

Witness Name: Richard Hugo Lyndon Morgan

Statement No: WITN08570100

Dated: 19 May 2023

## POST OFFICE HORIZON IT INQUIRY

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### FIRST WITNESS STATEMENT OF RICHARD HUGO LYNDON MORGAN

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I, **RICHARD HUGO LYNDON MORGAN, KC**, barrister, of Maitland Chambers, 7 Stone Buildings, Lincoln's Inn, London WC2A 3SZ, will say as follows:

#### Introduction

1. I am a barrister practising from Maitland Chambers at the above address, having been called to the Bar in November 1988 and appointed Queen's Counsel in 2011.
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 21 April 2023 ("**the Request**").

#### Privilege

3. In light of the content of correspondence I have had with members of the legal team for the Inquiry and my original Instructing Solicitors (Bond Pearce are now known as Womble Bond Dickinson (UK) LLP), I understand, and am proceeding

on the basis that, legal professional privilege in the matters addressed this witness statement has been waived by my original client, Post Office Limited (“POL”).

**Scope and content of the Request**

4. A number of the questions posed in the Request appear to me potentially to fall outside the scope of the Inquiry and the List of Issues produced within the Inquiry. I have, nevertheless, attempted to answer all the questions, but those answers are produced without prejudice to all lawful objections, which are expressly preserved should it become necessary or appropriate to make them.
5. I further note that some of the information sought should be contained in primary documents. In particular, I seem to recall that there were transcripts of the hearings in the matter upon which the Request is primarily focused, and they should provide a definitive record if they are still available. I apologise if my hazy recollection of events differs from the definitive record contained in the transcripts: if it has occurred, any such divergence is unintentional and is occasioned by an imperfect memory of the events in question.
6. In preparing this witness statement I was asked in the Request to consider a number of documents, most of which I do not remember or did not see at the time. I have listed in Schedule 1 to this witness statement the Unique Reference Number (“**the URN**”) of the documents provided to me so that a reader of this statement is informed of the documents considered and the evidence that I can offer on the basis of the information contained in those documents. Where the URN in the Schedule is in bold, the reference is to a document that also appears in the text below.

### **Professional background**

7. Having taken science "A" levels in 1981, I took a year off before starting University. I started a Physics Degree at Oxford University in 1982 but failed Physics Mods in 1983. I then did a 2 year law degree (LL.B) at the University of Buckingham, graduating with a 2:1 in 1985, and an LL.M at Cambridge University, graduating with a 2:1 in 1987.
8. I did my first 6 months of pupillage with Charles Flint KC and Ian Mill KC at the Chambers of Colin Ross-Munro at 2 Hare Court, and my second 6 months of pupillage with Catherine Newman KC at the Chambers of EWH Christie at 13 Old Square, one of the forerunner sets that went on to merge to form Maitland Chambers, and I have been a tenant in those, or the successor, Chambers since completion of my pupillage in 1989.
9. My practice has revolved around chancery, commercial and insolvency law, with an increasing focus on cross-border issues and freezing injunctions and litigation and arbitration both domestically and internationally. I have appeared in a number of jurisdictions overseas.
10. I have some limited knowledge of computers, computer networks and their operation, developed through personal interest, a temporary job prior to joining the Bar and from certain matters in which I have been instructed, including one matter concerning computer hacking that was resolved prior to 2006.

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11. According to a copy of a fee line retained on Chambers' diary system, I was instructed by Bond Pearce on behalf of POL at the end of November 2005 and

returned the trial bundles and most associated papers around the end of January 2007, and the last of my papers on the matter to Bond Pearce at the end of May 2008.

