

Witness name: Jonathan Hill

Statement No: WITN11110100

Dated: 1 March 2024

POST OFFICE HORIZON IT INQUIRY

FIRST WITNESS STATEMENT OF JONATHAN HILL

ON BEHALF OF POST OFFICE LIMITED

1. I, Jonathan Hill, of 100 Wood Street, London, EC2V 7ER, say as follows:

A. Introduction

2. I am Jonathan Hill, Compliance Director at Post Office Limited ("**POL**"). I joined POL in 2004 as a senior manager in the team looking after bill payments and commercial cash in transit. Around 2007 I became Head of Personal Financial Services, liaising with our joint venture company with the Bank of Ireland, Post Office Financial Services ("**POFS**"). In 2012 I was appointed the Head of Financial Services ("**FS**") Risk, Compliance, Strategy & Planning. In 2017 I became the Head of Risk & Regulation, FS & Telecoms. In 2018 I was appointed as Compliance Director. Prior to joining POL, I held various roles at different financial institutions, including American Express, NatWest and Visa. This is my First Witness Statement to the Inquiry ("**Statement**"). Whilst not having been employed

by the Company during the whole period in question (the “**Relevant Period**” – which I understand covers mid-1996 to June 2021), I feel that in my role as Compliance Director and taking into account my previous roles, I am equipped with the professional experience required in order to have acquainted myself with the regulatory oversight of POL during the Relevant Period and so subject to any caveats highlighted herein, I am the appropriate person to give this Statement on behalf of POL.

3. This Statement has been prepared in response to a request made by the Post Office Horizon IT Inquiry (the “**Inquiry**”) pursuant to Rule 9 of the Inquiry Rules 2006, dated 16 February 2024 (“**Request No. 51**”). Request No. 51 asks for an explanation of “*the regulatory oversight of **Post Office Limited** (and any relevant predecessors) during the relevant period (as defined in the list of issues), in respect of matters relevant to the Inquiry’s terms of reference*” and includes the following:

- a. A *high-level* overview of the regulatory role the Financial Conduct Authority (“FCA”) (and any relevant predecessors) played in relation to POL in respect of matters relevant to the Inquiry’s terms of reference; [See Section C]
- b. Whether POL is/was subject to the FCA’s Senior Managers regime; [See Section D]
- c. Whether POL is/was regarded as either a bank or building society by the FCA; and [See Section E]

d. *Whether any other regulators played a role in relation to POL in respect of matters relevant to the Inquiry's terms of reference, and if so, a high-level overview of that role.*

4. This Statement only addresses parts (a) to (c) of Request No. 51. I understand that part (d) will be addressed in a separate statement. I have aimed to include within this Statement evidence relating to all matters or issues detailed in parts (a) to (c) of Request No. 51 insofar as the relevant facts are within my own knowledge. The facts in this Statement are true, complete and accurate to the best of my knowledge and belief. Where my knowledge and belief, as set out in this Statement, has been informed by another person or by documents that I have reviewed, I acknowledge that person or those documents. I have been assisted in preparing this Statement by Burges Salmon LLP and Fieldfisher LLP (together "BSFf"), who act on behalf of POL in the Inquiry. I have had online meetings with BSFf to assist my preparation of this Statement.

B. Approach

5. Request No. 51 (as also set out in paragraph 3 above) refers specifically to POL and so this Statement provides relevant high-level information on POL. I have not commented on the extent to which subsidiaries or entities associated with POL have been subject to regulation (either by the FCA or its predecessors).

6. Insofar as regulation by the FCA is concerned, POL has an FCA authorised subsidiary (Post Office Management Services Limited (“**POMS**”)) which operates with its own independent Board of Directors.

7. In addition, POL has been party to joint venture and other arrangements with the Bank of Ireland for the provision of financial services. However, as I explain in more detail below, POL itself has never been authorised or regulated by the FCA or the Financial Services Authority (“**FSA**”).

8. In a similar vein, in this Statement I have addressed POL’s position in relation to the FCA (and FSA) from December 2001 onwards, being the point in time at which the Financial Services and Markets Act 2000 (“**FSMA**”) was implemented. Prior to this point in time, the financial services industry was regulated under a separate regime, with which I am not familiar. In addition, as I joined POL in 2004, I only have direct knowledge of the period from 2004 onwards. For the period between December 2001 and when I joined in 2004, I have set out the position to the best of my understanding¹.

C. Regulation by the FCA and its predecessors

C1: The UK’s Financial Services Regulators

¹ This also applies to the periods before 2004 mentioned in paragraphs 10 and 11.

9. Before addressing the specific matters set out in Request No. 51, in order to give context to what I say later, I have provided a brief summary of the evolution of the financial services regulation in the UK during the Relevant Period.

