 1979, I am also a Certified Fraud Examiner (2001), a Chartered Arbitrator and Fellow of the Chartered Institute of Arbitrators, an Accredited Mediator by the Centre for Effective Dispute Resolution (2001), a Life Member and Fellow of the Expert Witness Institute and a Member of the Fraud Advisory Panel. I have an MBA from the University of Sheffield and am a part-time lecturer at the University

of Portsmouth, where I obtained my doctorate in 2024. I am in public practice offering forensic accountancy and dispute resolution services worldwide.

4. I specialise in forensic accounting and tax investigations, financial disputes and areas of litigation support including civil, family and criminal matters. I have experience in specialist commercial matters including share valuations, insurance claims, management consultancy, construction disputes, business interruption, insolvency and corporate recovery, fraud investigations, forensic reconstruction, tax and professional negligence.

#### **Involvement with the Justice for Subpostmasters Alliance 'JFSA'**

5. I became involved in the Post Office treatment of its sub postmasters (SPMs) in 2009 because of my local postmistress, Jo Hamilton. My business partner, Mrs Barbara Jeremiah JP, used to drop into Jo's shop in South Warnborough to buy her lunch on the way to Court. One day in 2005, she found Jo in tears because of ever-increasing unexplained shortfalls in her business accounts. Barbara told Jo she needed the services of an accountant to fully understand the causes of the losses and differences shown on her computer branch terminals.
6. Jo did not take this offer up and went to her trial in Winchester with Issy Hogg a local criminal solicitor. Jo was advised by her legal team to accept a plea bargain changing the indicted offence of "Theft" to the "False Accounting". She pleaded guilty and was sentenced to community service.
7. When Barbara made me aware of this, we were naturally disappointed, as we wanted to help a trusted neighbour. As a forensic accountant, I was curious to try to find out how the Horizon terminal in Jo's shop had alleged losses, but no evidence was available to check the entries.
8. Sometime in around June 2012 Barbara spoke to Jo, who suggested that I phone Alan Bates, who was the centre of JFSA, as its organiser because he had a

forthcoming meeting in the House of Commons and Barbara and Jo believed that I could add value and help Alan.

9. As the Inquiry will be aware, the SPMs had banded together and formed the Justice for Subpostmasters Alliance ('JFSA'). JFSA is an unincorporated affiliation with no constitution, rules, or hierarchy but simply united by a common problem which is to get back the money wrongly taken by POL and attempt to recover losses and damages caused by the POL operation of the Horizon computer and support system in the SPM POL network.
10. I telephoned Alan Bates and volunteered to provide what assistance I could. Alan had clearly appreciated that there seemed to be a much wider problem of SPMs affected by Horizon being pursued in the civil Courts for money by POL for alleged shortfalls and possibly being prosecuted for theft and summarily terminated by POL causing financial distress by POL on what appeared to be little or no reliable shared evidence.
11. There was no need for me to have a 'lightbulb moment' as I knew Jo Hamilton's case inside out and she told me of other SPMs. In my opinion none of the POL prosecutions should have taken place because in POL's own manuals it specifies there will be no prosecution without a full investigation and POL should have, as the prosecuting authority, investigated the cause of all differences, given evidence to the accused SPM to check and an opportunity with all the figures to defend themselves. What actually happened was an extreme form of self-justified bullying and prosecuting SPMs without any evidence - like 'shooting fish in a barrel'.
12. As a forensic accountant I was aware of some aspects of civil and criminal litigation, to assist JFSA. Alan Bates agreed that I should attend a meeting with him at the then James Arbuthnot MP's office on 7 July 2012 to meet potential independent accountant investigators nominated by POL being Second Sight Support Services Limited ('Second Sight') Ron Warmington and Ian Henderson.

### First meeting with Second Sight

13. I first met Second Sight on 7 July 2012 with Alan Bates in James Arbuthnot MP's office. I was extremely suspicious of Second Sight, as they had been nominated by POL as independent forensic accountants, and I was concerned that their access to documents and review of POL's Horizon system might be a whitewash. I challenged them at our meeting in 2012 but was satisfied with their responses.
14. My role was to monitor the work of Second Sight to verify their independence and it was agreed that I would be paid a fixed fee for this service however long it took. As the Second Sight investigation progressed, I worked with them, and saw first-hand their approach, and attended some of the meetings with SPMs and I was impressed.

### Meeting with Paula Vennells and Alwen Lyons

15. I attended a meeting at POL with Alwen Lyons and Paula Vennells (I think in around in June or July 2013). We asked to meet Paula Vennells as CEO to try and get a reality check on the POL opposition to recognising the plight that POL had caused SPMs, to admit Horizon was not 100% perfect (as no computer system can be) and to get money paid back to SPMs asap.
16. At that stage, JFSA did not want a full public exposure just proper care for SPMs in giving money back wrongly taken and paying for losses and damages. We were asking for substantial amounts but nothing compared to their own bonuses published in great detail in the POL annual accounts.
17. However, this meeting was not a productive experience and the responses we received were laced with platitudes such as "we are listening" and "the important thing is the future of POL" and "lessons learned from the past".

### JFSA meeting at Kineton

18. Sometime later, Jo Hamilton asked Barbara and I to go to a JFSA meeting on 28 July 2013 of other SPMs in a village hall in Kineton to meet them and perhaps give some assistance with their financial affairs, accounts, tax, creditors and POL claims.
19. As an experienced forensic accountant in criminal and civil matters, I was well used to the type of documents and evidence that were needed by the prosecution and defence. I was persuaded to help by Barbara as a hobby without any charge to SPMs and, as Barbara says, this is a hobby that has now 'got out of hand'.
20. I took on the role as the accountancy and litigation advisor by JFSA and my position was later confirmed at the JFSA Kineton on 28 July 2013 by a show of hands by the members of JFSA [WITN00550101].

### Assistance to SPMs

21. In talking to other SPMs, I began to understand the scale of the problem as so many SPMs were, like Jo, in a dreadful financial and stressful position and very few had any documents that supported the alleged losses/shortages. I came to discover that no documentary evidence was provided to SPMs by Post Office Ltd ('POL'). As such, SPMs faced with Horizon computer shortfalls appeared to have no access to the standard type of documentary evidence a defendant should have in a case of civil recovery of a debt or accusations of criminal theft, false accounting or fraud.
22. These SPMs had been left with huge debts, mental distress, losses and tax compliance issues and creditors.
23. Since that time, I have been contacted directly by many JFSA SPMs as their confidential trusted adviser and have assisted them in preparing accounts, dealing with tax, debt collectors, financial arrangements, claims and any other financial

matter or correspondence that I was able to. There is no formal engagement letter or contract with SPMs as working for JFSA members is a public service initiative for my firm Kay Linnell & Company Limited ('KLL').

24. I should emphasise that everyone in my firm, KLL, spent time on the SPM' affairs. In particular, Barbara Jeremiah has provided extensive personal time to SPMs in the JFSA to support them over many hours in the last 15 years. The work has been extensive. I have 6 shelves of lever arch files on the JFSA matters.

25. KLL are still here to help them whenever the SPMs need it. We have not been paid for our services except for the first fixed fee in 2012 and for a brief period during the Initial Mediation Scheme sponsored by the MPs and administered through POL with Second Sight, and again during the GLO, both of which are described later in this statement in the interest of transparency.

26. JFSA has no funding apart from gifts from friends and donations to my knowledge, except for one Crowd Funding appeal to make an application to the Privy Council to apply for a Statutory Public Inquiry rather than the non-statutory Public Inquiry that was offered. This application in the event proved unnecessary as at the eleventh hour HM Government changed its position.

SPMs unable to defend themselves against POL allegations.

27. I have always been struck by the obvious unfairness of POL placing SPMs in a position where they were unable to defend themselves.

28. When I gave evidence before the Business, Innovation and Skills Committee on 3 February 2015 [UKGI00013818 – at page 8] I summarised the position that they faced through referring to a pub analogy that one of the MPs had given. Essentially a landlord has access to all the accounting records, he can see when cash is missing. What happened in the case of Horizon was that even where there was only an SPM operating the tills, money had gone missing which was out of their control.

29. As I stated, for example, if cash collection is picked up and remitted to head office, it is sometimes not logged against the SPM in head office and a shortage arises. Sometimes an entry goes through - a transaction correctional credit (TCC) and the SPM does not know about it. Although the SPM is personally responsible to pay cash, they are not aware of how the differences have arisen. If the mediation scheme had told the applicants where the money had gone within POL there should have been lots of settlements - but the SPM and JFSA still didn't know.
30. The accounting was always outside the SPM's control - yet under the contract with POL, the SPM was held responsible.
31. We later added in written submissions through JFSA [INQ00000399] that due to the complexities in the Horizon system there was a lack of intuitive flow with this operation. Furthermore the failure in the system design led to problems of tracking down where or if mistakes had been made, or what had happened to particular money.
32. In the long run it was always the SPM who had to pick up the tab - so POL didn't need to worry. The POL strategy was really all about transference of risk from the POL to the SPM.

