

IN THE POST OFFICE HORIZON IT INQUIRY

POL's position in respect of questions 3(e) and 3(f) of Rule 9(48)

1. The Inquiry's Rule 9 (Request 48) of 10 October 2023 asked POL to respond to a number of questions regarding Fujitsu's contractual obligations in the form of a corporate witness statement that addresses inter alia the following issues:

"3...

(e) With hindsight, the extent to which Fujitsu complied with each of the relevant contractual obligations. In particular:

- i. For any contractual obligation that Post Office states Fujitsu complied with for any period, please summarise the reasons in support.*
- ii. For any contractual obligation that Post Office states Fujitsu did not fully or failed to comply with, please provide examples of the relevant breaches with an explanation of the same."*

(f) If the Post Office now consider that Fujitsu did not comply with its obligations but did not incur any financial penalties for such breaches, please explain why."

2. In these questions, POL has been asked to set out its reasoned position, applying the benefit of hindsight, as to whether Fujitsu complied with its contractual obligations (and the extent of such compliance or non-compliance, providing examples). In the event that POL identifies areas of non-compliance in respect of which Fujitsu did not incur financial penalties, POL is asked to provide an explanation of that position.
3. In correspondence with the Inquiry following receipt of Rule 9(48), POL raised the issue of legal advice, which it considered would need to be revealed in order to answer questions 3(e) and 3(f). In response the Inquiry sought POL's open position with regards to those questions, noting that *"It is entirely a matter for POL as to whether privilege is waived."*
4. This Note sets out POL's open position on this issue.

5. POL considers that the question of whether or not Fujitsu breached its contractual duties (and whether financial penalties under the contract were payable for any identified breach and if so, why financial penalties were not incurred by Fujitsu) are questions that POL is unable to answer without waiving privilege over the substance of legal advice it has received in respect of Fujitsu's compliance with its contractual obligations and the availability of contractual remedies.
6. As the Inquiry and CPs are aware, POL previously set out its position on the waiver, or otherwise, in its Response in relation to Legal Professional Privilege dated 15 November 2021 ("POL Response on LPP"). This was provided by POL in response to Sir Wyn's announcement on 8 November 2021 in which he specifically requested that POL waive privilege over material relevant to the Inquiry's Terms of Reference, as carried into effect by the Provisional List of Issues and supplemented by the four themes which had been the subject of the Preliminary Hearing on 8 November 2021, from the date of the first pilot of the Horizon IT system to 26 February 2020.
7. In the POL Response on LPP, POL noted that whilst as a general principle it was willing to waive legal professional privilege for the purpose of this Inquiry (as per Sir Wyn's announcement of 8 November 2021), *"it is nevertheless important and in the interest of fair process for POL to be able to take legal advice and participate in disputes and remediation activities that are currently ongoing or in reasonable contemplation with the protection of privilege and so to a very limited extent. POL will need to maintain privilege."* (§4) In particular, advice on claims that may be brought in the future to which legal advice was given before 26 February 2020, including advice on possible claims against third parties, was expressly identified as an exception to POL's general waiver of privilege (§6).
8. A potential claim against Fujitsu constitutes a dispute resolution process that is in reasonable prospect or contemplation and as set out in the Response, it is important and in the interest of fair process, for POL to be able to take legal advice on such a dispute (§ 4). POL's view is that there is a real risk that it would prejudice its position in potential future litigation against Fujitsu were it to waive privilege by revealing the substance of the legal advice it has received during the period identified by the Inquiry in Sir Wyn's announcement of 8 November 2021 about Fujitsu's compliance with its contractual obligations and it does not consider that it would be in the interests of POL, nor in the public interest (given the potential for recovery of public monies against Fujitsu), for it to risk such prejudice.

9. In these circumstances, POL is not in a position to respond to questions 3(e) and 3(f) of Rule 9(48).

15 March 2024