10. Before 1997, the statutory Securities and Investments Board (“**SIB**”) set the rules for the securities market in the UK and these rules were implemented by three self-regulating bodies (the Personal Investment Authority, the Investment Management Regulatory Organisation and the Securities and Futures Authority). Her Majesty’s Treasury directly supervised insurance companies.

11. In October 1997, SIB changed its name to the FSA. Responsibility for supervision of different sectors was then transferred to the FSA piecemeal over the following 8 years, resulting in the FSA becoming the single regulator of all firms authorised under FSMA (see Section C2 below). Responsibility for banking supervision was transferred to the FSA from the Bank of England in June 1998. In May 2000 the FSA took over the role of UK Listing Authority from the London Stock Exchange. In October 2004, the FSA took on responsibility for mortgage regulation and in January 2005 for the regulation of general insurance business.

12. The Financial Services Act 2012 (the “**2012 Act**”) came into force on 1 April 2013. The 2012 Act created a new regulatory framework for financial services and abolished the FSA. It gave the Bank of England responsibility for financial stability, bringing together macro and micro-prudential regulation, and created a new

regulatory structure consisting of the Bank of England's Financial Policy Committee, the Prudential Regulation Authority (“**PRA**”) and the FCA.

13. The FCA has three operational objectives in support of its strategic goal – (i) to protect consumers; (ii) to protect and enhance the integrity of the UK financial system; and (iii) to promote healthy competition between financial services providers in the interests of consumers.

14. The FCA’s Handbook contains detailed rules and guidance applicable across authorised firms’ regulated activities. At the most fundamental level, authorised firms must have appropriate resources, both financial and non-financial; have the appropriate level of staff resource, skills and expertise; be fit and proper; and have a suitable business model in place.

C2: FSMA

15. Since 1 December 2001², determining who (and what activities) are regulated by the FCA (or the FSA before it) is governed by FSMA. This provides that carrying on a ‘regulated activity’ by way of business in the UK requires either (i) authorisation by the FCA (or its predecessor, the FSA³); or (ii) that an exemption applies⁴. For there to be a ‘regulated activity’ it is necessary for there to be both (a) a specified activity carried on by way of business; and (b) in relation to a

² Subject to transitional provisions as specified in SI 2001/2188 reg.15

³ The FSA had functions conferred on it by or under FSMA from 18 June 2001 until 31 March 2013, when the FSA was replaced by the FCA.

⁴ Section 19 FSMA

specified investment⁵. In broad terms, these activities relate to the provision and sale of financial products and services⁶.

16. The breadth of the regulatory perimeter under FSMA (and consequently the FCA's jurisdiction) has expanded over time to encompass a wider range of activities. For example, consumer credit regulated activities came under FSMA from 1 April 2014, having fallen under the Consumer Credit Act (and supervision of the Office of Fair Trading) before then.

17. In simple terms, therefore, the FCA (and the FSA before it) regulated anyone who performed one or more regulated activities – but who did not benefit from an exemption. As I explain in more detail below, while POL did perform regulated activities during the Relevant Period, it was not regulated by the FCA as it benefited from an exemption.

C4: The Appointed Representative Exemption

18. At various points in time between December 2001 and the end of the Relevant Period, POL has performed various regulated activities including the marketing and sale of certain financial products, such as mortgages and consumer credit, credit cards, travel insurance and life insurance. However, POL has never been

⁵ Section 22 FSMA

⁶ The activities and investments are specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO")

directly authorised and regulated by the FCA (or the FSA), because it benefits from an exemption as an ‘appointed representative’ (“**AR**”)⁷.

19. An AR is defined by the FCA as being “*a firm that conducts regulated business on behalf of a directly FCA-authorized firm, who is its ‘principal’. The principal firm takes regulatory responsibility for the appointed representative, and must ensure it meets FSA requirements*”⁸. An AR is, in overview, an unauthorised person who (a) is exempt in relation to certain prescribed regulated activities; and (b) carries on such activities under a written agreement with an authorised person who has accepted responsibility for those activities (the “**Principal**”).

20. The key premise of the AR regime is that it is the Principal who is authorised and regulated by the FCA (of FSA before it) – not the AR. The Principal takes responsibility for its AR and as such, the AR is not directly regulated by the FCA (or the FSA).