12. Along with old electronic files relating to other cases, those relating to this case were deleted by me sometime between 2015 and 2017.
13. In the circumstances I have retained no papers and have no access to historic electronic documents other than very limited legacy information relating to billing and diary entries, and accordingly save to the extent that specific documents have been drawn to my attention in the Request this statement is prepared to the best of my recollection of events taking place more than 15 years ago and without the benefit of the surrounding documents.
14. So far as I can recall, the case against Lee Castleton ("**the Case**") was the first occasion on which I was instructed on behalf of POL or any of the Post Office companies. I was instructed after the proceedings had already been ongoing for some time.
15. Having refreshed my memory from legacy records on the Chambers system, I can see that I had previously been instructed by Tom Beezer of Bond Pearce for an unrelated lay client before I was instructed on the Case. I seem to think I was instructed on the Case because of my relationship with Tom Beezer, developed whilst acting for the previous client.
16. The partner at Bond Pearce responsible for instructing me was Tom Beezer and his assistant was Stephen Dilley. There may have been other lawyers (whose names would presumably appear on the Bond Pearce documentation), but I cannot remember anyone else.

17. I do not now recall any specific or general instructions from POL in relation to Mr Castleton's case that any shortfall was entirely the fault of problems with the Horizon IT system, but my instructions can, no doubt, be ascertained by recovering from my solicitors a set of the Instructions sent to me. I was obviously aware it was Mr Castleton's case that the losses were caused by a problem with the Horizon IT system, and I think I would have known that from reading the Brief [POL00073008] from my Instructing Solicitors and the statements of case. I can't remember how or when I came to know about it, but I did seem to know that there were other cases where sub-postmasters were saying that there were problems with Horizon. I do not recall anyone ever identifying in any detail what the problems were or how they allegedly caused any losses.

18. Beyond being told that no-one had identified any problems with the Horizon system at Mr Castleton's branch, I do not independently recall being provided with any information about any investigations conducted by the Post Office or Fujitsu beyond that which was mentioned in the Brief and which subsequently appeared in the witness statements tendered on behalf of POL.

19. I was initially instructed after the first round of pleadings had closed at a time when Mr Castleton had entered a judgment in default on his counterclaim. I was asked to assist on an application to set that judgment aside, but that application was compromised before a hearing.

20. The claim against Mr Castleton was worth around £25,000, yet the costs and court time of bringing the claim to trial appeared to me to be out of proportion to the sum in issue. This was even more the case if any trial ultimately involved trying to explain the workings of a computer system where no particular fault was alleged

beyond a generalised allegation that the system was somehow generating discrepancies.

21. POL sought to protect itself in costs by making an offer under Part 36 of the Civil Procedure Rules and an attempt was made to have the case moved to a tribunal that was more appropriate for a trial of this value.

22. It seemed obvious to me that trying to prove forensically that an entire computer network operated properly was going to be a very difficult, if not impossible, exercise, and it also seemed that Mr Castleton had not identified any mechanism by which errors were allegedly being generated. The lack of any reason identified by Mr Castleton, or indeed anyone else, for any alleged errors meant that there was uncertainty as to whether anything could ever be proved for or against the accuracy of the Horizon system.

23. I have been asked to look at the following documents:

- a. A letter from Bond Pearce to my clerk dated 29 November 2005 **[POL00070446]**;
- b. the Brief to represent POL at a CMC before Master Turner dated 29 November 2005 **[POL00073008]**;
- c. emails from early December 2005 **[POL00070792]**, **[POL00070767]** and **[POL00070764]**;
- d. emails dated 18 January 2006 between Stephen Dilley and me **[POL00070969]** and **[POL00070978]**;
- e. an email from Stephen Dilley to me dated 25 January 2006 **[POL00070954]**;
- f. emails dated 7 February 2006 at **[POL00070928]**;
- g. an email from Stephen Dilley to me dated 6 March 2006 **[POL00070896]**;
- h. an attendance note dated 16 August 2006 **[POL00072741]**;

- i. an email from Tom Beezer to Mandy Talbot dated 21 August 2006 **[POL00071081]**; and
- j. an email dated 24 August 2006 **[POL00071040]**.

24. Looking at the various emails to which my attention has been directed, whilst I have virtually no recollection of the events set out, it looks like I advised that all the hardware from the branch should be identified and secured and both parties should have their appointed experts examine whatever needed to be examined so that they could work out if anything was going wrong. I am not sure whether or not that ever happened, but I seem to recall (although I am by no means sure) that I was told there was some progress in securing both hardware and historic versions of software.

