

Witness Name: Gary Robert
Hickinbottom

Statement No.: WITN11780100

Dated: 29 October 2024

POST OFFICE HORIZON IT INQUIRY

FIRST WITNESS STATEMENT OF GARY ROBERT HICKINBOTTOM

I, Sir Gary Hickinbottom, will say as follows.

INTRODUCTION

1. I am Chair of the Post Office Overturned Convictions Independent Pecuniary Loss Assessment Panel (the “**IAP**”) under the Post Office Overturned Convictions Pecuniary Loss Scheme (the “**OC Scheme**”).
2. This witness statement is made to assist the Post Office Horizon IT Inquiry (the “**Inquiry**”) with the matters set out in the Rule 9 Request dated 2 October 2024 (the “**Request**”).

PROFESSIONAL BACKGROUND

3. I have been asked to set out my educational and professional qualifications.
4. I attended Queen Mary's Grammar School (1967-74), before University College Oxford (1975-78) from where I graduated with a First Class Honours in Jurisprudence (BA 1978, MA 1982). I obtained the Chartered Institute of Arbitrators' Diploma in International Commercial Arbitration (DiplCARb) in 1996.
5. I passed my Law Society Part II Exams in 1979, and became a Solicitor in 1981 and a Solicitor Advocate (All Courts) in 1997. I am a Fellow of the Chartered Institute of Chartered Arbitrators (1995) and a Mediator registered with the Academy of Experts (1991).
6. In terms of my professional and judicial career, I attach a short curriculum vitae (**WITN11780101**).

OVERTURNED CONVICTIONS SCHEME: BACKGROUND

7. Before I deal with the specific questions raised in the Request, it would be helpful to set out some background to the OC Scheme and IAP.
8. The IAP was set up as part of the OC Scheme by the Post Office with input from claimant representatives to facilitate the resolution of the pecuniary loss claims of claimants whose convictions had been overturned by the courts, by providing an independent assessment of any heads of pecuniary loss in dispute between a

claimant and the Post Office following the lodging of a claim, a response/initial offer by the Post Office and without prejudice discussions/counteroffers. The procedure before the IAP is itself without prejudice, non-binding and confidential, so that, after the assessment, either party may resort to other forms of alternative dispute resolution or formal litigation if they do not accept the assessment.

9. The OC Scheme (and therefore the work of the IAP) does **not** cover (i) claims of claimants whose convictions have been overturned by statute (rather than by the courts) which are the subject of a separate redress scheme, or (ii) claims for non-pecuniary losses which I understand are being assessed and negotiated separately on the basis of an Early Neutral Evaluation by Lord Dyson. The OC Scheme is limited to the pecuniary loss claims of claimants who were convicted of offences allegedly arising out of their work at post offices whose convictions have been overturned by the courts.
10. There are currently 111 claimants in the OC Scheme. Because of the Post Office (Horizon Systems) Offences Act 2024, which generally overturned convictions of relevant offences, this is likely to be a closed cohort, i.e. it is unlikely that any further claimants will have their convictions overturned by the courts and therefore be added to that number.
11. Following discussion with the Horizon Compensation Advisory Board (the “**HCAB**”), the former Minister of State for Enterprise, Markets and Small Businesses, Kevin Hollinrake MP, who was the Minister responsible for Horizon redress, commissioned a report from each on the redress schemes with the

intention that the reports should be produced and published monthly. My first report on the progress of the OC Scheme was in July 2024. With the change of Government, the reports have become quarterly. I attach the July Report (**WITN11780105**); and a draft of the October 2024 Report which has yet to be published (**WITN11780106**). These set out figures for the number of claims in the Scheme and the stage that they have reached, as well as a narrative in which I include particular concerns I have had about factors which may slow future progress of claims.

OVERTURNED CONVICTIONS SCHEME: SPECIFIC QUESTIONS

12. I will now deal with the specific questions about the OC Scheme raised in the Request, in turn. I will use the paragraph numbers in the Request.