Second Sight – current involvement.

33. After Second Sight had completed their task and POL had closed down the Initial Mediation Scheme in 2015, I had no reason to be in touch with Second Sight again. However, Second Sight remained in touch with Alan Bates and Freeths, who JFSA appointed as the lawyers to take their GLO case. Ron Warmington, Ian Henderson and myself remained in contact but in separate 'camps' in so far as POL was concerned.
34. After the High Court action ended in March 2020 and before the Court of Appeal March 2021 hearing (to overturn some GLO SPM criminal convictions) Ron

Warmington, Ian Henderson and I spoke about working together on other non-POL related investigations as I intended to remain part of JFSA and have nothing to do with the Second Sight work that Ron Warmington and Ian Henderson had done on the POL case. We agreed to put up a “wall” between me and them on all POL matters. I have never been involved in any Second Sight casework concerning POL as I retain my JFSA identity concerning the POL GLO action and its consequences as I consider my obligation to SPMs as an overarching instruction.

35. Ron Warmington formed a new Second Sight company called Second Sight Investigations Ltd (‘SSIL’) on 31 May 2021 Company Number 13429845 and we three Ron Warmington, Ian Henderson and myself became directors and equal shareholders. We looked for and found new assignments unrelated to POL and continue to trade as SSIL together.

36. Ron Warmington was the majority shareholder of Second Sight, which had other shareholders in May 2021 but after that Ron Warmington arranged to buy out the other shareholders and terms were agreed on 29 June 2022. I believe that Ron Warmington and Ian Henderson consider themselves, as I do, to be in a quasi-partnership with each other and me as trusted forensic accounting colleagues having complementary skills and experience.

37. We agreed to operate on new assignments in resolving investigations and asset recovery in the new SSIL. Ron Warmington considered that as we considered ourselves as quasi-partners that we should also all be joint owners of Second Sight as well, which made sense for tax purposes. Ron Warmington appointed me as a Director of Second Sight on 1 July 2020 and I resigned on 1 July 2023 as soon as Second Sight Investigations Ltd (‘SSIL’). SSIL was trading on new assignments unrelated to POL.

### **The Run up to the First Interim Report**

38. I confirm that I have considered the following documents provided to me:



- (i) the email dated 12 July 2012 at **POL00096817**;
- (ii) the emails dated 18 July 2012 at **POL00091028**;
- (iii) the emails dated 13 and 17 September 2012 at **POL00096962**;
- (iv) the emails dated 10 August 2012 at **POL00058188**;
- (v) the email dated 1 October 2012 at **POL00096980**;
- (vi) the email dated 25 January 2013 at **POL00097402**.

39. I note the email exchanges between Second Sight, James Arbuthnot MP, Susan Crichton and others concerning my meeting with Alan Bates and Second Sight on 12 July 2012; and part of the September 2012 email chain discussing the type of cases to be included in the MP's sponsored independent case review by Second Sight to be paid for through POL.

40. I had no involvement with POL concerning the gathering and production of data and documents and no contact with Fujitsu.

#### Initial investigation by Second Sight

41. After the interview in July 2012 in James Arbuthnot MP's office there was a dialogue between all the MPs who had affected SPMs in their constituencies represented by James Arbuthnot MP, Second Sight, POL and JFSA.

42. There was no consultation at this point about terms of reference because Second Sight were charged by the MPs to go inside the POL systems and find out what had happened in the case of each SPM constituent that had raised a complaint. It was clear to me that the MPs' SPM constituents had tried in many ways to trigger assistance from POL to get to the bottom of how shortfalls or differences had

arisen but in every case they had been blocked in accessing data, or ignored in that POL refused to investigate and their complaints were treated as trivial.

43. The scope of the Second Sight initial investigation was limited to the MPs' complaint cases and formed a series of 'Spot Reviews' where Second Sight were given extensive access and assistance by POL as directed by the POL in-house lawyer and General Counsel, Susan Crichton. The completed Spot Reviews were used to select 6 cases to be investigated in depth, which eventually led to the production of the Second Sight interim report in July 2013. [POL00099063]

#### JFSA strategy

44. As advisor to the JFSA I discussed strategy with Alan Bates to consider how we could obtain information from POL that related to every SPM's own transactions that should already have been disclosed to them but was withheld by POL. We adopted this approach because SPMs applications under Freedom of Information requests had produced little, and SPMs were told the information was legally privileged and redacted or that it had been destroyed.

45. Alan Bates had put pressure through MPs on POL to investigate the SPMs' complaints of "false" figures from the Horizon system and there was finally a spoken willingness through MPs from the CEO, Paula Vennells, to engage and mediation was suggested. I understand that Paula Vennells had expressed this willingness to James Arbuthnot MP and this has been dealt with in his evidence.

46. After much negotiation, and only on the basis that JFSA's SPM members could keep any document disclosed, JFSA agreed to participate in the proposed mediation scheme. The JFSA members appointed Alan Bates and myself to represent them as it was imperative to involve every JFSA member.

### Systems error and Systemic error

47. It is worth noting the difference between a 'systems error', [that is an IT coding error that will replicate an error of the entry of the same data and processing of transactions in the IT system] and a 'systemic error' [that is one caused by incorrect implementation and management of the sub postmaster network using the Horizon computer accountancy system]. An example of a systemic error was the fallacy by POL that all shortfalls were recoverable from SPMs rather than only shortfalls arising from SPM errors or those of their staff.

### The Interim Report

48. The Second Sight interim report was produced solely by Ron Warmington and Ian Henderson (Second Sight), although I now understand that POL saw an early draft and made or suggested some changes. JFSA did not see any draft and first saw the report at the meeting with the MPs on 8 July 2013.

49. I have seen an attendance note of this meeting at the Houses of Parliament which I attended with Alan Bates on 8 July 2013 [POL00029664]. The note records Alan Bates saying that the report was quite new and that JFSA needed time to reflect. The note also says that Alan said that he was aware that POL were present and so he was restricted in what he could say.

50. My understanding of this comment is that Alan would only talk openly without POL being present because whenever he said anything openly in POL's presence, POL would try to use it against JFSA and its campaign to uncover the facts. I felt the same way, and perhaps Paula Vennells' extraordinarily inaccurate record of our conversation in Bonn (which I detail later in this statement) demonstrates that our instincts were right.

51. The Second Sight report could have been much stronger with regard to the POL field operation and systemic working errors of POL as well as program system errors found in the spot reviews.

52. I am not aware of JFSA member differences in our group opinion of the interim Second Sight report as it hinted at errors which confirmed our suspicions but was restrained in its criticisms of POL.

**Initial Complaint Review and Mediation Scheme ('The Mediation Scheme')**

53. I confirm that I have considered the following documents provided to me:

- a. **POL00043636** (minutes of the Working Party meeting on 21 August 2013);
- b. **POL00060760** (the emails from August and September 2013);
- c. **POL00099551** (the emails of 10 September 2013);
- d. **POL00108122** (brief for meeting with Sir Anthony Hooper on 24 September 2013);
- e. **POL00108207** (report on the Chair of the Working Group dated 25 September 2013);
- f. **POL00026625** (minutes of the Working Group meeting on 25 October 2013);
- g. **POL00043641** (minutes of the Working Group meeting on 31 October 2013);
- h. **POL00043622** (minutes of the Working Group meeting on 7 November 2013);
- i. **POL00043623** (minutes of the Working Group meeting on 14 November 2013);
- j. **POL00043624** (key points and actions of the Working Group meeting on 28 November 2013);
- k. **POL00043625** (key points and actions of the Working Group meeting on 5 December 2013);

- l. **POL00026666** (key points and actions of the Working Group meeting on 12 December 2013);
- m. **POL00026638** (key points and actions of the Working Group meeting on 3 January 2014);
- n. **POL00026639** (standing agenda for Thursday calls and note for 16 January 2014 meeting);
- o. **POL00026640** (note of Working Group Meeting on 23 January 2014);
- p. **POL00026635** (note of Working Group meeting on 6 February 2014);
- q. **POL00026636** (note of Working Group meeting on 20 February 2014);
- r. **POL00026637** (note of Working Group meeting on 27 February 2014);
- s. **POL00026656** (note of Working Group meeting on 7 March 2014);
- t. **POL00026643** (note of Working Group meeting on 13 March 2014);
- u. **POL00026642** (note of Working Group meeting on 20 March 2014);
- v. **POL00026644** (note of Working Group meeting on 27 March 2014);
- w. **POL00026633** (note of Working Group meeting on 1 April 2014);
- x. **POL00026652** (note of Working Group meeting on 17 April 2014);
- y. **POL00026653** (note of Working Group meeting on 24 April 2014);
- z. **POL00026663** (note of Working Group meeting on 1 May 2014);
- aa. **POL00043627** (note of Working Group meeting on 6 May 2014);
- bb. **POL00026657** (note of Working Group meeting on 15 May 2014);
- cc. **POL00026662** (note of Working Group meeting on 20 May 2014);
- dd. **POL00026667** (note of Working Group meeting on 29 May 2014);
- ee. **POL00026668** (note of Working Group meeting on 5 June 2014);
- ff. **POL00026664** (note of Working Group meeting on 12 June 2014);

