

Witness Name: Anthony Oppenheim

Statement No.: WITN03770300

Dated: 4 June 2024

POST OFFICE HORIZON IT INQUIRY

THIRD WITNESS STATEMENT OF *ANTHONY OPPENHEIM*

I, *MR ANTHONY OPPENHEIM*, will say as follows:

1. This witness statement is made to supplement the oral evidence I provided to the Inquiry on 26 October 2022 and my two earlier witness statements.
2. It will highlight certain contractual provisions in the Third Supplemental Agreement in particular which I believe would have influenced the way Horizon was operated to the detriment of sub-postmasters.
3. Its purpose is to do two things: (i) identify these contractual provisions for consideration by the Inquiry within Phases 4 and 5 and (ii) correct an error of recollection in my original witness statement in the light of information since gleaned from later testimonies to the Inquiry.
4. This is my input and mine alone. I have not consulted with ex colleagues, nor have I requested or received advice from the lawyers assigned by Fujitsu to support me.

5. "Mr. Bates vs the Post Office" impelled me to try to understand why things had gone so disastrously wrong.
6. I read the Second Sight report dated 9 April 2015 and listened to a number of testimonies that I thought might provide insight. As a result, I discovered facts that I could not have known before and was reminded of others that I had forgotten. I cite these discoveries in the relevant sections below.
7. As a result, I wish to:
 - a. correct what I had said in the very last paragraph of my original witness statement with respect to prosecutions
 - b. expand on the reference I had made in my testimony on 26 October 2022 to a provision set out towards the end of the Third Supplemental Agreement
 - c. highlight the significance of the Post Office's decision taken in 2003 to remove the cash account suspense account facility as an outcome of their Impact Programme (as I understand it)
 - d. address the question of risk transfer resulting from the change from PFI contract to a more conventional construct when the Codified Agreement was entered into.

Correcting last paragraph of my original witness statement

8. Jeremy Folkes' testimony reminded me that the sole target for prosecutions in the original BA/POCL contracts was benefits encashment fraud. The Requirements in the BA/POCL agreements were very specific about the former and had nothing to say about the latter.
9. I said at the end of my original witness statement:

"I was aware of POCL's facility to mount private prosecutions against sub-postmasters determined to be acting fraudulently and that the Codified Agreement required Pathway to provide audit trails when requested to do so to support such prosecutions. My expectation was that each case would be

properly investigated before concluding that the cause of a cash shortfall was indeed fraud rather than some kind of mis-match in the system. To the best of my recollection, I was never asked to look into any of these cases – indeed, I was completely unaware at the time that the prosecutions were going on.”

10. I realise now, with the benefit of Jeremy Folkes’ testimony, that that statement had been completely wrong. I had allowed what I had learned over the intervening 22 years to interfere with my recollection of what I knew at the time.
11. I would ask that paragraph 277 of my original witness statement dated 7 September 2022 be annotated with a note stating that that paragraph has been withdrawn and replaced with this statement in this supplemental witness statement:

“Having now seen material via testimonies that had not been available to me when I produced my original witness statement (some of which I would never have seen), I now believe my understanding regarding prosecutions as expressed in paragraph 277 of my original witness statement to have been incorrect.

With the benefit of the new information and reminders gleaned from other witnesses, I now believe my understanding at the time to have been that:

- *Eliminating encashment fraud had been the primary financial driver behind the BA/POCL business case. The BA had placed explicit requirements on ICL Pathway to enable it to do that.*
- *There was no equivalent statement of purpose in the POCL contract with respect to prosecuting sub-postmasters.*
- *The BA contract contained provisions for ICL Pathway to operate a dedicated FRMS service and to provide a “certificate of good operation” to support PACE. [This obviated the need for a witness statement and court appearance by an ICL Pathway representative.]*