Paragraph 5

13. I have been asked: Please describe how and when you came to be appointed to as Chair of the IAP for the Overturn Convictions Scheme (“**the OC scheme**”).
14. I was contacted by the Solicitors to the Post Office (Herbert Smith Freehills LLP, “**HSF**”) in October 2023 with a request to chair the IAP. I understand that I was nominated by the claimant representatives and that nomination was agreed by the Post Office. I agreed to chair the Panel.

15. Although my role was to be independent, I was to be formally retained (and paid) by the Post Office. I began work in post as Chair immediately, but my formal appointment was not finally signed off by the Post Office until February 2024.

Paragraph 6

16. I have been asked: Please describe your involvement, if any, in the creation of the IAP and its composition. Please include any delays of which you were aware in relation to the creation of the relevant pecuniary principles, your appointment as Chair and the appointment of the other specialist panel members. Please include your views as to the cause of the delays and any steps that could have been taken to expediate the process.
17. I had no involvement in establishing the OC Scheme. There are four main documents underlying the OC Scheme, namely (i) Overturned Convictions Pecuniary Assessment Process (the “**Process Document**” WITN11780102”), (ii) Terms of Reference for the IAP the “**Terms of Reference**” WITN11780104), (iii) Overturned Convictions Principles Underlying Offers of Pecuniary Compensation (the “**Principles Document**” or just the “**Principles**”) and (iv) Without Prejudice Application to the IAP (the “**Application Form**” POL00448909). By the time I was approached in October 2023, these documents were in all but final form. I do not know how long they took to be in that form or why that finalisation took the length of time it did, but I understand the documents were the subject of six months’ consultation by the Post Office with the claimant representatives.

18. On 11 October 2023, I was sent the Process Document and Terms of Reference, in HSF's words, "to give you a broad sense of what you and the Panel will be asked to do, so as to ensure that you are comfortable with your role". I was asked for any comments by 18 October 2023 as, subject to final Post Office governance procedures, the documents were due to go to the Post Office Board on 31 October 2023. I submitted a few, minor comments which were generally incorporated. I was sent an updated version on 27 October 2023. These documents were duly approved by the Post Office Board and published on the Post Office's website when the IAP was publicly announced. I attach a copy of each document in its current form. There have been no significant changes to either.

19. On 27 October 2023, I was also sent the final version of the Principles Document and Application Form. I was told that the former had been the subject of consultation and that: "It is not formally agreed, but instead sets out Post Office's proposals for a negotiated framework for compensation which incorporates and takes account of comments by claimant representatives". My understanding was that the Principles were intended to ensure fair compensation for each claimant by setting out principles that were at least as generous as those of the general common law and in places more generous, both in scope and evidential proof requirements.

20. Annex D of the Principles Document sets out the principles and processes to be applied in the assessment of the claimants' legal and professional fees which, under the OC Scheme, were to be borne by the Post Office in any event. Such fees were to be agreed by the parties or, failing agreement, to be assessed by either the IAP Chair or a separately appointed Costs Adjudicator. In assessing costs, we were to have regard to

“legal principle and practice”, i.e. how costs are assessed under the Civil Procedure Rules including such issues as whether the rates claimed were reasonable for the work done, whether the work had been done at the lowest reasonable level of seniority and whether there is unnecessary duplication of work. In the October 2023 version of the Principles Document, Annex D was incomplete.

21. Although, subject to Annex D (see paragraph 25 below), I had no opportunity to comment on the Principles, (i) I understand there had been extensive consultation on them with the claimant representatives, and (ii) under the Process Document, it was open to claimants to refer to the IAP disputes as to the Principles themselves, and their application; and, as such issues were resolved, the Principles might be updated. The Principles were without prejudice and confidential as between the parties unless the parties agreed otherwise. They consequently have not been published.
22. The Application Form (which was and is also a confidential document) is simply a process document to ensure that applications to the IAP contained the necessary information to enable the IAP to do its work.
23. I was therefore not significantly involved in establishing the Principles under which the IAP was to operate.
24. Nor was I involved in the creation of the IAP or its constitution. In October 2023, I was asked whether I had any objection to the appointment to the IAP of Mike Harper (accountancy expert) and Stephen Bassett (retail expert). I had no objection – nor did

the claimant representatives – and Mr Harper and Mr Bassett were duly appointed by the Post Office Board on 31 October 2023.