- gg. **POL00026673** (note of Working Group meeting on 16 June 2014);
- hh. **POL00026665** (note of Working Group meeting on 26 June 2014);
- ii. **POL00026672** (note of Working Group meeting on 10 July 2014);
- jj. **POL00026671** (note of Working Group meeting on 17 July 2014);
- kk. **POL00026683** (note of Working Group meeting on 24 July 2014);
- ll. **POL00026676** (note of Working Group meeting on 28 August 2014);
- mm. **POL00026679** (note of Working Group meeting on 4 September 2014);
- nn. **POL00026685** (note of Working Group meeting on 16 September 2014);
- oo. **POL00101367** (email dated 17 September 2014);
- pp. **POL00043628** (note of Working Group meeting on 25 September 2014);
- qq. **POL00026684** (note of Working Group meeting on 2 October 2014);
- rr. **POL00040475** (note of Working Group meeting on 17 October 2014);
- ss. **POL00043629** (note of Working Group meeting on 30 October 2014);
- tt. **POL00107151** (letter dated 10 November 2014);
- uu. **POL00043630** (note of Working Group meeting on 14 November 2014);
- vv. **POL00043631** (note of Working Group meeting on 8 December 2014);
- ww. **POL00043633** (note of Working Group meeting on 14 January 2015);
- xx. **UKGI00013818** (which includes my oral evidence to the Business, Innovation and Skills Committee on 3 February 2015) and **INQ00000399** (supplementary written evidence from JFSA);
- yy. **POL00043634** (note of Working Group meeting on 13 February 2015);
- zz. **POL00022446** (letter dated 10 March 2015).

54. I have examined all the documents in the above list. I confirm the above list includes all the minutes of all the working group meetings as prepared by Belinda Crowe.

55. The minutes for 30 January 2014 at **POL00026641** which dealt with revising the terms of reference for the working group. POL sought to narrow the terms of reference and JFSA objected, Chris Aujard went away to review the terms for POL and report back. He did not report to any other working group meeting, and to my recollection simply imposed the POL new terms unilaterally to restrict the authority of the working group that effectively further slowed up the completion of cases and passing cases to mediation.

56. In addition, there are documents [**POL00060760**], such as an email exchange ending on 1 September 2013 between Ron Warmington and Angela van den Bogerd where POL's control over the working group procedures is demonstrated, by Angela van den Bogerd refusing a proposal for input from an experienced and neutral relief SPM at a forthcoming meeting. Anil (the relief SPM concerned) was someone who Second Sight wanted to add to their team to speed up the production of reports by Second Sight. The email exchange shows that Angela van den Bogerd refused to permit him to attend a meeting.

#### Appointment of Sir Anthony Hooper

57. I suggested Sir Anthony Hooper, a retired Court of Appeal Judge with considerable criminal law experience, as an independent chairman. I telephoned Sir Anthony on 21 August 2013 [see WITN00550102] and discussed the potential of him coming in to chair a mediation scheme. The scheme became the 'Initial Complaint and Mediation Scheme'.

58. Sir Anthony was known to me as Chairman of the Expert Witness Institute when I was vice chairman and served for as a director for many years. Sir Anthony Hooper accepted and met with all parties.

Briefing paper for meeting with Sir Anthony Hooper

59. The self-determining and callous 'protection of the POL brand'; policy is shown again in [POL00108122], which is an undated and unsigned briefing paper prepared for a meeting with Sir Anthony Hooper that was to take place on 24 September 2013. The document shows that POL appeared to want to control the process and was keen to ensure that it achieved a favourable outcome through the mediation process – 'the right judgments'.

60. The third bullet point in the heading '*Suggested questions to stimulate discussion*' contains the statement: '*Ultimately it will be for the Post office to justify its stance (to subpostmasters, MPs, BIS, the NAQ – but how can we ensure mediation process helps us to reach the right judgments?)*'

61. I further note that POL did not wish to be particularly transparent with Sir Anthony because of his connection with me. The document states (at the bottom of the page): *Topics to avoid .... In talking about the other stakeholders involved (JFSA, SS, JA etc.), it will be important to be neutral and suitably circumspect (not least because we know he has been briefed by Kay Linnell and may talk to her again).*

Minutes of Working Group meetings

62. The first meeting of the working group committee under Sir Anthony Hooper was held on 25 October 2013 [POL00026625], when the future arrangements were



agreed. I note the minutes of the working group meetings were in a 'military' style where progress was recorded but certain items like requests to POL not to destroy documents or requests for explanation of where suspense account balances held by POL from SPMs had gone were simply not recorded or minuted.

#### POL failure to consider compensation/ redress in 2013

63. It is noteworthy that JFSA and Alan Bates continued to ask POL for compensation and redress through James Arbuthnot MP. [POL00099551] shows that on 10 September 2013 Susan Crichton wrote to Alwen Lyons in anticipation of a meeting with James Arbuthnot on 11 September 2013 and stated that: *'James may ask about compensation as Alan Bates keeps referring to us needing a fund (of) between £50 - £100 million...'* However, POL never discussed any of these issues with JFSA and did not indicate to James Arbuthnot that they were prepared to provide any meaningful redress.

#### 150 applications to the Scheme

64. There was considerable negotiation with Post Office Limited, (Susan Crichton and Simon Baker) MPs, (Lord Arbuthnot) and JFSA (Alan Bates and myself) about the scheme, the structure, the documents and invitations. Once these were agreed and the terms for Second Sight were signed off by the JFSA and the MPs then an advertisement 'window' was opened to allow SPMs to apply to join the initial mediation scheme. The window was short, opening on 27 August 2013 and closing on 18 November 2013, after 150 applications had been received. I understand that the Inquiry has seen a letter that was drafted by Post Office and edited by the MPs and JFSA which deals with these arrangements.

65. Fourteen cases out of 150 cases initially accepted were struck out by POL for various reasons (such as those cases relating to Crown Office employees, non-SPMs, pending prosecutions etc.).

### Training day

66. Generally, the scheme ran smoothly during its design and set up. POL organised a training day on 5 September 2013 at the Thistle Hotel in Birmingham. I attended that day with Julian Wilson (who acted as deputy to Alan Bates) to represent JFSA. The training day was also attended by Second Sight, and presentations were given by Susan Crichton, Angela Van Den Bogerd and Andy Parsons.

**[WITN0055103]**

67. It was essential we all had a proper overview of the way the Horizon computer system operated, was completed and how training support and the whole POL SPM network was managed. However, I came away from the training day with the impression that POL had simply provided their version of how they thought the Horizon system was supposed to work. The way the system operated was actually more nuanced than POL's assessment of it. We know there was a huge disparity between what the POL manual said, what Horizon did and how the POL system actually operated in SPM's branches.

### Second Sight commissioned by MPs

68. It should be noted that the MPs commissioned Second Sight and instructed POL to assist MPs by administering the Second Sight contract and initial complaints and mediation scheme, as the MPs had no direct budget.

69. Second Sight was supposed to report to the MPs, JSFA and POL. My view was that Second Sight were formally instructed by the MPs, and it is a matter of some regret that POL, who were supposed to be only providing administrative and payment services, hijacked the process and ultimately saw fit to unilaterally terminate the engagement of Second Sight without consultation with or the consent of the MPs for whom Second Sight was actually working.

70. I understand that Chris Aujard later required Second Sight to sign a second and more restricted contract solely with POL in January or February 2015 in an attempt

by POL to directly control Second Sight, who at that stage were still working on the initial mediation scheme cases. Under this more restrictive contract, Second Sight was effectively to report solely to POL and not SPMs, through JFSA, or the commissioning MP committee through James Arbuthnot. JFSA was unaware of this development at the time and, as far as I know, this matter was not communicated to the Working Group.