- *Requirement 829 of the POCL contract required ICL Pathway to “ensure that all relevant information is evidentially admissible”. This was sufficient for BA to mount prosecutions using that data.*
- *R829 did not contain a “certificate of good operation” provision: only the BA needed that for the BA to mount prosecutions. Likewise, the POCL contract contained no provision for a FRMS-like service.*
- *I believe this was because the original POCL Agreement had not contemplated the prosecution of sub-postmasters. Having gone over the evidence I can now see with a fine toothcomb, I do not believe POCL made me aware of their intention to prosecute, either at Codification or later. If I was not made aware, as contract manager, then who in ICL Pathway was made aware? If ICL Pathway senior management were not made aware, then how were its operational personnel expected to know that what they did or did not do could land a sub-postmaster in jail?*
- *Requirement 829 was carried forward unchanged into the Codified Agreement. The reference to PACE was still there but without context. Apart from prosecutions, R829 was still relevant for the provision of audit-trails to support investigations into such as a mis-match in ATP balances between POCL and a client. The draft “Horizon System Audit Manual” dated January 2000 described in detail the process for extracting audit-trail Riposte data from tape archives. It did not extend to the additional information that should have been reviewed and made available for a prosecution from HSH or 2nd and 3rd line support records.*
- *I do not recall any discussions about AI370 with my colleagues or POCL. As a low severity AI, that would have been normal. My focus was on the Highs and Mediums. Neither do I recall any attempts by POCL to strengthen R829 at Codification.*
- *I would not have known of the existence of S&IE or POSIS or of their internal Post Office exchanges with Jeremy Folkes about the AI370 “gap”.*

- *If the late Keith Baines had raised it with me and the issue had just been about money, I am confident that we would have come to an agreement: the small amounts involved (as I would have assumed them to be at the time) would not have justified falling out with him. I consider it far more likely that my reason for not agreeing to such a Change, had I been asked, would have been concerns over safety of evidence.*
- *Please go to my discussion below with respect to paragraph 3.6.12 of Schedule 5 of the Third Supplemental Agreement. I find it very surprising that anyone who had been aware of A1376 or paragraph 3.6 could have considered evidence from the Horizon system “safe beyond all reasonable doubt”.*
- *To “lean on” ICL witnesses to suppress the caveats they had expressed about the safety of the evidence I regard as beyond shameful.*
- *It appears that one of two things must have happened:*
 - *a Change was agreed at some point to add witness statements and court appearances into R829, or*
 - *POCL “leant on” ICL Pathway to provide witness statements to back up the incomplete PACE requirement as it stood at Codification. “Requirements creep” had been a feature of the BA/POCL contracts from the start, exploiting weaknesses in requirements specification inherent in the PFI construct (this being an example). It is quite possible that ICL Pathway caved in to Post Office pressure when the first prosecution was in play, creating a precedent.*

Paragraph 3.6.12 of Schedule 5 of the Third Supplemental Agreement

12. In my testimony I had started to refer to provisions contained in a paragraph towards the end of the Third Supplementary Agreement. Bringing me back to his line of questioning, Mr. Beer said that the Inquiry would come back to the Third Supplementary Agreement later.

13. I have not followed the Inquiry closely enough to know if the point I was trying to make has since been covered. I have heard references to the Second Supplemental Agreement but not the Third. I apologise if what I am about to say duplicates.
14. The paragraph I was referring to was paragraph 3.6.12 of Schedule 5. It reads:

“Where the Contractor is required to make an assumption in order to correct a Data Error and/or present Repaired Transaction Data or a Repaired Cash Account, the Contractor shall make such assumption and promptly inform POCL of the assumption made.”

Picking this apart, this is saying:

- a. errors should be expected to occur throughout the term of the contract (such was and still is the nature of complex IT systems)
- b. ICL Pathway was required to correct data errors and cash accounts whenever errors were identified (again, it was and still is standard practice for administrators with the necessary privileges to recover lost data or to make corrections when something goes wrong)
- c. it will not always be possible to determine the root cause of an error, hence know what the appropriate correction should be (despite the more sophisticated tools available today, that can still be the case)
- d. in such instances, ICL Pathway was required to make an assumption as to what had caused a given discrepancy and to apply a correction using that assumption, notifying POCL of what it had assumed but not requiring it to seek the prior agreement of either POCL or the sub-postmaster.

Please refer to my original witness statement at paragraphs 226 and 227.7 which make essentially the same points but without the emphasis.

