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1 September 2023

Dear Mr Jide (and Ms Smith),

**Post Office Horizon IT Inquiry: Post Office Disclosure: Structural Update as Incoming RLR**

I write further to our letter of 31 August.

**Purpose**

- 1 This letter:
  - (a) Summarises the current position on disclosure (including my understanding from observation to date of POL's approach to disclosure) and our proposed approach following BSF's RLR designation from 1 September. As part of this approach we propose structured engagement on these issues with the Inquiry to ensure that it continues to be fully sighted.
  - (b) Gives an overview of the structural review referred to by Diane Wills at paragraphs 18 and 108 of her second witness statement.
  - (c) Explains the relevance of that review to POL's support for the work of the Inquiry.

**Current Position and Proposed Approach**

- 2 Thank you to Sir Wyn for the letters of 30 August 2023 confirming my RLR designation. During the three-month period since our appointment in May 2023, the BSF team has been working intensively to mobilise and then get up to speed with, in particular, the complex issues involved in relation to disclosure. This is in order to form a view on the position as a whole, including the fast-moving issues that have necessitated the September hearing. I thought that it would therefore be helpful, given the matters below, to summarise the position on disclosure overall.
- 3 We are mindful of the seriousness of the issues and events being reviewed by the Inquiry and the acute human and other impacts that those have had upon the Postmasters and others affected. Both in terms of our approach and our instructions from POL, that awareness informs and underpins all aspects of our work for POL during the rest of the Inquiry and to the inputs

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- that the Inquiry will understandably demand of POL. That of course applies to the points set out below.
- 4 Neither I nor other members of the BSFf team had any prior involvement with any work for the Post Office nor the matters that gave rise to the Inquiry's Terms of Reference. As a team we therefore recognise that we do not yet fully understand everything that has gone before nor all of the complexities. We will however continue to work intensively to get across those issues and to engage frankly and constructively with the Inquiry and with those representing the Postmaster Core Participants ("CP's") and other CPs.
  - 5 The issues being considered at the September hearing have, necessarily, involved significant amounts of detailed explanation in witness statements, disclosure statements and correspondence. The purpose of this letter is to seek to stand back from that detail and to provide a frank overview of the position based on our current understanding and our assessment since our appointment. The work to build that understanding is ongoing; we are seeking to take a structured and systematic approach to it.
  - 6 As various of the witnesses for the September hearing have confirmed from their own perspective, my understanding and direct observation is also that POL's instruction and wish is to provide all relevant evidence that the Inquiry wishes to see, so that the full factual position can be examined and become known. That is the attitude and instruction from the POL team with whom we are working, the great majority of whom have also come fresh to the issues that are being examined by the Inquiry.
  - 7 I have been instructed by POL (and it would in any event be my intended approach professionally) to flag to the Inquiry if ever there were to be an attempt to withhold evidence that should be disclosed in relation to the Terms of Reference and the events leading up to the Inquiry being set up. I sense however that that is unlikely to arise; the issues faced are really those of scale, complexity and practicability.

### Proposed Engagement

- 8 My aim and request is that there can be continued (formal and minuted as necessary) engagement with the Inquiry's senior team on these critical issues so that the Inquiry is updated on the work POL is undertaking. We hope such an approach will best support the Chair to continue to plan for the vital remaining stages of the Inquiry. Whilst we will provide updates in correspondence, with issues of this complexity we consider that the ability to have a discussion on points of concern may be beneficial for the Inquiry and for POL in assisting it.
- 9 That is of course a matter for the Inquiry to consider but I reiterate that I, and colleagues, are happy in that context to meet with you and your colleagues regularly and as you would find helpful. I will also, as and if necessary, attend as many future disclosure hearings to provide formal updates.

### Disclosure Position - Overview

- 10 As Diane Wills and Gregg Rowan note in their witness statements for the 5 September hearing, the position is of significant complexity. I have been in professional practice for over thirty years dealing with (and since 1997 leading) in roles for clients in complex and large-scale public inquiries, inquests and disputes projects. Many have involved multiple parties, involved facts and very large hard copy and electronic data sets/structured disclosure exercises. I have not however encountered (or even come close to) a situation involving issues of the scale and complexity of that involving POL's disclosure position.