25. Shortly afterwards, to assist with any costs issues, Peter Hirst (former Senior Costs Judge) was appointed Costs Adjudicator under the Scheme. Mr Hirst and I were asked to comment on Annex D of the Principles Document and our comments (on process) were taken into account in an amended version of the Principles Document in January 2024.

26. Because I was not involved until October 2023, I cannot comment on any delays in the setting up of the OC Scheme and IAP. The formal appointment of the IAP members (including me) were not made until February 2023, I understand because of (i) difficulties in some members of the Panel obtaining appropriate insurance and (ii) delays in the Post Office governance procedures for signing of the appointments. However, this did not cause any delay in the functioning of the IAP, which began its work in October 2023 and was in practice unimpeded by the absence of formally signed off appointments.

27. Given the nature of the work to date, the other members of the IAP and Mr Hirst have not as yet had any substantive part to play in the IAP, although it is proposed that Mr Harper and Mr Bassett will sit with me when the IAP hears the intended future loss claim referrals referred to below.

Question 7

28. I have been asked: Please set out the terms of reference for the IAP as you understand them to be.

29. The Terms of Reference are attached (**WITN11780104**).

Question 8

30. I have been asked: Please describe the process for assessing a claim upon receipt of a summary referral.

31. The assessment process on referral to the IAP is set out in the Process Document attached (WITN11780102).

32. The following points may assist in respect of process more broadly.

33. First, it is important to note that a referral to the IAP is the “final resort” in the process designed to result in a voluntary, full and final settlement of the pecuniary claims of a claimant who has had a conviction overturned. The steps in that process are set out in the Process Document and include the assessment by the Post Office of a submitted claim on the basis of the principles set out in the Principles Document, an offer by the Post Office and discussion/negotiations between the Post Office and the claimant. The process and principles encourage the parties to agree heads of claim which can be agreed, and for the Post Office to make full payment of the losses so agreed by way in interim payment. A referral to the IAP is only necessary if, in relation to a particular head

of loss, that process fails to result in a compromise; and is restricted to the heads of loss upon which a compromise has not been reached. Given both the complexity and likely value of future loss (including pension claims), it has always been recognised that it is likely that most referrals will be restricted to heads of future loss.

34. Second, on 18 September 2023, the Department of Business and Trade (the “**DBT**”) announced an offer to the claimants within the cohort of this scheme that they could accept £600,000 “up front”, in full and final settlement of their claims, without the need to lodge or pursue a claim for their actual losses (often referred to as “the initial offer”). Claimants have been encouraged to take legal advice on whether this option should be chosen, and a further sum of £20,000 (excluding VAT and pre-approved expert fees) is available for a claimant to take legal advice so that they can take an informed decision on whether they should accept this offer. Whilst there is no time limit on this offer, the offer lapses if a full claim is lodged or pursued. It has been made clear to claimants that this offer is entirely optional, and if a claimant does not wish to accept it, then they can pursue any other means available to recover their losses including a particularised claim under the OC Scheme or court proceedings.
35. Third, a claimant within the OC Scheme cohort may apply for interim payments on account of their losses. The Post Office at first offered an initial interim payment of £163,000 on account within 28 days of receiving an application for it. Given that a claimant can accept the full and final settlement initial offer of £600,000 referred to above, I could not see why this initial interim payment should be so low where a claimant has lodged a full claim; and, as Chair of the IAP, at a meeting of the partes, I formally recommended that it be increased to £450,000 in those circumstances. That

recommendation was accepted and implemented by the Post Office. I have also indicated that I consider the IAP has the power to consider referrals in respect further interim payments where the Post Office has refused an application for such payment. No such applications have yet been made, but (i) several potential applications have been indicated to me, and (ii) the Post Office has now made several substantial interim payments in particular cases.