15. Data Errors were expected to occur throughout the contract term. ICL Pathway was required to correct them.
16. Paragraphs 3.6.5.4 and 3.6.6.2 set out maximum allowable numbers of Data Error per cash account week.
17. Errors discovered and corrected before the Data had been transmitted to TIP should not exceed 50 errors per cash account week. Errors discovered and corrected after they had been transmitted to TIP should not exceed 20.
18. 20 Data Errors per week identified after transmission equates to an allowable error rate of 0.12% on an average population of 17,000 branches over the initial term compared to the limit set for Acceptance (AI376) of 0.6% and that achieved just prior to Acceptance of 0.06%.
19. As mentioned in my earlier Supplemental Witness Statement, this order of magnitude improvement occurred during the Christmas peak trading period when, with more than double the normal number of transactions, one would have expected to see an increase. POCL had historically suspended all Product Reference Data changes over the peak trading period. 1999 was no exception. The purpose of the suspension was to protect the network from the disruption POCL knew could be caused by making such changes. The error rate increased again after the suspension was removed.
20. Widespread errors would have become obvious within minutes. They would have generated Incidents, Problems (multiple Incidents of the same type), PINICLs and an emergency response determined by CCD. These happened very rarely. Branches would have benefitted from “safety in numbers” when they did. In sharp contrast, (i) an exception condition that triggered a bug that only manifested itself under that exception condition or (ii) a faulty Product Reference Data change that applied to just one or a few branches would have been hard to spot. This observation is not intended to excuse a failure to investigate.
21. 15 years (2000 to 2015) at 20 instances per week would have equated to some 15,000 allowable instances of Data Error up to the point when Post

Office stopped prosecuting its sub-postmasters in 2015. If just 10% of these were not repaired correctly, that would have amounted to some 1,500 Incorrect Cash Accounts over the period.

22. The obligation to correct a Data Error and its associated Incorrect Cash Account did not extend to a Not Data Error or its associated Incorrect Cash Accounts (Not Data Error), attributable to User error or error in Product Reference Data. The carve out was designed to protect ICL Pathway from SLA penalties in respect of faults it could not control.
23. As noted above, the numbers had shown an order of magnitude reduction in error rate when no Product Reference Data changes were applied and a resumption of higher rates when Product Reference Data changes were applied again. If repeated throughout the term, this pattern would suggest that up to 90% of Incorrect Cash Accounts may have been caused not by software bugs but by errors in Product Reference Data or its distribution to counters by ICL Pathway. Those that were identified and attributable to errors in the Product Reference Data itself would have counted as Not Data Errors and been treated accordingly.
24. I fear that the carve out may have had unintended consequences:
 - a. encouraging a mindset among ICL Pathway support personnel that such errors were “not to do with ICL Pathway” so “not their problem”
 - b. incentivising HSH operators and 2nd and 3rd line support staff to dismiss “one-off” problems (those not reported at the same time by multiple sub-postmasters) as User error: as such they would not count for SLA purposes
 - c. to recover losses, the sub-postmaster would have had to appeal to the NBSC: without a notice from ICL Pathway to indicate a possible Incorrect Cash Account, they would have stood little chance of success.
25. I would like to think that the majority of errors would have been found and repaired correctly by ICL Pathway. But in the real world, some (perhaps

many) would have been either missed altogether or mis-diagnosed due to an early presumption of User error (as above), a paragraph 3.6.12 condition (as above), human error within 2nd or 3rd line support, or otherwise.

26. That is especially likely to have been the case after the removal of the Suspense Account facility in 2003. Until I listened to David Smith's testimony I had been unaware of the removal of the Suspense Account facility in 2003. If I have understood what I heard correctly, it is a troubling disclosure. The Suspense Account facility was in my opinion absolutely fundamental to the safe investigation, detection and resolution of errors.
27. Without the ability to "carry forward" an unexplained imbalance, the "safety valve" that allowed time for inspection, analysis and resolution was gone. A sub-postmaster faced with an unexplained cash imbalance on a Wednesday evening would now have been forced to do one of four things:
 - a. get ICL Pathway to identify and fix the problem in real time (before midnight)
 - b. commit the cash account notwithstanding the discrepancy, make up the cash shortfall and hope to be able to recover it later
 - c. falsify an entry to balance the books to make the shortfall go away (fraud), or
 - d. close for business.
28. Only if the error type was immediately recognizable as one described in the KEL would the sub-postmaster have stood a chance on the day. Product Reference Data errors would not have appeared in the KEL. The PinICLs I was asked to comment on in my original Witness Statement illustrated how difficult it was to identify such errors.
29. Once the cash account had been committed, I believe that it would have been harder for the sub-postmaster to convince HSH or NBSC to look into the problem than if it had still been showing in a Suspense Account. If HSH did not pass it to 2nd/ 3rd line there would have been no investigation and

hence no notice to NBSC identifying a possible Incorrect Cash Account, so nothing that would have indicated to NBSC that the sub-postmaster may have been telling the truth.