25. Nevertheless, at a very high level, the issue in the Case was whether there was a discrepancy of around £25,000 between (i) the cash and stock Mr Castleton held at the end of the period when taken together with cash sent back to the Post Office and all other receipts received by the Post Office from the branch and (ii) the cash and stock that Mr Castleton was given at the start together with the cash and stock that he received whilst trading. If those cash and stock numbers could be established by reference to primary documents, then it was possible to prove what the correct figure for the closing balance should be forensically without reference to the Horizon system, and hence whether there was a real, as opposed to illusory, discrepancy.

26. I think some of the primary documentation prepared by Mr Castleton must have been provided to me at some point early on and I noticed that he signed off on daily and/or weekly figures (I cannot remember exactly what documentation was

produced, I only have some recollection that there was a body of accounting documentation, and there were some manuscript documents). It therefore seemed to me that the deficiency could be proved simply by adding up all the manuscript figures produced, and all the calculations signed off, by Mr Castleton and without reference to any records produced only by a computer.

27. Whilst thinking about that, and I can't remember why I knew it (perhaps another case on receivership accounts), but I recalled that there was a line of authorities in relation to accounts stated and settled accounts. When I researched that line of authorities, I realised that there was authority for the argument that if Mr Castleton was tendering his own figures to POL, he was vouching their accuracy. I therefore advised that we should re-align our pleaded case to take this point and we should try to establish the true trading position by reference to Mr Castleton's own documents (by which I mean documents produced and/or verified by Mr Castleton, rather than print outs from Horizon).

28. I seem to recall that this resulted in all the daily and weekly figures produced by Mr Castleton being collated and put in the trial bundle. My recollection now is that when one went through the figures produced or verified by Mr Castleton, without any reference to any unverified Horizon print outs, those showed that there was a discrepancy of around £25,000 as was claimed. If that was correct then either there was a discrepancy, or the manuscript figures produced by Mr Castleton were inaccurate, and I don't recall him ever saying that they were wrong. I should say that this is what I think now, and I also think it is what I thought at the time, but I cannot be sure. It is certainly how I recall going about preparation for the trial and spending days and days cross-referencing manuscript daily and weekly trading



records to typed pieces of paper so that I could take the witnesses and the Judge through the figures at trial if necessary.

29. I don't remember, but I see from emails, that I did see draft statements and made suggestions on them. I can't remember what those suggestions were. I must also have asked for more documents, for relevant hardware to be preserved, and for any backup copies of the software as it existed at the relevant times to be preserved. I think I also recognised in my own mind, and I think I told my Instructing Solicitors, that trying to recreate an entire hardware and software system to replicate what was in place at the time of the relevant events would probably be extremely difficult, if not impossible, and that I didn't see how I could prove that there were actual losses by reference simply to what a computer print-out said. Instead, I needed physical records of cash and stock in, cash and stock out, and a calculation at the end of the day for what should be left after it had all been taken into account. If that was done, then it seemed to me that the operation of the Horizon system was irrelevant.

30. I do not recall ever formally advising on the merits, although I did, I think, express an opinion, or opinions, close to trial that the loss could be proved. I do not recall ever being asked formally to advise on the evidence, although I did review the witness statements from both sides, along with all the material in the trial bundles. I do not recall ever being asked to advise on disclosure generally, nor on any specific issues, but then again I do not really remember much at all about what happened at that time.

31. I did advise on strategy (as outlined above) and in the course of the trial itself I think there was at least one discussion, and probably more, when I discussed with solicitors and POL whether it was necessary to call as a witness anyone from

Fujitsu or the Post Office Horizon Team. My dim recollection is that we agreed that it probably was not necessary to call anyone from those groups but that it was more transparent if they were at least offered for cross-examination, and I think that is what happened.

32. I have read a copy of the email at [POL00071081] and the third paragraph from the bottom of the final page of the attendance note dated 18 August 2006 at [POL00072741]. I cannot now recall why I might have been raising a point about the integrity of the Fujitsu product generally.