### The Working Group

71. The timetable for cases was set at the initial meeting and confirmed after the appointment of the independent Chairman. The working group meetings consisted of monthly face-to-face meetings with fortnightly telephone updates in between to check on the progress of cases. Meetings were held at the offices of Bond Dickinson (now Womble Bond Dickinson) and latterly Matrix Chambers.
72. The agreed case process was that an SPM would make a claim, POL would reply and that was followed by an investigation and recommendation by Second Sight. The mediation scheme was set up, after the full review of the first few reports, that if Second Sight recommended that a case was fit to go to mediation, then that case was meant to progress immediately to the independent dedicated CEDR panel of mediators. Only cases where Second Sight did not recommend mediation were to be reviewed by the working group.
73. After the working group was set up to oversee the initial mediation scheme it was agreed that only the first few cases would be reviewed in full by the working group to test the system and make sure the differences on Horizon and any other complaints were being addressed and the facts provided.
74. The principal process was that the SPMs (136 in the scheme) made a claim describing their history as an SPM, any problems with Horizon, losses and other compliance and personal issues. Next, POL would prepare their reply. Angela Van den Bogerd investigated and oversaw the POL report and investigations, including POL's explanations of any difference, after her investigation, to expose the

reasons for any differences or shortfalls. POL's report in response to the SPM was delivered to the SPM and Second Sight. Finally, Second Sight would look at both documents and after their own inquiries were complete made a recommendation to the working group as to whether the SPM's case was fit to mediate or not.

75. POL had been asked by MP's (led by James Arbuthnot) to organise, administer and facilitate the working group meetings. These meetings were held at the offices of Bond Dickinson (now Womble Bond Dickinson), POL's external lawyers, near Butler's Wharf, alongside the Thames. The meetings were hosted by Andy Parsons and was provided. All administration (including the minutes and document packs) were provided by POL and in particular Belinda Crowe.

76. Belinda Crowe was the POL appointed administrator and acted as secretary to the working group keeping a flow chart updated for all cases which was circulated and reviewed at each working group meeting. Belinda Crowe kept the minutes which recorded each case's progress but are not a full record of the other discussions and agenda items. Face to face meetings usually took a whole day.

77. I was not aware at that time that POL had a separate committee chaired by Belinda Crowe called Project Sparrow, which was only revealed after the High Court trials. The fact that JFSA did not know about this is typical of POL's behind the scenes obsession with secrecy and control.

78. The timeline and progress of every case, (coded by "M0" number) was monitored by the working group and the reasons for delays were probed. Requests were made to extend time limits. POL took time to investigate the earlier shortfalls in depth. Angela Van Den Bogerd demonstrated that it was possible to explain the Horizon differences in individual cases.

79. It was clear that this level of investigation into individual cases had not been properly undertaken at the time the Horizon differences arose in the individual cases. It was also clear that POL had taken no corrective action at the time of the

Horizon difference because, until the working group was established, there was no explanation or information to correct.

#### Preparation of individual reports by Second Sight

80. Second Sight fell behind in providing their “recommendation” reports but explained they needed sufficient time to make their own enquiries fully before opining. This included meetings with SPMs as well as reviewing the IT data and other material. JFSA worked closely with the SPMs and Second Sight and, as I have previously stated, I attended some SPM and Second Sight meetings to satisfy myself that full and proper enquiries were being made by Second Sight.

#### The Initial Mediation Scheme

81. The Working Group met weekly or fortnightly during this period from 21 August 2013 to 13 February 2015 to try to maintain momentum in passing cases to the mediation panel. I had suggested that a specific CEDR mediation panel should be set up at CEDR. I am a CEDR trained mediator and understood how the mediations should take place - but obviously once any mediation case passed from the working group into its CEDR mediation panel, then the case became confidential between the SPM and POL. This meant that JFSA and the working group had no visibility of any SPM case discussions or settlements.

82. I heard anecdotally at the time that POL had turned up at the mediations with two lawyers, and with no intention of settling or really taking time to deal with the SPMs' complaints. During mediations, POL apparently simply fell back on the Statute of Limitations to tell the SPM that there would be no apology or offer as the SPMs were 'out of time'. I have been following the Inquiry and the examples that have been given in evidence are consistent with my understanding of how Post Office approached mediations - essentially by refusing to mediate.

Gina Griffiths

83. There were tensions during the day long meetings of the Working Group and I recall in particular a conversation that Alan Bates and I had with Angela Van Den Bogerd over a sandwich lunch regarding the case of Martin Griffiths (deceased). Alan and I obtained a promise from Angela that she would not go and see Gina (Martin's widow) without allowing Alan Bates to go with her. This was a promise that Angela broke. My understanding of the ramifications of Angela's conduct is that Gina Griffiths was put into a position where she was unable to pursue a claim that would have potentially been substantial and accepted a far lower sum equivalent to one under the POL Network Transformation payment scheme. Alan had wanted to accompany Angela, so as to protect the Griffiths family from the very actions that Angela took.

Disappearance of Susan Crichton and approach of Chris Aujard

84. During the working group chain of meetings, without notice, the in-house POL legal counsel Susan Crichton disappeared in September or October 2013 and was replaced by Chris Aujard. I had limited contact with Susan Crichton but she gave the impression of being competent and interested in getting to the truth of what had happened. She was obviously tarnished through her work with POL, but it is important to note that upon Chris Aujard's appointment the entire tone of POL's attitude changed from trying to investigate and discover what had happened to one of 'closing down' any criticism, queries or challenge to the Horizon system.

85. Chris Aujard's attitude was one of a litigator protecting POL, imposing deadlines, refusing access to data. He acted to minimise POL's damage. Essentially, Chris Aujard approached the mediation scheme as if it were an arm's length litigation against external aggressive individuals who were trying damage the reputation and business of POL. He came across as a very aggressive litigation solicitor.

### Controlling behaviour by POL

86. The Second Sight reports (and their earlier first interim report [POL00099063] did not mention systemic issues that is the way that Horizon had been implemented and regulated by POL in the SPM network) and there seemed to be some reluctance by POL to allow Second Sight to control its own narrative.

87. After the interim report in July 2013 and Susan Crichton's departure, POL (under Chris Aujard and Paula Vennells) became more controlling and attempted to limit Second Sight's access to documents. I understand that Second Sight complained about these restrictions on access to documents at the time. I recall one example, where Chris Aujard prevented Second Sight from seeing prosecution files, which they had previously been able to review. This was a matter that was raised at the Select Committee meeting in February 2015, when Paula Vennells tried unsuccessfully to deny Ian Henderson's accusation.

### Letter to Jo Swinson 16 April 2014

88. On 16 April 2014 JFSA (through Alan Bates) wrote to Jo Swinson MP, who was the Minister for Postal Affairs within BIS. He expressed the concern of JFSA that POL had failed to finalise a single case report to the point where it was ready for the working group to consider whether any case should be referred for mediation. He noted that POL was not providing proper funding to representatives or forensic accountants and was constantly seeking extensions of time for its own responses, notwithstanding Paula Vennells having informed MPs on 24 March 2014 that POL had 22 trained investigators working on cases.

89. Alan Bates stated: *'Regardless of what it says publicly, POL in practice seems not only to be hardening its corporate defence, but now seems to be prepared to*

*invoke the protection of the public purse as their last line of justification for not righting the wrongs they have inflicted on so many. It appears that whatever POL can block, it does, for some reason POL is the only one that doesn't seem to be able to recognise what everybody else can see so clearly.'* [POL00022683].

90. I note that this letter was raised by POL at the Working Group Meeting on 6 May 2014 and that POL expressed dissatisfaction that JFSA had broken the confidentiality of the process [POL00043627]. I take the view that JFSA's action were entirely justified in the face of the delays and continual POL requests for extensions. POL were also operating a costs clampdown to prevent proper investigation by suitable experts. I thought Alan was completely right to write to the Minister. This is particularly true when looked at in the context of the desperate situations that were being faced by SPMs.

91. I have not been directed by the Inquiry to Jo Swenson's reply to Alan's letter, but recall from memory that it was non-committal, dismissive and very similar to previous Minister's letters replying to Alan Bates. The response looked like it had been drafted from somebody within POL.

#### Meeting with Paula Vennells – September 2014

91. Coincidentally when I was flying home from another forensic appointment on 17 September 2014 I saw Paula Vennells in Germany, at Bonn airport, and went over to her to ask her to speed up dealing with the claimants and paying out compensation to the SPMs. I have now seen her extremely inaccurate file note of that conversation – [POL00101367].

92. I am surprised that Paula Vennells has made such a number of inaccurate observations from our discussion. As one example, I actually said that Jo Hamilton had done nothing wrong but her accounts might have been muddled because Jo felt she had been forced to roll over Horizon differences.



93. We did not discuss 'pay-outs' and I did not opine on their size or settlements. I am shocked by the extent of Paula Vennells misrepresentations in this document. Her summary is inaccurate, misleading and mainly untrue.