30. Please note that HSH scripts had to be agreed with POCL and adhered to at least 95% of the time. Failure to do so would have incurred SLA penalties. Schedule 1 of the Third Supplemental Agreement sets out agreements to agree re. the HSH scripts and also the inter-actions and divisions of responsibility between HSH and NBSC. The “You are the only one with this problem” refrain would have either been approved by POCL or come from POCL in the first place.
31. I have listened to Richard Roll’s description of what he said actually took place on a regular basis to correct errors. I was shocked by what he had to say. That was emphatically not the way corrections were supposed to be carried out. If 3rd line / SSC adopted the User’s identity either with the sub-postmaster’s agreement or otherwise, then the Riposte audit trail would have been corrupted, rendering it unsafe for prosecution.
32. The removal of the Suspense Account facility may explain (not excuse) why short-circuiting of due process (as set out in paragraph 3.6 of Schedule 5) may have come about. ICL Pathway was now being driven to make corrections in real time, before the end of the cash account week cut off. Had 3rd line not done so, it strikes me as highly likely that more sub-postmasters would have been forced to “irrevocably commit” Incorrect Cash Accounts. Again, not intended to excuse bad practices.
33. I understand that the removal of the Suspense Account facility came about as a result of a Post Office drive to improve cash recovery performance. The Change was predicated on the default presumption that the sub-postmaster would always be in the wrong. No consideration was given to the possibilities of Horizon system error including the possibility that there was in fact no cash shortfall. This despite the known history of faults and the caveats set out in the Third Supplemental Agreement that expressly made provision for managing the errors that were expected to occur.

34. Question: why would a sub-postmaster intent on fraud use a suspense account facility that drew attention to a mis-match when he/ she could simply have introduced one or more transactions to balance the books?
35. Second question: was a Change Request for the removal of the Suspense Account submitted by POCL and, if so, was it approved by ICL Pathway? That Change alone, coupled as it was with the mindset that the sub-postmaster was wrong by default, would in my opinion have contributed very significantly to the miscarriages of justice that followed.
36. Third question: did the incidence rate of prosecutions increase from 2003?
37. The Codified Agreement and its three Supplements stacked the odds against the sub-postmaster:
 - a. HSH operators were encouraged by scripts and SLAs to assume that single instances of reported problems were down to User error
 - b. ICL Pathway was not required to obtain sub-postmaster approval before making a correction
 - c. No Suspense Account safety valve after 2003
 - d. Contractually, Not Data Errors and Incorrect Cash Accounts (Not Data Errors) were treated as “not ICL Pathway’s problem”
 - e. Two service desks (HSH and NBSC) meant that neither was fully responsible
 - f. The sub-postmaster had no contractual right to an audit-trail when a problem arose. A history of every “key stroke” (actually touch screen touches, there was no keyboard) was simply not possible with the technology of the day but a time-stamped audit-trail by transaction was entirely possible from the Riposte message store.
 - g. Audit-trail evidence, as defined by the CCD, may have been sufficient for the resolution of commercial mis-matches between POCL and its

clients but it was not sufficient for the safe prosecution of sub-postmasters.

- h. Lack of any User-centric QoS obligations to ensure that Horizon delivered an accurate service to its Users: the obligations on ICL Pathway were all towards POCL.

In my opinion, particularly after the withdrawal of the Suspense Account facility, it follows that the Codified Agreement was “not fit for purpose”.

Risk transfer

- 38. Much has been said about the PFI origins of Horizon. I believe it has been generally accepted that PFIs were not the way to contract for large, complex, mission-critical IT programmes. (Ref. NAO, PAC and others.)
- 39. But the idea that the risk all transferred to POCL when the contract ceased to be a PFI contract would be to misunderstand the nature of the changes.
- 40. The changes were limited to payment terms, timetable and Acceptance. The POCL related requirements and all other provisions of the original contract were carried forward pretty much unchanged into the Codified Agreement. The intention was to complete what had been started before BA withdrew but for POCL alone.
- 41. The Codified Agreement, even with more conventional payment terms, was still far from being risk-free.
- 42. As has been noted before, making Horizon work end-to-end was dependent on the interfaces with BA, POCL systems and POCL client systems, notably CAPS, TIP and Reference Data. As Paul Rich noted, at the time BA withdrew, CAPS was still not “fit for purpose”. Reference Data continued to be problematic. Resolving all of these things had taken time and money that had not been allowed for. The original BA/POCL timetable had been predicated on business case driven “plug-and-play” aspirations rendered unrealistic by the many A2As and “missings”. The risks that had crystallised

during the early life of the programme had resulted in a large financial overhang.