36. Fourth, I have had regular meetings with the parties (i.e. HSF and the claimant representatives) together to discuss any concerns any party may have, and ways in which barriers to settlement might be removed and the settlement process be speeded up. For obvious reasons of confidentiality, individual claims are not discussed at such meetings. These meetings have had some success. For example:
- (i) My recommendation with regard to a minimum interim payment after a claim has been lodged arose out of one of these meetings.
 - (ii) They have identified issues with assessment and payment of claimant representative costs, which have been resolved.
 - (iii) They have resulted in a proposal that individual claims be selected from those in which future loss claims are very unlikely to be compromised without assistance, with a view to early referrals being made in these claims. Future loss claims are notoriously fact-specific; but I consider that, if the IAP were to consider several future loss claims together, we may be able, not only to make recommendations in

respect of those individual claims, but also to give some anonymised guidance drawn from those cases for the assistance of the parties in other claims. It is proposed that there is liaison with other Horizon redress schemes where similar issues arise, so that maximum value can be obtained across all schemes from the consideration of these claims by the IAP. I have a further meeting with the parties in November at which this proposal will be discussed further with a view to referrals coming on for hearing by the IAP in early 2025.

37. Fifth, although there have as yet been no completed references to the IAP, upon appointment as Chair, I indicated to the parties that I considered that the documents which established the OC Scheme and IAP enabled me, as chair of the IAP, to case manage individual cases by issuing case management directions to the parties after considering their representations and, if necessary, after a case management hearing. This power had proved valuable. In addition to the meetings with the parties referred to above, where a party – usually, but not always the claimant – considers that a claim is not proceeding as quickly or effectively as it might, or that directions from me might assist the parties towards settlement (or a speedier settlement), they have made an application for directions which has either resulted in the parties agreeing directions for the more speedy/efficient resolution of the claim or my giving directions to similar effect. Occasionally, extensions of time have been later sought; but generally, there has been compliance with those directions. In my view, that has been the most important role of the IAP to date.

Question 9

38. I have been asked: The Inquiry understands that the IAP have not been asked to make a recommendation regarding a disputed head of loss. If this correct, are you able to offer any explanation as to why?
39. I am unsure about the scope or intent of this question; but, if it a reference to the fact that there has as yet not been any completed referral to the IAP, I refer to what I say about process above (paragraphs 32 and following). A referral is effectively the last resort of the scheme, and to date considerable progress has been made in the settlement of individual cases without any referral of an individual claim running its course. The figures are set out in the attached OC Scheme Reports. As at 30 September 2024, of the 111 claims within this cohort, 60 have been fully and finally settled (54 at the initial offer sum of £600,000 and six at a different (higher) sum). Interim payments have been made in the remaining 51 cases. The rate of progress of settlements can be gauged by the fact that, in the three month period 30 June and 30 September 2024, 12 further cases were settled.
40. The remaining 51 cases broadly comprise (i) cases in which claimants are considering whether or not to accept the initial £600,000 offer which, in some cases, is not a straightforward decision and one which requires both expert and legal input; and (ii) cases in which claims are still being prepared or have been lodged and are being considered by the Post Office or are being negotiated. It is likely that, by the beginning of 2025, there will be very few if any claimants who have not accepted the initial offer or lodged a full claim and the focus of the IAP's work can be concentrated exclusively on how most effectively and efficiently the future losses in the remaining claims can be considered, if necessary assessed, and settled. As Chair, I am currently attempting to

put claimants into the position where they can make an early decision on the initial offer; and, if a claim is made, then the parties can consider how future loss claims can be efficiently and effectively dealt with under the scheme. The proposal for guidance cases early next year is one proposal towards that end.

Question 10

41. I have been asked: Please describe any other occasions, unrelated to a pecuniary assessment, where the IAP have made a recommendation or given any direction as to how a claim may proceed.

42. I have effectively dealt with this question elsewhere in this statement. Examples include (i) my recommendation as Chair of the IAP that a minimum interim payment of £450,000 of made to any claimant who has lodged a full claim (see paragraph 35 above); (ii) directions I have given in cases in respect of the cost assessment process designed to speed up that process (paragraph 36(ii)); (iii) the proposal that guidance future loss claims are referred to and considered by the IAP as a priority (see paragraph 36(iii)); and (iv) directions in individual cases designed to speed up the assessment process (see paragraph 37) above).