21. To the best of my knowledge and belief, this was the case for POL from December 2001 to the end of the Relevant Period. POL’s entry on the FS Register⁹ (FRN 409080) reflects POL’s status as an AR, with the FS Register stating that POL has been registered as an AR since 1 February 2001. As such, in its capacity as an AR

⁷ A person may be an exempt person under FSMA, and therefore not need to be authorised, as a result of various provisions, the primary one being section 39(1) FSMA, which covers the exemption of ARs. This exemption effectively came into effect on 1 December 2001

⁸ www.fca.org.uk/publication/archive/fsa-responsibility-appointed-representatives.pdf

⁹ The FS Register (the Financial Services Register) is a public record that lists all regulated and approved financial services and individuals by the FCA and/or the PRA

and in accordance with the regime as outlined above, to the best of my knowledge and belief POL is not (and was not) directly subject to regulation by the FCA.

22. The FS Register lists POL's current and former Principals, for whom it has been an AR.

C6: The Payment Services Regulations

23. POL also facilitates international money transfers. Such transfers are a form of payment services that are regulated by the Payment Services Regulations 2017 ("**PSRs**"), in respect of which the FCA is the principal regulator.

24. However, POL is not an authorised payment institution (which is one of the categories of persons who may provide payment services under the PSRs). Instead, (as POL's entry on the FS Register (FRN 508905) reflects) POL provides these services as a 'PSD Agent' on behalf of:

- (a) MoneyGram International Limited; and
- (b) Western Union Payment Services GB Limited.

25. As a PSD Agent, POL is not regulated by the FCA. The categories of persons that can provide payment services without the need for further authorisation or registration by the FCA under the PSRs includes "*the Post Office Limited*". However, POL is still required to comply with the applicable conduct of business requirements of the PSRs and its reporting and notification requirements.

26. POL's compliance with those requirements is not directly regulated by the FCA.

Similar to the position with the AR regime under FSMA, regulation 36(2) of the PSRs provides that the payment institutions who appoint a PSD agent (in this case MoneyGram and Western Union) are responsible for anything done or omitted by that agent (i.e. POL). So it is the payment institutions who are responsible for monitoring POL's compliance with the relevant rules.

27. Separately from international money transfers, POL has provided deposit and withdrawal related services for various banks. During the Relevant Period, POL has never been regulated by the FCA (or the FSA) in relation to these activities. POL has explained to the FCA why it considers that it does not require FCA authorisation to conduct these activities and the FCA has not objected to POL's position.

28. In a similar vein, and for completeness, while POL was not regulated by the FCA (or the FSA) (in the sense of being authorised and carrying permissions to conduct specific activities), it nonetheless liaises with the FCA frequently on a range of matters. But to be clear, those interactions are not because the FCA regulates POL - they are reflective of the fact that POL is a major industry participant, which acts responsibly in relation to public bodies such as the FCA.

D. FCA's Senior Managers Regime

29. The Senior Managers Regime ("**SMR**") forms part of the FCA's Senior Managers and Certification Regime ("**SMCR**"), which was launched in 2016. The SMR covers

senior managers who perform specified senior management functions (“SMFs”) in authorised firms.

30. The SMCR (and in turn the SMR) only applies to FCA regulated firms authorised under FSMA. As POL is only an AR and/or PSD Agent, SMCR (and therefore SMR) does not apply to it.

31. While SMCR does not apply to POL, as it is an AR it is still subject to the predecessor of SMCR, the Approved Persons Regime (“**APR**”). This means that applications to the FCA for the approval of relevant individuals performing “controlled functions”¹⁰ should be submitted to the FCA (or FSA) by the relevant principal firm (rather than POL or the individual). In this sense, therefore, there is a supervisory link between POL’s senior management and the FCA.

32. The FCA may grant an application if it is satisfied that the candidate is a fit and proper person to perform the FCA controlled function stated in the application form. Responsibility lies with the firm making the application (i.e. the Principal firm, not the AR) to satisfy the FCA that the candidate is fit and proper to perform the FCA controlled function applied for.

¹⁰ Being, like SMFs, functions which are specified by the FCA as being ones which necessitate the individual function holder to be approved by the FCA under section 59 FSMA. Such individuals then appear on the FS Register entry for the relevant AR(s). At present Nick Read, POL CEO, is the only approved person.

33. The FS Register records the POL individuals who have been approved to perform controlled functions in connection with POL's activities as an AR (whether currently or historically).

34. In summary, therefore, POL is not subject to the SMR but by nature of being an AR, satisfaction of the fit and proper person test is required, as well as oversight by the Principal, which may be relevant to the Inquiry's terms of reference in relation to matters of governance.

E. POL's Status as a Bank or Building Society

35. POL has never been authorised as a Bank or Building Society by the FCA or PRA or their precursors, during the Relevant Period. As far as I am aware, neither the FCA nor the PRA have ever regarded it as such either.

Statement of Truth

I believe the content of this statement to be true.

Signed:

GRO

Dated: 1 March 2024