94. I told Paula she had better sort out the SPM MPs complaint situation or it would blow up in her face. I said Angela was the best person to go and find the facts because she knew her way around the Horizon system. I did not say that Angela was credible and stood the best of getting people on side. I did mention about SPMs being given an opportunity to be heard not to 'vent'. I think it was important for POL to meet the SPMs and allow the SPMs to have their complaints heard and receive explanations, be given facts about differences charged to them, get POL help and perhaps get issues 'off their chest'. I recall that Paula was concerned that the SPMs might shout at POL and I said something along the lines that POL was 'big enough to take any shouting' and that 'it might be deserved'.

95. I repeat that it is absolute rubbish to suggest that I said that Jo had done something wrong, in fact I said she had done nothing wrong. It is an utter fabrication for Paula Vennells to suggest that I said I did not expect SPMs to 'reap great pay-outs'. SPMs have always been entitled to recover all the money wrongly taken from them by POL relying on false Horizon figures, especially when POL and Paula knew Horizon was unreliable. Continuing to take the SPM's money was wrong and there was always going to be a large quantum of recoverable losses and damages. I can only think this was wishful imagining by Paula.

96. I am quite appalled that Paula Vennells recorded conversations in a completely fabricated way. The Inquiry may consider this is a matter that is relevant to other communications or notes made by Paula Vennells on other occasions.

Lack of progress in the mediation scheme – JFSA letter dated 10 November 2014

97. The JFSA dissatisfaction with the lack of progress into getting money back for SPMs is clearly set out in the JFSA letter from Alan Bates [POL00107151] dated 10 November 2014 addressed to Sir Anthony Hooper. In that letter Alan Bates wrote: *'JFSA is now of the opinion that the Scheme has strayed so far away from the original purpose for which it was intended, that the few applicants who have actually reached a mediation meeting through CEDR have expressed such disappointment with the Scheme, that at least one applicant has withdrawn'*.

98. At this point the scheme had been going for nearly a year and the scheme timetable (had it been met) should have ensured that the majority of cases should have passed through the Second Sight review. Yet no SPM could realistically say that they had been through the process believing that they had been heard or had received some sort of satisfactory offer. On the contrary, SPMs were receiving derisory and insulting treatment.

99. The letter refers to an exchange between Chris Aujard and myself concerning disclosure of prosecution files to Second Sight. I have not seen the relevant correspondence to this issue, but recall that there was some concern that POL were refusing to disclose such material to Second Sight. Chris Aujard asked me to disclose the documents that I held. I think he wanted to know what material JFSA might have had, which could be used against POL.

100. In the 10 November 2014 letter to Sir Anthony Hooper JFSA also expressed a wider concern that the further the scheme was progressing and the longer it ran, the more entrenched and defensive POL's position had become. POL no longer seemed interested in getting to the truth, but were now fixated on denial and attribution of blame to SPMs.

Practice by JFSA of retiring during discussion of individual cases

101. There was a development in the working group meetings where the originally agreed terms for the working group were unilaterally varied by POL when the working group attempted to discuss cases where Second Sight had recommended mediation. It is important to note that the process that was originally agreed was as follows:

- (a) If Second Sight recommend the a case is suitable for mediation that automatically goes to mediation
- (b) If Second Sight recommended the case is not suitable for mediation the working group should discuss that recommendation
- (c) If Second Sight does not make a recommendation on whether a case should be mediated the working group should make a decision

102. However, I believe that POL misrepresented the position to Sir Anthony Hooper when they originally briefed him. This was first known to JFSA when POL attempted (through Andy Parsons and Chris Aujard and Angela van den Bogerd) to discuss individual SPMs cases, where Second Sight had recommended mediation. Alan Bates and I left these discussions and waited outside as this was a significant departure from the remit of the working group. The working group remit was only to discuss cases where Second Sight did not recommend mediation for individual SPMs.

103. As I have stated above, it had originally been agreed that if Second Sight recommended that a case was going to mediation then that was the end of the matter. However, POL 'moved the goalposts' by insisting on discussing cases that Second Sight had recommended should go to mediation. This appeared to be a tactic to delay mediation for SPMs or any payment to them by POL.

104. I recall in one of the meetings that a POL representative said that POL wanted to discuss every case. JFSA objected and both Alan Bates and I left the meeting as it was not appropriate for Alan and I to endorse a departure from an agreed process and delay mediation. We would wait outside the working group meeting until POL had finished those case discussions. We would then return to the working group meeting to discuss other agenda items concerning case progress and reports.

105. To reiterate, JFSA took the view that nothing should be discussed on any case where Second Sight had recommended mediation. The whole point of the Second Sight review was to assess whether a case was fit to mediate if Second Sight opined it was then the case should have gone immediately to mediation.

Concerns raised at Working Group meetings – Where had the money gone? Destruction of documents.

106. I recall that at nearly every meeting of the working group after Sir Anthony Hooper had taken up the chair he had asked for two things:

107. Firstly, where has the SPMs' money gone? He asked for explanations and figures, especially from the suspense account. POL indicated this would be an onerous task but in my opinion access to the POL accounts would provide an easy explanation. Second Sight offered to assist but POL refused to allow Second Sight access to the POL accounting records at their Chesterfield HQ. POL failed to provide any explanation or figures at all. Chris Aujard said he would get this information on several occasions but never did.

108. Secondly, Sir Anthony Hooper asked how the documents for the SPMs and other affected cases were being preserved. He warned Chris Aujard not to destroy any documents at all. Chris Aujard replied to Sir Anthony Hooper that POL would continue to destroy documents following its usual six year statute of limitations document destruction policy. I understand that there was actually a 7 year retention policy. This was not minuted by Belinda Crowe of POL.

109. I am now aware that the Fujitsu contract with POL was onerous in terms of the financial penalties Fujitsu imposed on POL for keeping or accessing documents. Fujitsu charged penalties for this because this was not their job to store or archive material. POL did not disclose at the time that there were stringent contractual clauses regarding this. Neither does it seem that POL took any meaningful action to resolve this issue.

### **Termination of Second Sight and the Working Group**

110. The initial mediation scheme was summarily terminated unilaterally by POL without notice or consultation, and JFSA was informally told that Second Sight had been sacked and had been told to return all the documents to POL and not to discuss the SPM cases with anyone.

111. I have no direct knowledge of this, nor any meetings between Second Sight and POL or fee negotiations or termination or contract negotiations. I was not involved with Second Sight at that time. I am still not connected with Second Sight and as previously stated the work of RJ Warmington and Ian R Henderson for POL or SPMs. A 'paper wall' has been erected and maintained between us.

112. The unilateral closure of the working group with unfinished business is set out in the letter to me from Jane MacLeod of POL on 10 March 2015 [POL00022446] and epitomises POL's takeover of the whole mediation process and POL's attitude. Jane MacLeod basically said that the scheme was closed and that I should send my final invoice. This letter was terse, dismissive and, high handed with no explanation.

### **The Group Litigation**

#### **Engagement of Freeths**

113. Alan Bates and I discussed the outcome of the closed incomplete initial mediation scheme and a way forward for JFSA SPM members. Alan agreed to

continue his campaign with MPs which continued to drive the JFSA SPMs' cause forward. At the same time after reviewing the newly revealed evidence from the initial Mediation Scheme of SPMs, Alan and I agreed there was at least enough to consider taking a High Court case against POL.

114. Alan Bates and I went to several law firms, Neumans, Edwin Coe and latterly Freeths. Alan Bates happened to meet James Hartley (GLO Leeds office Freeths team), at the same time I was making inquiries in the Freeths Nottingham office where my cousin was a family law partner. All three of these law firms were well known for GLO expertise and their contacts with litigation funders.

115. Once James Hartley, Alan Bates and I had talked it was clear that Freeths were eager to take this on and identified and introduced litigation funders Therium; after the event insurers; and the counsel team from Henderson chambers. The GLO SPM litigation team was assembled. SPMs were invited to sign up as all the necessary protection was in place for the High Court litigation to go ahead without any further financial exposure for SPMs.

#### **POL strategy during Group Litigation**

116. Freeths took the lead and advertised for SPMs to join the GLO group of claimants. Freeths introduced and managed the Therium Litigation Funding Agreement [SMIS0000097]. Freeths helped SPMs complete schedules of client information (SOCIs) and liaised with the Counsel team at Henderson Chambers.

117. Furthermore, Freeths asked SPM GLO litigants to sign 3 client care and retainer letters to set out the intended scope of work, the funding arrangements and in order to protect the Claimants from an adverse Costs Order. The letters were:

- (i) a contract with Freeths;
- (ii) a contract with after the event insurers and;
- (iii) a contract with Therium as funders.