Question 11

43. I have been asked: Please provide your view as to whether the OC scheme offers full and fair compensation.

44. Most of the claims which have settled on a full and final basis have done so because the claimant has chosen to accept the initial offer of £600,000. As I have indicated, under the Scheme, the claimant is entitled to up to £20,000 legal costs and in addition expert costs necessary to come to an informed view as to whether to accept that offer. I have seen nothing to suggest that any claimant has accepted that offer other than on an informed and voluntary basis, as an exercise of unrestricted free-will. I have seen no evidence of undue pressure being placed on a claimant to accept the offer, nor of claimants considering that they may be under such pressure; there is no time limit on the offer; interim payments are available to assist a claimant during the period they are considering the offer; and there is evidence from the claimant representatives that claimants are seeking legal and expert advice in appropriate cases and are considering the offer very carefully before deciding to accept or reject it. The inference is that the OC Scheme is affording those claimants appropriate redress.

45. More generally, although the Principles have not yet been tested before the IAP, they have been drafted by the Post Office with input from the claimant representatives on the basis that they incorporate common law principles or principles that are more generous with regard to scope of heads of claim and evidential requirements of proof. As a fall back, if any claimant considers the Principles fall below that standard, then they can refer relevant principles and/or a particular claim involving those principles to the IAP which can then make a recommendation for a change to the Principles. On the basis of past experience, the Post Office is very likely to agree to implement any such recommendation by amending the Principles.

46. There is therefore no evidence that I have yet seen which suggests that the OC Scheme offers less than full and fair compensation.

Question 12

47. I have been asked: Please set out any steps that you consider would improve the administration of the OC scheme.
48. I have set out in my Reports (attached) my concerns about factors which slow progress of claims and about the OC Scheme more generally.
49. Matters which do **not** currently appear to be slowing progress of claim resolution include:
- (i) Other Horizon redress schemes have a claims facilitator built into the scheme, and that appears to have been beneficial in those schemes. I have discussed the possibility of including a claims facilitator into the OC Scheme. No party considers that that would assist; and I agree. I do not consider that it would add to the efficiency or speed or resolution of claims in this scheme, in which the number of claimants who do not accept the initial offer of £600,000 is likely to be relatively small and the remaining, disputed heads of claim are likely to be challenging future loss claims.

- (ii) At present, the claimant representatives say (and I accept) that resource capacity is not a factor affecting speed of preparation of claims etc. That will need to be kept under review, as the same claimant representatives and experts are likely to be involved in the new redress scheme for claimants whose convictions have been overturned by statute.

50. Matters which may be adversely affecting the progress of claims include the following.

- (i) Whilst the general picture is that claimant representatives are progressing claims reasonably quickly, it is clear that they face a myriad of challenging circumstances. Especially important, some claimants are traumatised or otherwise suffering from mental health issues (often as a result of the convictions themselves), which means that it is often a challenging and time-consuming task for their legal representatives to take instructions particularly on future loss claims, including the particular claimant's version of historical events and their view of the counterfactual (i.e. what would have happened but for the conviction). Some clients are extremely distrusting, and sceptical of all aspects of the process (including, in some cases, their own representatives). For some, late disclosure of (e.g.) their Post Office pension arrangements has required a recalculation of part of their schedule of loss. Some claimants live abroad and have complex tax arrangements. The challenges faced by those representing the claimants should not be underestimated. I consider that regular, careful and sensitive case management of the individual cases, as outlined above, is the best way to progress these claims.

- (ii) Some delays can be put at the door of the Post Office. Whilst I understand the challenges of finding information relating to events years and sometimes decades ago, and although more recently this appears to have become less of an issue, there have been times when the Post Office has not been as quick as it might in disclosing information relevant to the formulation of a claim. Furthermore, as well as being slow in responding to disclosure requests, there have been suggestions from the claimant representatives that the Post Office has been overdemanding in the particulars of claim it seeks before making an offer on a claim. Those too seem now seem to be less.

- (iii) However, the Post Office's governance procedure is lengthy and slow, so that anything requiring approval takes longer than it should and longer than prescribed in the Process Document. So, the Post Office seeks to respond to a full claim with an offer within 40 business days (i.e. 8 weeks); but it seems that that is sometimes extended to 10 or even 12 weeks. Even where a loss schedule is straightforward, an offer is rarely made in less than 40 days. Approval of claimant expenditure on expert evidence required to formulate a claim is sometimes slow. Whilst it is not entirely clear whether, or the extent to which, delays are the result of governance procedures in the Post Office or the DBT or both, the evidence suggests that is mainly the Post Office procedures that result in delay. Speeding up these procedures would result in a more effective claims process.

