

Witness Name: Benjamin James
Cuthbert Tidswell

Statement No.: WITN11290200

Dated: 12 December 2024

POST OFFICE HORIZON IT INQUIRY

**SECOND WITNESS STATEMENT OF BENJAMIN JAMES CUTHBERT
TIDSWELL**

Introduction

1. My name is Benjamin James Cuthbert Tidswell. I was a Non-Executive Director on the Post Office Limited ("**Post Office**") Board from 27 July 2021 to 8 July 2024.
2. I make this statement to comply with a request made on 27 November 2024 by the Post Office Horizon IT Inquiry ("**Inquiry**") for a witness statement pursuant to Rule 9 of the Inquiry Rules 2006 ("**Rule 9 Request**"). This is my second statement to the Inquiry. My first witness statement is WITN11290100 and is dated 27 August 2024.
3. I have prepared this statement following meetings with my solicitors, in respect of which I intend no waiver of privilege. Save where otherwise stated, I make this statement from facts within my own knowledge, and I believe them to be true. Where I refer to information supplied by others, I identify the source

of that information, and I believe it to be true to the best of my knowledge and belief.

Mr Staunton's evidence

4. While I was not asked to give oral evidence at the Inquiry, I have tried to keep myself apprised of the ongoing hearing for phase 7 of the Horizon IT Inquiry ("**Inquiry Hearing**"). As part of this, I reviewed the transcript of Mr Staunton's oral evidence at the Inquiry Hearing ("**Transcript**") [**Transcript of Mr Staunton's oral evidence at the Horizon IT Inquiry Hearing - INQ00001189**]. In doing so, I identified that Mr Staunton had given evidence about statements attributed to me at the Post Office Board meeting on 24 January 2023. I have also seen that Mr Staunton gave similar evidence in his first written witness statement ("**Staunton 1**") [**First Witness Statement of Henry Eric Staunton - WITN11410100**].

5. Mr Staunton's evidence was that I had said that "*the Company [the Post Office] had a duty to ensure that people who were guilty remained guilty*" [**WITN11410100 at paragraph 49 and INQ00001189 at page 98 line 6 to page 100 line 2 and page 156 line 21 to page 158 line 2**]. He then went on to suggest that this reflected a view that the "*the majority of post masters were guilty as charged*" [**WITN11410100 at paragraph 49**]. As I explain below, Mr Staunton has taken my statements out of context, with the consequence that his evidence on this point is misleading.

6. On 12 November 2024, my solicitors Enyo Law LLP (“**Enyo**”) wrote to the Inquiry and to the core participants, explaining that Mr Staunton’s evidence on this point was misleading. In doing so, they explained that the statement reflected legal advice provided to the Post Office Board, rather than being an expression of my own personal views regarding postmasters [**Letter from Enyo to the Inquiry copying in core participants dated 12 November 2024 – WITN11290203**].

7. The letter also stated that I would be willing to assist the Inquiry by providing a further witness statement on this point. It also asked that, if a further witness statement was requested, the Inquiry provide me with POL00448713 [**extract from the 24 January 2023 Post Office Board meeting minutes - POL00448713**] and POL00448620 [**24 January 2023 Post Office Board meeting minutes - POL00448620**], being the copies of the 24 January 2023 Post Office Board meeting minutes to which Mr Staunton had referred. This was particularly important because the fact that the Board had received legal advice at this meeting meant that relevant sections of the minutes were likely to be redacted to protect legal privilege. Further, while I had been provided with a redacted and an unredacted version of the minutes by the Post Office, it was unclear whether the same redactions had been applied to the version of the document that Mr Staunton referred to and which the Inquiry had seen (there were in fact inconsistencies in the way redactions were applied between POL00448713 and POL00448620).