43. A key PFI principle had been that the Contractor should be given latitude to amend legacy business processes. Requirements were written at a high level for this reason. Many were subject to A2As. The reality was that ICL Pathway was required to replicate precisely POCL's historic paper-based counter processes but without the benefit of a detailed specification that defined those processes. Hence the references to "reverse engineering". This risk did not transfer to POCL when the payment terms changed.
44. Some processes (such as Shared stock units) that may have work perfectly well in a paper-based environment did not transfer well to an IT system. Computer software looks for binary associations. Having to accommodate such rules added to the risk of exception conditions occurring that could trigger a software bug. This risk did not transfer to POCL when the payment terms changed.
45. The Second Sight report had highlighted the risk of losing transactions when there was a comms outage, especially in remote areas. That risk assessment was made in relation to Horizon On-Line some 15 years after Horizon was first introduced and almost 20 years after it was first conceived. During the intervening period, orders of magnitude improvements in comms reliability and reach had made on-line viable. Back in 1998, the fragility of comms would have caused frequent branch closures and transaction losses (transactions in mid-flight when the break occurred). Hence the distributed system architecture. The downsides of a distributed system architecture were increased complexity (more moving parts so more to go wrong) and the immaturity of the components (PCs, Microsoft platform software, Escher software, comms and remote systems management). Avoiding the inherent risks of an on-line system introduced different risks for Fujitsu to manage.
46. By way of example of risk management, Fujitsu leveraged its relationship with Microsoft at corporate level to get Microsoft to fix the Windows NT bug that caused the blue screens. The dependency on Escher had been

identified by BA and POCL as a risk well before they selected ICL Pathway. The reason for accepting the risk came down to the perceived greater risk of going with a centralized hub-and-spoke (always on-line) system.

47. As a “child of PFI”, the die had been cast regarding Horizon design a long time before the change in contractual terms. By then, the design was what it was. The question to ask was not whether there had been problems during Horizon’s genesis (there is no denying that there had been) but whether the improvement actions undertaken by ICL Pathway succeeded in resolving those problems. Horizon passed the Acceptance hurdles that had been set by POCL having closed out all the key AIs. The question then became: who bore most risk if those positive AI assessments proved to be wrong?
48. Under PFI, payment was by outcome. For BA/POCL that meant payment per transaction. Instead of payment per transaction, ICL Pathway would now be paid for outputs. These outputs were: a single milestone payment for Acceptance followed by 4 milestone payments for Roll-out followed by on-going monthly payments for operating the Horizon service.
49. Fujitsu was still required to fund all the up-front investment. The total cost of developing the system, infrastructure (branch equipment and data centres), putting ISDN into branches, modifying branch offices to accommodate terminals, training the 70,000 personnel, setting up the HSH and support functions, etc. ran into the hundreds of £ millions. Fujitsu was at risk for this if it did not deliver.
50. To get paid, ICL Pathway needed to:
 - a. Achieve Acceptance from a starting point that had been seriously problematic (I think everyone would agree that it had been seriously problematic even if they have different views as to the primary causes)
 - b. Then, for 2 years, achieve continuous Roll-out at a rate of 300 offices per week, week in, week out, having first trained “just in time” a cadre of personnel many of whom had never used a computer before

- c. Scale the services (notably HSH and support services) to keep pace with the rapidly increasing demand from Roll-out, subject to stringent SLA and associated penalties and a constant threat of termination
 - d. Apply software releases at the same time as achieving its Roll-out milestones.
51. I submit that it would simply not have been possible to achieve all these outcomes if the system had suffered from systemic or widespread faults.
52. Had it done so, the HSH and NBSC would have been overwhelmed within hours. Between them POCL and ICL Pathway would have had no option but to suspend Roll-out.
53. To answer my own question, I would say that the risks still fell overwhelmingly on Fujitsu. There was a risk that, if Roll-out had stopped it might never have re-started. Even if it had restarted, the costs of the suspension would have run into the tens of £ millions. If the operational service had missed its SLAs for more than 3 consecutive months, POCL was entitled to terminate the contract for breach.
54. The above is based on my best efforts to piece together the contractual and commercial picture after listening to some but by no means all of the Phases 2 and 3 witness testimonies.
55. Everything I have said should be checked and substantiated by others.

Statement of Truth

I believe the content of this statement to be true.

GRO

Signed: _____

Dated: 4 June 2024