- 11 My understanding from what we have seen since May 2023 is that this is down to a combination of factors including (but not exclusively):
- (a) POL's own long and complicated organisational history and internal structures over decades (and longer) including a demerger during the last 20+ years during which the Horizon problems and events have occurred.
  - (b) Multiple sites and the absence until recently of any 'data universe' map of hard copy and electronic repositories (locations and systems) of potentially relevant documents leading to emerging sources from both 'known unknowns' but also 'unknown unknowns'.
  - (c) Multiple document systems (current and historic) and interactions between different systems.
  - (d) A complicated mix of hard copy, digital and e-media sources from various different eras and without any central record. Some sources are local, others central, or are a hybrid of both.
  - (e) The evolution (through the collation and adding of different source repositories from different providers and at different times with different methodologies) of the Relativity database operated by KPMG for POL. This is also complicated by system constraints on all disclosure databases including Relativity. Functionality and usability declines materially once databases get above a certain size. I am not a technical e-disclosure expert but my understanding is that the 60million documents currently held are approximately 30 Terabytes of data in total and that a Relativity review workspace database starts to have serious functionality problems at or around 10Tb.
  - (f) The scale of data involved (as others have confirmed, now over 60 million documents with more inevitably to be found as the data mapping continues and specific requests for Phases 5-7 are formulated and targeted).
  - (g) As a result of different inputs from different sources and providers, variability in data quality and therefore also functionalities (for example email threading or use of CAL – computer assisted learning - or TAR – Technology Assisted Review) that would ordinarily be available and are commonly used in Relativity disclosure projects being either not available or only partially available.
  - (h) The need to respond swiftly to incoming evidence requests as the Inquiry evolved, potentially led to a focus on responding to individual requests, whilst balancing the factors brought into play in all large disclosure exercises of scope vs time vs avoidance of irrelevant material etc.
  - (i) Practical difficulties in the use of search terms on issues which – necessarily – are not always easily defined – for example processes, bugs/errors/defects and other terms

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<sup>1</sup> A review workspace is the database that a legal team has to use for coding and so has to involve all of the necessary functionality. The exact size at which problems occur depends on the complexity of the coding. The Horizon issues involve highly complex coding due to the interaction between different issues under the ToR. For completeness a processing workspace (that used primarily by the e-disclosure provider for processing of data) can be larger as it does not involve that same level of necessary functionality.

used in a wide variety of contexts – some highly relevant to the Inquiry and others not so.

- 12 We are also mindful that the requests for information and documents relating to Phases 5 and 6 under Section 21 or Rule 9 will involve (given the wider scope of those Phases) necessarily wider scope than many of the requests in earlier phases<sup>2</sup>.
- 13 In the light of these factors, and the opportunity afforded to us to assess the position during the course of a transitional hand-over period, the structural review to which Diane Wills refers in her statement, is being taken forward by revisiting the EDM<sup>3</sup> (Electronic Discovery Reference Model) stages. The Inquiry will be aware EDM is the generally recognised global methodology for complex disclosure exercises. It involves looking separately at each of the key stages of identification; preservation; collection; processing; review; analysis and production. In practice that involves a system review of all sources of data and systems (electronic and hard copy), how they are being captured and processed. It will also involve looking at the viability (or not) and time involved (if viable) of restructuring the Relativity databases. That structural review is underway.
- 14 We are conscious that there has, for example been very intensive work ongoing on hard copy data repositories and that the Inquiry has received updates from HSF on this on 22<sup>nd</sup> August and on 31 August. The same confirmatory exercise is being carried out in relation to digital repositories and also the interactions between different systems.
- 15 This is to check, to the best level achievable, all of the relevant elements that make up POL's disclosure in the light of the factors summarised at paragraph 11 above: sources of data; types of data; those that have been successfully captured and those that remain to be captured for potential relevance to the remaining Phases of the Inquiry, how it is currently held and accessed in Relativity and whether this can be improved. Each of the implementation processes and actions (all of the stages in the chain of what is being done by whom) will be looked at to seek to reduce risks and make any achievable improvements.
- 16 This is being done mindful of the reality that the focus of attention and review to date evidentially has been on Phases 2-4. We do not have anything like the same level of knowledge and detail on those phases and related work as do HSF and therefore defer to them on that issue. However, from our understanding and involvement since our instruction our sense is that detailed and thorough searches and data collation have occurred in relation to those Phases. The focus in the review is therefore on Phases 5-7.