The Rule 9 request and correspondence regarding redactions

8. On 27 November 2024, I received the Rule 9 Request from the Inquiry. The Rule 9 Request asked me to provide a witness statement in relation to the issues with Mr Staunton's evidence set out in Enyo's letter of 12 November 2024.
9. The Inquiry also provided me with POL00448713 and POL00448620, the copies of the minutes of the 24 January 2023 Board meeting referred to by Mr Staunton. POL00448620 is the complete set of minutes from the 24 January 2023 Board meeting. POL00448713 is an extract from these minutes (it contains pages 8 and 9 of the 17-page document). Given that POL00448620 is a complete set of the minutes, when I refer to the minutes I am referring to POL00448620, unless I specify otherwise.
10. On the same day, the Inquiry also wrote to the Post Office inviting it to consider whether it wished to remove any redactions from these documents.
11. On 28 November 2024, the Post Office responded to the Inquiry, agreeing to remove the redactions which it had applied to item 6.4 of POL0044873. Item 6.4 of the minutes had not been redacted in POL00448620, so it had already been provided to the Inquiry in unredacted form. The Post Office also agreed to remove some, but not all, of the redactions applied to item 3.1 of POL00448620 (item 3.1 was not included in POL0044873). The Inquiry has, therefore, not been provided with item 3.1 of the minutes in unredacted form.

12. On 29 November 2024, Enyo wrote to the Post Office asking it to reconsider this approach. In doing so, Enyo explained that the statement attributed to me in item 6.4 of the minutes was a reference to legal advice contained in the part of item 3.1 which remained redacted. Enyo explained that the Post Office's approach would not allow the Inquiry to see the legal advice that I was referring to and would therefore not allow it to properly contextualise and understand the statement attributed to me at item 6.4 of the minutes. Enyo also noted that the Post Office's claim to privilege in the part of item 3.1 which remained redacted had likely been waived by the reference to that advice in item 6.4 to the Inquiry [**Letter from Enyo to Post Office copying in the core participants dated 29 November 2024- WITN11290202**].

13. The Post Office responded to this letter on 2 December 2024. Unfortunately, it did not agree to remove the redaction in the relevant section of item 3.1 of the minutes [**Email chain between the solicitors for the Post Office and Enyo – WITN11290201**].

14. While this approach limits the Inquiry's ability to contextualise and understand my statement at item 6.4 of the minutes, I have nevertheless endeavoured to assist the Inquiry by providing context to the legal advice in item 3.1 of the minutes and my subsequent reference to that legal advice in item 6.4 of the minutes. In doing so, I have been careful to avoid referring to the substance of that advice and I do not intend to waive any privilege to which the Post Office may be entitled in relation to the minutes.

The 24 January 2023 Post Office Board Minutes

15. By way of context to the board minutes of 24 January 2023, the Remediation Committee¹ met on 19 January 2023 and the item at 3.1 of the Board minutes reflected an action allocated to me, as Chair of the Remediation Committee, to brief the Board on issues arising from an appeal of conviction by a postmaster. As the postmaster's conviction had been entered in the Magistrate's Court, the appeal lay to the Southwark Crown Court.

16. As the Inquiry will be aware, Crown Court appeals are determined by a different process from that applying to appeals of criminal convictions to the Court of Appeal. In the Crown Court, the onus is on the prosecutor (if it opposes the appeal) effectively to prosecute the convicted appellant again.

17. That process brings into consideration the Code for Crown Prosecutors (the "Code"), which provides for a two-stage test in relation to decisions about prosecutions:
 - a. An evidential test, which assesses the quality of the evidence and determines whether there is a realistic prospect of a conviction.

 - b. A public interest test, which operates where the evidential test has been met. I understood that this required a balancing of various factors, which were relatively limited in their scope. For example, I understood

¹ At that time known as the Historical Remediation Committee

that the Post Office was not entitled to take into account its own view of the prospects of success (beyond the advice it received about the evidential test) or any concerns about the impact of a prosecution on its own reputation.

18. The Post Office Board had some time earlier expressed its extreme discomfort with the idea that the Post Office should find itself in the position of conducting any prosecution, regardless of the circumstances. That is reflected in the comment by one of the Board members in item 3.1 of the Board minutes. It was a view shared by the Remediation Committee members. However, my understanding was that the Post Office was nonetheless bound to apply the Code and that it had duties under the Code (because it had a legacy role, having been the original prosecutor) to oppose an appeal (that is, to conduct a fresh prosecution) if the evidential test and the public interest test were both met.