- (iv) See also paragraphs 60 and following below.

The HCAB

Questions 13 and 14

51. I have been asked: Please set out your role and/or involvement in relation to meetings of the HCAB? Please set out your view as to whether the HCAB are effective at instigating change to the administration of the OC Scheme.
52. I do not have any involvement in the HCAB, except that I have indicated to the HCAB that I will regularly report to them and respond to any particular queries they have or update they may seek.
53. I keep the HCAB up-to-date by sending my draft and final reports to the Chair of the HCAB (Dr Christopher Hodges) for circulation to HCAB members, by joining meetings of former Minister Hollinrake and the HCAB and updating them (and answering any questions they may have) at those meetings, and regularly reporting to the Chair of the HCAB usually by Teams call.
54. HCAB have been helpfully supportive by (e.g.) supporting my recommendation of the £450,000 interim payment (see paragraph 35 above) and generally supporting my case management approach to the claims within the OC Scheme cohort. Indeed, they have exhorted increasing use of such powers to drive the claims forward, an approach which I have been happy to take within the constraints outlined above concerning the fragility of many of the remaining claimants in the cohort.

55. Whilst I cannot speak directly as to the effectiveness of HCAB on instigating change to the administration of the OC Scheme, I can say that the Post Office appears to listen carefully to, and take account of, HCAB's recommendations; and, consequently, I have greatly appreciated HCAB's support for my recommendations and approach.

Question 15

56. I have been asked: Please consider **RLIT0000275** – Report of the 14th Meeting of the HCAB (14 May 2024). Please describe any steps described within paragraph (1) that were proposed in relation to the OC Scheme, whether any of those steps have been implemented and if so whether the speed of redress has increased or likely to increase in the future.

57. Paragraph 1 of the Minutes to which reference is made said:

“The Advisory Board met with Minister Hollinrake and Sir Gary Hickenbottom on 22 April. They had discussed implementing greater scrutiny on case management, reviewing evidential requirements, and other ways to increase the speed of redress. They also raised concerns about Post Office staff with prior involvement in Scandal events being involved in compensation and appeals work.”

58. I have effectively responded to this request in paragraphs 33-37 and 59-63 of this statement.

Question 16

59. I have been asked: Please set out any concerns that you hold in relation to Post Office staff who are working on the administration of the OC scheme and whether any steps have been taken to address those concerns.
60. As indicated above, some claimants are (understandably, given their history) extremely wary and untrusting of the Post Office. Part of my role has been to ensure that they and their representatives have confidence that I am independent of the Post Office. All claimant representatives are invited to my joint meetings with the parties. I do not have any communication with the Post Office direct; and, except for the most mundane administration (which is usually dealt with through my clerk), I do not communicate with HSF without copying in the claimant representatives. The claimant representatives originally selected me to chair the IAP. In my view, their confidence in my independence, and willingness and ability to drive the progress of claims forward, is key.
61. I understand steps have been taken to ensure that those with previous experience of the Horizon scandal are not involved in the administration of the OC Scheme. However, the mere fact that the Post Office – and its solicitors, HSF – is administering the OC Scheme does not assist in the building of the claimants' confidence in the Scheme; but I believe that is a challenge that can be overcome. The confidence of the claimant representatives is vital in that task. I believe I have, and can maintain, that confidence.
62. In appropriate cases, I can take special measures to help allay particular concerns.

General

63. I have been asked: Please set out any other information that you think is relevant to the Inquiry.

64. I do not consider that I can usefully add to this this statement and its attachments; but, if the Inquiry has any issues which I could usefully clarify, I would be pleased to do so.

Statement of Truth

I believe the content of this statement to be true.

Signed:

GRO

Dated: 29 October 2024

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3	WITN11780106	Draft Report – October 2024 – Pecuniary Losses	WITN11780106
4	WITN11780102	Overtured Convictions – Pecuniary Assessment Process	WITN11780102
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