118. **[SMIS0000097] page 7** names Alan Bates and me as the JFSA GLO steering committee members for JFSA. The documents were explained to each GLO claimant by Freeths who masterminded the extremely successful High Court litigation. It was the start of a 'dream come true' for the GLO SPMs and opened the way for redress, recovery of money wrongfully taken, losses and damages.
119. The Freeths legal team put in place all the necessary mechanisms and steps to cope with and respond to the aggressive POL litigation strategy, which in my view and the view of others, was primarily designed to run the GLO claimants out of funding. Fraser J refers to this in his judgment by implication.
120. Further POL tactics included limited and sporadic late disclosure, contested costs applications and other litigation "tricks" such as POL's recusal application to derail the planned five trial litigation.
121. The facts concerning obtaining the GLO before the Senior Master and having Mr Justice Fraser allocated as the High Court trial judge are known to the Inquiry. The JFSA SPM GLO group were fortunate in having Mr Justice Fraser as the trial judge (now Lord Justice Fraser) because he was so competent in dealing with large numbers of documents.
122. There were over 4.5 million electronic documents and there were inevitable document management issues which arose from consistently late disclosure by POL. It is my understanding when he was in charge of the Technology and Construction Court Mr Justice Fraser had designed and implemented an electronic document handling system that could effectively mark documents and allocate them to designed IT rooms. The parties in the litigation were able to use such electronic document handling rooms.
123. Mr Justice Fraser had a remarkable knowledge of the documents in the case and quite often when lawyers were unable to locate a reference during the hearing he would say try number 'xxx' and the document would come up.

124. An example of POL's conduct in the GLO arose in relation to their lamentable approach to disclosure. I specifically recall that in October 2019, at the end of the Horizon issues trial, Mr Patrick Green and Mr De Garre Robinson had both finished their closing submissions when Mr Robinson stood up and said 'I have one further matter to raise'. Mr Robinson proceeded to offer to the court another tranche of the disclosure ordered documents. At this point Mr Justice Fraser asked Mr Green if he would like Mr Justice Fraser to take these new documents into account. Mr Green very politely said 'no thank you my Lord'. While this was mildly amusing at the time it is symptomatic of POLs disregard to disclosure of important documents in Horizon related matters.

#### Support for SPMs during the litigation

125. Throughout this process between 2016 and March 2020 I and my partner (Barbara Jeremiah JP) and our staff supported the SPMs in the GLO group outside the litigation by providing accountancy, tax, creditor claims, bank finance, insolvency and other business and personal help where we were able.

126. The SPMs had been put into a position of having to sell their assets, incur debts, and had no funds to pay for professional advice or other assistance or pay their bills. Barbara and I as directors of KLL, a small accountancy compliance practise, made our resources and assistance available to assist them in any way we could to relieve the SPMs' problems.

127. The SPMs could not afford to pay KLL and were not charged. Over the entire period it is important to note the actual fees paid to KLL on the grounds of complete transparency. KLL had invoiced POL for the initial fixed investigation fee in early 2014 to review the initial work of Second Sight. KLL had received a monthly retainer during the working group for 20 months. KLL was also paid a retainer for 54.5 months during the GLO. There were 2 additional fees charged and paid for specific instances of work on a company restoration in March 2020 and for a mediation in July 2020. I disclose these fees to the Inquiry to ensure



there is complete transparency. The fees were raised between January 2013 and 30 June 2020, the only period for which any fees have been raised by KLL.

128. As one example of the work done by KLL I recall a case where an SPM had no accounting records for his own business because POL had taken them away with their POL Post Office records and had refused to return his private business records to the SPM. The SPM was consequently in default with both HMRC and Companies House for failing to file accounts and tax returns as he had no records. The SPM could not afford to obtain copies of bank statements as the SPM did not have money to pay the bank fee. KLL obtained the bank statements for the SPM, wrote to all the known customers and suppliers and reconstructed 4 years of accounts. The estimated accounts were agreed, filed at Companies House and with HMRC to restore the SPMs' company to the Companies House register. This enabled the company to transfer the right to take action against POL to the SPM so the SPM could take part in the GLO Freeth's litigation. This is one example and the type of work that KLL undertook.
129. Our practice (KLL) also dealt with SPMs' creditors, banks, landlords, insolvency practitioners, HMRC for VAT and tax arrears. We also tried to give assistance where we could to help SPMs with charges, IVAs, bankruptcy, rent arrears, corporate insolvency, housing references, financial management, accounting and tax (corporate and personal).

#### The Common Issues trial and the Horizon Issues trial

130. JFSA, through Alan and I, had been appointed by the SPMs in the GLO to represent them, as a steering committee, in the legal proceedings and to represent their views. I found this task to be a huge responsibility. I was not aware of POL's Project Sparrow until March 2021 but it was clear to me that POL was operating an aggressive litigation strategy headed by Andy Parsons and latterly by Herbert Smith Freehills. We were extremely fortunate in the Freeths, Henderson Chambers, Therium and insurers teams who were amazing in their prosecution of the actual 2 trials and care of individual SPMs but JFSA knew it was ambitious

with so little funding to manage to run all 5 planned trials. At all times neither Alan Bates nor I wanted to settle the High Court litigation, although we knew it might come to that but we did not want to do that until after the third trial, which I recall was to deal with liability issues.

131. As the Inquiry will be aware, the first main judgment decided that the SPM/POL contract was “relational” and not “commercial”. The second main trial judgment noted that the Horizon IT computer system could be directly accessed on the live online system by Fujitsu staff (and possibly POL staff) at will, without proper controls and logs, meaning that there was effectively a “back door” ability to alter live data and possibly create losses for SPMs to pay. Furthermore, it was confirmed that Legacy Horizon and its Horizon Online replacement contained numerous bugs, errors and defects. Essentially, the Horizon data and alleged shortfall differences were unsafe and entries could be manipulated on the live system through an IT back door completely compromising the Horizon data.

#### Funding issues prior to third trial

132. As Freeths and the Henderson team prepared for the third main High Court trial the Claimants’ cash position was flagged up by Therium as the expenditure plus contractual uplifts assessed at that point indicated that insufficient funds would be available for the Claimant SPMs to receive any part of a likely settlement. Therefore, Therium were considering withdrawing all future funding.
133. JFSA was faced with an impossible decision, to either ‘go on’ and be left without funding and lose the Freeths/ Henderson legal team or to stop and mediate a settlement in around November/December 2019. Alan Bates and I concluded on the advice of the legal team that the claim could not continue and we were forced to accept a mediation, as it was the only logical choice to achieve any possibility of any financial settlement for individual SPMs.

Settlement negotiations

134. What followed was 11 1/2 days in December 2019 of mediation negotiations at the offices of Herbert Smith Freehills in London. I attended every day on behalf of JFSA. During the negotiation, Nick Reed, the new POL CEO visited HSF and met several SPMs in person. I understand that, as a general rule, mediation discussions remain confidential. However, I can say that during the negotiations, I suggested that some mental health care of SPM victims and their dependant families and partners should be given and I contacted Professor Rix to discuss setting up a triage unit of psychiatrists and mental health professionals.
135. POL refused this request and it was not included in the settlement. This suggestion was typical of the protection for SPMs that JFSA attempted to ensure were included in the POL settlement process, but which POL continued to block.
136. Settlement at this post High Court December 2019 mediation was made relying on a representation (which I am now told was either misheard or misunderstood) that the maximum settlement POL could offer and that JFSA could achieve for the SPMs was fixed at £50 million. I was told during the mediation that a £50 million settlement by POL would need the HM Government's shareholder approval. In fact, the true position from the POL's Articles of Association is that any settlement over £50 million would need the shareholder (i.e government) approval.
137. In fact, when the settlement was actually reached at 00:15am on 11 December 2019 (according to my diary) I was told that a Government minister had been 'got out of bed' to sign it off. Alan Bates and I had agreed in these circumstances, in addition to a cash sum of £50 million, we should request as many non-cash elements as possible.
138. These non-cash terms included POL agreeing to:

- (i) to exclude SPMs with criminal convictions (to preserve the right to overturn their convictions under a separate legal action and pursue a new action for malicious prosecution);
- (ii) writing off all POL debts against any SPM up to December 2019;
- (iii) to obtain an undertaking from POL to give all assistance and cover the costs of removing cautions of any SPM's property or assets;
- (iv) an undertaking to assist in overturning bankruptcies and supporting applications for annulments;
- (iv) to write off all POL claims and for POL to give all necessary assistance to pay creditors and annul bankruptcies.

139. These are the main items but this is not an exhaustive list. Those benefits were given by POL at its own full expense plus the cash £50 million settlement plus the £8.75 million costs ordered against POL during the High Court trial already paid to Freeths by POL. These formed the 'pot' for the settlement.

#### Settlement agreement and funds distribution

140. The mediation settlement agreement in December 2019 was signed off after midnight on the day of a train strike before I left the UK for an arbitration hearing in New York.