#### **The relevance of the review to POL's support for the work of the Inquiry**

- 17 The work on the review will of course continue in parallel with our work in responding to the live requests from the Inquiry and we do not anticipate it impacting negatively on that. However, the issues set out at paragraph 11 above add an additional layer of complexity to that work.
- 18 In terms of timing we anticipate that the review itself will take a number of weeks. If structural changes to the Relativity database are viable and bring material benefits, the scale of data and

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<sup>2</sup> For Phases 5 and 6, some difficult issues of without prejudice and other privilege (not solely within POL's power to waive) will also arise, in particular, in relation to the operation of the ICRMS. We will write very shortly to the Inquiry on that issue to explore how it should properly and most effectively be addressed.

<sup>3</sup> A visual is exhibited to Diane Wills' statement

<sup>4</sup> It is going to be applied here to both hard copy and electronic POL data sources.

- resulting processing time is likely to take 12-15 weeks. However, that structural work (if actioned) would be done in parallel with continuing review work in the existing system<sup>5</sup> and should not affect that continuing work.
- 19 The review work is required to be able to enable POL to comply with current requests of the Inquiry in relation to Phase 5 and future such requests. In particular, POL wishes to establish that all ascertainable data sources have been identified and collected to the full level reasonably achievable so that the review pool contains the source data potentially relevant to the specific request/requirement. The review work on the existing pool will continue whilst that is done in parallel.
- 20 The aim of the work will also be - as with any complex disclosure exercise - to inform the necessary interactions and balancing between different factors including resource, efficiency, and depth of review achievable relative to different timescales. Those factors obviously involve unavoidable choices in any review exercise - for example on depth achievable vs time available. The aim will remain that the support from POL to the Inquiry can be effective and efficient. However, the reality is that it will not be possible to mitigate all of the factors set out at paragraph 11 above. Many are historic matters inherent in a disclosure exercise of this nature.
- 21 The scale of POL's task in identifying and providing disclosure to the Inquiry in a way that meets the Inquiry's timetable has been and remains significant, for the reasons set out above. I explained at the outset of this letter that I wanted to set out a frank overview of the current position. All disclosure processes rely upon both technical and human inputs. They also require careful judgements to be made as they progress. Due to a combination of all of those factors, no disclosure process as large and complex as the one being conducted can be configured to produce every document that could potentially be relevant within in an organisation's custody and control. This is of course unfortunately the reality of large-scale searches where parameters have to be set; even when these are widely drawn to target and locate that which both the requesting and producing party are determined to find, the technical, system and human factors produce constraints.
- 22 Even with the changes that are likely to be put in place as a result of the structural review, that will remain the case and I think it is important to be direct and up front with the Inquiry about that.

By way of reassurance however, I confirm that POL and its legal advisors are devoting, and will continue to devote, very substantial resource and effort to ensure that it provides, as far as is reasonably achievable to do so, all relevant documents in response to the Inquiry's requests.

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<sup>5</sup> We understand that there may need to be a very short period of 'downtime' limited to 48 hours or so for migration at the end of the structural work only.

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I hope that the overview in this letter is helpful. I and BSFf colleagues would welcome the opportunity to engage with the Inquiry on the issues raised in any way which would assist. We hope that it will be possible to meet (formally and on a minuted basis) with the Inquiry team to discuss these important issues.

Yours sincerely

**GRO**

**Chris Jackson**

Partner  
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