19. In accordance with previous practice, the evidential test in relation to this particular appeal had been assessed by external counsel from the senior criminal bar and there had been a debate at the Remediation Committee meeting on 19 January 2023 as to the significance of that advice. We had discussed in particular whether it was open to the Post Office, in properly implementing the Code, to disagree with or otherwise challenge the advice of counsel. My view (which was I think the consensus view once the matter had been fully aired) was that the Post Office was entitled to challenge the advice and, if it wished, to seek a second opinion.

20. It did however seem to be the case that if the Post Office received consistent advice that the evidential test was met then it had little choice but to accept that advice and the Code then anticipated that the Post Office would conduct a re-prosecution, unless the public interest test determined otherwise. Given the relative narrowness of the public interest test, that might well mean that the Post Office could be committed to re-prosecuting a postmaster if the evidential test was met.

21. These were the concerns that the Remediation Committee members had identified at the 19 January 2023 meeting and which I explained to the Board at the 24 January 2023 meeting. In short, my understanding was that there was a duty, under the Code, to prosecute if the evidential test was met, unless the public interest test was otherwise engaged, which may well not be the case in the appeal under consideration.

22. In the last sentence of item 3.1 of the Board minutes (which remains redacted as a result of the Post Office maintaining its claim to privilege in this part of the document), I recorded the legal advice the Remediation Committee had received on this point. The passage towards the end of item 6.4 of the minutes (which is referred to by Mr Staunton), records me referring back to that advice and to the discussion recorded at item 3.1. The reference to a “duty” was to my understanding of the Post Office’s obligations under the Code, where the evidential test had been met and the public interest test had not otherwise engaged.

23. It is unfortunate that the minutes use the language they do, in particular by referring to people being “guilty”. I cannot recall if I used that expression on this occasion, or whether the person who drafted the minutes used the term as shorthand. I can say that my usual practice was to refer to the test established by the Court of Appeal in *Hamilton & Ors v Post Office*, rather than to use that more emotive (and inaccurate) term.

Mr Staunton’s assertion that I considered that the majority of postmasters were “guilty as charged”

24. As set out above, the statement attributed to me at item 6.4 of the minutes was a reference to legal advice received by the Post Office Board recorded at item 3.1 of the minutes. It was not an expression of my personal views about postmasters.
25. However, given Mr Staunton’s evidence on this point, I would like to note, for the avoidance of any doubt, that it was not and has never been my view that the majority of postmasters were “guilty as charged”. I also disagree with the suggestion in Mr Staunton’s evidence that he raised this issue (that is, my statements at the meeting or any perception by him about my views on postmaster culpability) with me after the 24 January 2024 Post Office Board meeting (see for example **INQ00001189** at page 158 lines 6 to 8). This did not happen, either immediately after the meeting or at any other time. Mr Staunton’s evidence on this point is simply untrue.

Statement of Truth

I believe the content of this statement to be true.

Signed

GRO

Dated: 12 December 2024

Index to Second Witness Statement of Benjamin James Cuthbert Tidswell

| No. | URN | Document Description | Control Number |
|------------|--------------|---|---------------------------|
| 1 | INQ00001189 | Transcript of Mr Staunton's oral evidence at the Horizon IT Inquiry Hearing | INQ00001189 |
| 2 | WITN11410100 | First Witness Statement of Henry Eric Staunton | WITN11410100 |
| 3 | WITN11290203 | Letter from Enyo to the Inquiry copying in core participants dated 12 November 2024 | WITN11290203 |
| 4 | POL00448713 | Extract from the 24 January 2023 Post Office Board meeting minutes | POL-BSFF-WITN-035-0000011 |
| 5 | POL00448620 | 24 January 2023 Post Office Board meeting minutes | POL-BSFF-WITN-021-0000006 |
| 6 | WITN11290203 | Letter from Enyo to Post Office copying in the core participants dated 29 November 2024 | WITN11290202 |
| 7 | WITN11290201 | Email chain between the solicitors for the Post Office and Enyo | WITN11290201 |