141. In January 2020, Alan Bates and I were advised by Freeths and worked with Freeths to produce a mechanism to distribute the small amount of funds for the SPM claimants. This pool of funds was created by many of the funders, lawyers, insurers taking a haircut on the success uplift fees. The very complicated formula attempted to take account of the loss of home, prosecution, loss of earnings, ill health, loss of profits or other assets plus the return of funds wrongly taken due to the Horizon system and incorrect POL accounting.

142. This exercise was very difficult because the funds left for SPMs of about £11million were estimated to be only about 10% of the redress funds required. This was not compensation by POL. The JFSA Freeths payment plan had to include hardship payments for SPMs in distress, whether the SPM had a criminal conviction or not. This was extremely difficult as the funds available were less than 10% of the estimated amount required to provide a proper restitution of SPMs and restore the SPMs to their previous position but for the actions of POL and it did not include any Judge awarded damages for mental distress, physical health and dependent relatives or partner claims.
143. On average each Claimant received approximately £20,000.00 although in some cases the sum was less as it was a percentage of the calculated value of their financial losses, based on appropriate legal principles and contract terms and actual costs suffered. In the vast majority of cases £20,000 fell substantially short of the actual losses and represented a very small sum.

#### Ongoing JFSA campaign

144. In January 2020 Alan Bates and I discussed future possibilities to recover the money owed to the 492 GLO SPMs remaining in the GLO group, excluding those with criminal convictions. Alan Bates produced a JFSA invoice for approximately £46 million plus interest, in respect of the GLO litigation costs actually suffered by the GLO group, which he sent to the Prime Minister, Boris Johnson MP, demanding full repayment of all the legal costs in the High Court case as HM Government was the owner of POL and had benefitted from the money wrongly taken from SPMs. Earlier costs suffered by SPMs were not included as the JFSA invoice was intended to follow the legal doctrine of 'costs follow the event'. JFSA had won hands down and if we could have progressed to the 5<sup>th</sup> trial we would have recovered all our costs.
145. Alan Bates maintained pressure through MPs and the Parliamentary Select Committee and other campaigns to reopen the flawed POL High Court litigation

mediation December 2019 settlement. The intervention of COVID-19 in March 2020 complicated and delayed matters and made face to face meetings with SPMs more difficult. I supported Alan Bates whenever he requested my help. JFSA continued its campaign and undertook crowdfunding to raise funds to apply to the Privy Council to support the request for a Statutory Public Inquiry, although this was granted in the event without Alan Bates evidence being required.

146. Alan Bates and I used the same lawyers to assist us in approaching the Parliamentary Ombudsman to request an investigation into Government Ministers, MP's and civil servants conduct. The Parliamentary Ombudsman has now been accepted this application, but their investigation is stayed pending Sir Wyn Williams' Inquiry report.
147. Alan Bates and I have also contacted and assisted the Metropolitan Police criminal investigation set up after a referral of the Fujitsu witnesses by Mr Justice Fraser (now Lord Justice Fraser) after the Horizon High Court Trial Judgment. I have also spoken with other regulators and I am aware of enquiries from other regulatory authorities including the Bar Council and Solicitors Regulatory Authority.

Post Office expenditure in the group litigation.

148. JFSA and the GLO legal team incurred approximately £15,000,000.00 in legal costs as claimants in the High Court litigation and I had expected that POL as defendants would have spent 2/3 of this at, say £10 million. I was shocked to learn from the POL published accounts that apparently nearly £140 million has been spent on legal fees, which appears to have been a complete waste of public money in defending the POL brand. It seems to me that POL senior staff have perpetrated a cover up apparently at any cost to the to hide their criminal theft of funds from SPMs, possibly orchestrating a conspiracy to pervert the course of justice and endorse or commit perjury in the Court by themselves or others.

Dishonesty, cover-up and incompetence

149. Proportionality was used by POL to deny disclosure of cogent relevant material that deliberately prevented SPMs from defending themselves and enabled POL to frighten SPMs to agree to criminal charges without ever knowing the reason for any difference. Investigations need to be made of the conduct on the Board of POL, especially the two HM Government nominated POL board directors reporting to the minister and the supervising department. Dishonesty, cover-ups and incompetence created a perfect storm sacrificing SPMs in the wake of POL executives' brand protection strategies, for which conduct many of POL were rewarded with honours and very large bonuses.

General

150. I would like the Inquiry to consider two matters further:

151. Firstly, concerning POL's use of suspense accounts. There were two types of suspense accounts; the first type of suspense accounts were made available to SPMs to use when on-boarding Horizon between 1999 until 2005 when they were withdrawn by POL. SPMs used these suspense accounts to effectively freeze any Horizon difference until investigations had been completed to determine the cause of any discrepancy. If payment was properly due to POL because the difference was caused by the SPM's own or staff wrongdoing then it would be released and paid. If POL investigated and the amount was caused by an error then POL would issue a Transaction Correct (TCC) and the error correction removing the difference POL was obliged under the SPM relational contract to investigate, provide an explanation of any difference and give the evidence to the SPM to check themselves.

152. As far as I am aware despite being set out in the relational SPM / POL contract these investigations were never done by POL. Instead, POL demanded and took money without doing the investigation. In addition, when the suspense account facility was withdrawn from SPMs by POL under the IMPACT programme in 2005

it left the SPMs without the ability to challenge any entry or get hold of documents. I would like to know what happened to the money on suspense account held by POL when the facility for SPMs was closed.

153. POL also operated its own internal suspense accounts that probably held balances of money wrongly taken from SPMs. If that money was properly due under the Horizon accounting system then it would be shown as a debtor on the POL Balance Sheet and when recovered it would be cash amount clearing the debtor, again on the POL Balance Sheet. So why was there any balance carried forward on this second internal POL suspense account at all?
154. Further, from time to time in the published annual accounts of POL there are substantial credits to the POL Profit and Loss account of unreconciled 'differences' to POL profit. These cannot be money taken from SPMs as those are Balance Sheet items unless the POL HQ accounting records do not balance, or Horizon generated false difference, so what are these credits?
155. I have been following the evidence in the Inquiry and endorse what Sir Anthony Hooper said in his oral evidence on 10 April 2024 concerning suspense accounts. To the best of my memory, Sir Anthony raised the point about suspense accounts at the start of every meeting of the working group. He was very aware that the production of the suspense accounts should have enabled him to ascertain where the money that SPMs has paid on account of shortfalls had gone. Clearly if the Horizon generated shortfalls had not been real – this could be shown in the accounts so that would exonerate SPMs and cast real doubt of POL's repeated assertions that the Horizon system was robust.
156. Finally, I am concerned as to how the POL board directors satisfied themselves that they had discharged their statutory duties of keeping proper accounting records and laying true and fair accounts before the HM Government sole shareholder member. This concern applies especially to those Directors nominated by HM Government and presumably regularly reporting to the supervising department and Minister. The POL board directors needed to satisfy



themselves that the relational implied contract terms were being fulfilled as duties of care owed to SPMs. I would like to know how each director satisfied themselves that their personal duty was properly discharged.

157. Any director needs to satisfy themselves before signing off on the accounts that the report and financial statements properly reflect the assets and liabilities of the business and its trading results. Directors should use the guidance set out at Companies House on their duties and obligations. Directors must satisfy themselves that these POL accounts are true and fair. However the accounts signed off clearly include figures that demonstrate the accounts are not accurate because the directors have signed off on accounts that do not balance as they include credits from suspense accounts in the profit and loss account. This figure should be recognised for what it is. A sundry credit from the suspense account is a 'plug' to make the accounts balance without understanding what that sundry credit represents. The accounts do not balance if they need an unidentified 'plug' figure to make them balance, or that figure has not been properly identified. If the board directors had done their diligence and fulfilled their duties properly on the published accounts then the Horizon system defects would have been exposed as inadequate many years ago.

**Statement of Truth**

I believe the content of this statement to be true.

Signed:

**GRO**

Kay Jhneil

Dated: 16 May 2024

**Index to First Witness Statement of KAY LINNELL**

<b>NO.</b>	<b>URN</b>	<b>Document Description</b>	<b>Control Number</b>
1.	WITN00550101	Letter of engagement with JFSA	WITN00550101
2.	UKGI00013818	Transcript of Paula Vennells', Ian Henderson and Angela Van Den Bogerd's evidence to BIS Committee on 03/02/2015	UKGI024611-001
3.	INQ00000399	Supplementary written evidence from the Justice for Sub postmasters alliance	VIS00000682
4.	POL00096817	Email from Paula Vennells to Alwen Lyons, Theresa Iles, Susan Crichton in re to printed subpostmasters and 2nd sight	POL-0096400
5.	POL00091028	Email from Simon Baker to Jarnail A Singh, Susan Crichton and Alwen Lyons re: FW: The Post Office	POL-0090672
6.	POL00096962	Email from Ian Henderson to James Arbuthnot, re Post Office Cases	POL-0096545
7.	POL00058188	Email from Ron Warmington to Susan Crichton, Alwen Lyons, Glenda C Hansen and others re: Case Review	POL-0054667
8.	POL00096980	Email from James Arbuthnot to Ian Henderson and Ron Warmington, re Post Office cases	POL-0096563
9.	POL00097402	Email chain from Ian Henderson to Janet Walker, Ron Warmington RE: Meeting - 25 March, 5-6pm	POL-0096985
10.	POL00099063	Signed Interim Report into alleged problems with the Horizon system	POL-0098646
11.	POL00029664	External Meeting Minutes of 08/07/13 at Houses of Parliament	POL-0026146
12.	POL00043636	Working Party 21st August 2013, Attendees: Ian Henderson, Susan Crichton, Kay Linnell , Andy Parsons, Alan Bates, Andy Holt, Ron Warmington, Not Present: Alwen Lyons, Angela Van-Den-Bogerd	POL-0040139
13.	POL00060760	Email from Ron Warmington to Angela Van Den Borgerd re: IN CONFIDENCE - Anil PANDIT	POL-0057239
14.	POL00099551	Email chain between Susan Crichton and Alwen Lyons Re: Meeting with James Arbuthnot.	POL-0099134

15.	POL00108122	Brief for meeting with Sir Anthony Hooper	POL-0110944
16.	POL00108207	Sir Anthony Hooper Appointment Report - Chair of the Working Group to the Initial Complaint Review and Mediation Scheme	POL-0106336
17.	POL00026625	Working Group for the Initial Complaint Review and Mediation Scheme - Key Points and Actions from Meeting 11am 25 October 2013	POL-0023266
18.	POL00043641	Working Group for the Initial Complaint Review and Mediation Scheme - Key points and actions from the conference call at 1pm on 31 October 2013	POL-0040144
19.	POL00043622	Working Group for the Initial Complaint Review and Mediation Scheme - Key Points and Actions from conference call - Working Group applications to be accepted onto Scheme	POL-0040125
20.	POL00043623	Working Group for the Initial Complaint Review and Mediation Scheme - Key Points and Actions from the Conference Call at 1pm on 14 November 2013 re New applications, completed case questionnaires, matters arising from existing applications, and cases to be discussed at the next full meeting	POL-0040126
21.	POL00043624	Working Group for the Initial Complaint Review and Mediation Scheme - Key points and actions from the conference call at 1pm on 28 November 2013	POL-0040127
22.	POL00043625	Working Group for the Initial Complaint Review and Mediation Scheme Key points and actions from the conference call at 1pm on 5 December 2013	POL-0040128
23.	POL00026666	Working Group for the Initial Complaint Review and Mediation Scheme (Key points and actions from the conference call)	POL-0023307
24.	POL00026638	"Working Group for the Initial Complaint Review and Case Mediation Scheme" Amended Minutes of 03/01/2014	POL-0023279
25.	POL00026639	"Working Group for the Initial Complaint Review and Case Mediation Scheme Standing Agenda" for 16/01/2014.	POL-0023280
26.	POL00026640	Meeting Minutes for Working Group for the Initial Complaint Review and Case Mediation Scheme	POL-0023281
27.	POL00026635	Working Group for the Initial Complaint Review and Case Mediation Scheme Standing Agenda for Thursday Calls	POL-0023276
28.	POL00026636	"Working Group for the Initial Complaint Review and Case Mediation Scheme Standing Agenda" for 20/02/2014	POL-0023277

29.	POL00026637	"Working Group for the Initial Complaint Review and Case Mediation Scheme Standing Agenda" for 27/02/2014	POL-0023278
30.	POL00026656	Face to face meeting of the working group - Initial complaint review and mediation scheme- 7 March 2014	POL-0023297
31.	POL00026643	"Working Group for the Initial Complaint Review and Case Mediation Scheme Standing Agenda" for 13/03/2014	POL-0023284
32.	POL00026642	Working Group for the Initial Complaint Review and Case Mediation Scheme Standing Agenda	POL-0023283
33.	POL00026644	Working Group for the Initial Complaint Review and Case Mediation Scheme - Minutes for 27/03/2014.	POL-0023285
34.	POL00026633	Initial Complaint and Mediation Scheme Working Group Minutes of 01/04/2014.	POL-0023274
35.	POL00026652	Working Group for the Initial Complaint Review and Case Mediation Scheme minute dated 17/04/2014	POL-0023293
36.	POL00026653	Working Group for the Initial Complaint Review and Case Mediation Scheme Minute	POL-0023294
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38.	POL00043627	Initial Complaint Review and Mediation Scheme Working Group - Minute of meeting dated 6 May 2014.	POL-0040130
39.	POL00026657	Working Group for the Initial Complaint Review and Case Mediation Scheme - Minutes of case conference call 15 May 2014.	POL-0023298
40.	POL00026662	Meeting Minutes of the Initial Complaint Review and Mediation Scheme Working Group (20th May 2014)	POL-0023303
41.	POL00026667	Meeting Minutes for the Working Group for the Initial Complaint Review and Case Mediation Scheme	POL-0023308
42.	POL00026668	Working Group for the Initial Complaint Review and Case Mediation Scheme - Working Group Minute - 5th June	POL-0023309
43.	POL00026664	Working Group for the Initial Complaint Review and Case Mediation Scheme Meeting Minutes - 12th June.	POL-0023305
44.	POL00026673	Minute - Initial Complaint Review and Mediation Scheme - Working Group 16 June 2014	POL-0023314
45.	POL00026665	Working Group for the Initial Complaint Review and Case Mediation Scheme - Minute of Working Group Call 26 June 2014	POL-0023306

46.	POL00026672	Minute - Working Group for the Initial Complaint Review and Case Mediation Scheme - 10th July 2014	POL-0023313
47.	POL00026671	Working Group for the Initial Complaint Review and Case Mediation Scheme - Minutes of the Working Group Call 17 July 2014	POL-0023312
48.	POL00022683	Letter from Alan Bates to Jo Swinson re: Justice for Subpostmasters Alliance, Initial Case Review & Mediation Scheme	POL-0019162
49.	POL00026676	Minute - Working Group for the Initial Complaint Review and Case Mediation Scheme - 28 August 2014	POL-0023317
50.	POL00026679	Working Group for the Initial Complaint Review and Case Mediation Scheme - Meeting Minutes (04/09/14).	POL-0023320
51.	POL00026685	Working Group for the Initial Complaint Review and Case Mediation Scheme Meeting Minutes - 16.09.14.	POL-0023326
52.	POL00101367	Email from Paula Vennells to Chris Aujard, Gavin Lambert and others re: Kay Linnell	POL-0100950
53.	POL00043628	Standing Agenda for Thursdays calls - Working Group for the Initial Complaint Review and Case Mediation Scheme (25/09/14).	POL-0040131
54.	POL00026684	Minute - Working Group for the Initial Complaint Review and Case Mediation Scheme - 02 October 2014	POL-0023325
55.	POL00040475	Working Group for the Initial Complaint Review and Case Mediation Scheme meeting minutes of 17/10/2014	POL-0036957
56.	POL00043629	Minute - Working Group for the Initial Complaint Review and Case Mediation Scheme - 30 October 2014	POL-0040132
57.	POL00107151	Letter from JFSA (Alan Bates) to Sir Anthony Hooper, RE: Raising concerns about the position and direction of the Initial Case Review & Mediation Scheme.	POL-0105459
58.	POL00043630	Meeting Minutes - Working Group for the Initial Complaint Review and Case Mediation Scheme - 14 November 2014	POL-0040133
59.	POL00043631	MINUTE, Working Group for the Initial Complaint Review and Case Mediation Scheme, 8th DECEMBER 2014, MATRIX CHAMBERS	POL-0040134
60.	POL00043633	Meeting Minutes - Working Group for the Initial Complaint Review and Case Mediation Scheme - 14 January 2015	POL-0040136
61.	POL00043634	Agenda for the Working Group for the Initial Complaint Review and Case Mediation Scheme - 13 February 2015	POL-0040137

62.	POL00022446	Letter from Jane MacLeod to Ms K Linnell re Complaint Review and Mediation Scheme ("the Scheme")	POL-0018925
63.	POL00026641	Initial Complaint Review and Mediation Scheme - Working Group - Minutes - 30 January 2014	POL-0023282
64.	WITN00550102	Briefing to JFSA members regarding the JFSA meeting in Kineton on 28 July 2013	WITN00550102
65.	WITN00550103	POL presentation on initial complaint review and mediation scheme	WITN00550103
66.	SMIS0000097	Agreement between Therium Litigation Funding IC and The Individuals listed in Schedule A re: Litigation Funding	VIS00010042