33. I do remember spending time thinking about how to prove the claim and how one would go about proving that the Horizon system was producing the correct figures. I do not remember when I spent that time, but I think it must have been before the conference on 18 August 2006. It struck me that one would need to have a complete understanding of the network and how the relevant nodes operated when running the software that had been used at the time Mr Castleton was in post. I think I thought that even if the network could be reconstituted, I could not prove that it was impervious to external modifications (by which I mean hacking, unauthorized alteration, etc). I was generally concerned that if I was going to have to prove the case by reference to Horizon logs, I wanted to know whether there were possible ways that the system could be manipulated and I wanted to understand whether there was a context in which any other, and if so how many, incidents had been reported. I don't recall ever being told that there were any incidents or weaknesses and the issue seemed to fall away in any event when the pleading was amended to rely on Mr Castleton's own accounts. I therefore never did get instructed on the detailed operation or workings of Horizon.

34. I have no recollection of any wider concerns by POL about the Horizon System being mentioned to me, nor do I remember any occasion when settlement was suggested on the basis of any such (unexpressed) concerns. I sought to encourage POL to settle with Mr Castleton simply because the value of the claim was small in comparison to the costs that would be incurred and not because I was aware of any concerns about the Horizon System. As I hope is clear, the operation of the Horizon System appeared to me to be entirely divorced from the merits of the claim against Mr Castleton when based on his own records of account.

35. I have been asked to look at the following documents:

- a. Claimant's Statement of Claim dated 25 May 2005 [**LCAS0000859**];
- b. the undated Amended Statement of Claim [**LCAS0000811**];
- c. the Defence and Counterclaim dated 15 August 2005 [**LCAS0000624**];
- d. the emails dated 23 August 2006 at [**POL00071053**];
- e. the Amended Particulars of Claim by order of Master Turner dated 23 October 2006 [**LCAS0000295**];
- f. the Re-Amended Reply and Defence to Counterclaim amended pursuant to the order of Master Turner dated 23 October 2006 and pursuant to the agreement of the Defendant [**LCAS0000190**]; and
- g. the Amended Defence and Counterclaim dated 7 November 2006 [**LCAS0000294**].

36. I had no involvement drafting the Statement of Claim dated 25 May 2005 or the undated Amended Statement of Case. I settled the Amended Particulars of Claim and the Re-Amended Reply, and although I have no specific recollection I would have done so by considering the primary materials that had been provided to me

with my instructions, confirming with my Instructing Solicitors the client's approval to my suggested approach and that the claim as it was to be amended reflected the way they wanted the case to be advanced, and then I would have set about making the amendments. I do not recall receiving any instructions that the claim should or should not be run in any particular way other than in accordance with the advice that I gave.

37. I have been referred to the following documents:

- a. Emails dated between 6 and 22 December 2005 **[POL00071003]**;
- b. emails dated 21 December 2005 from Julian Summerhayes **[POL00071010]** and **[POL00071011]**;
- c. emails dated 21 and 22 December 2005 **[POL00071004]**;
- d. emails dated between 21 and 23 December 2005 **[POL00071002]**;
- e. an email from Julian Summerhayes dated 23 December 2005 **[POL00071011]**;
- f. an email from Stephen Dilley dated 25 August 2006 **[POL00071033]**;
- g. an attendance note dated 11 September 2006 **[POL00069622]**;
- h. emails dated 13 to 27 September 2006 **[POL00069555]**;
- i. an email from Stephen Dilley to me dated 29 September 2006 **[POL00069528]**;
- j. an attendance note dated 3 October 2006 **[POL00069513]**; and
- k. an attendance note dated 7 November 2006 **[POL00072675]**.

38. I have no direct recollection of any involvement with production of witness statements in this case. The evidence that I now set out is based entirely on the documents to which I have been referred in the Request. It looks as though I received draft witness statements and commented or suggested that further

questions be asked of the witnesses, and that would be how I would usually have worked in relation to witness statements. I notice that in some of the email chains there were attachments where I had added comments and questions, but those attachments have not been provided to me and I am unable to remember anything about what I might have been focusing upon.

39. I notice a number of emails identified in in the material provided to me do not include me amongst the recipients. Since I did not apparently see them at the time, I cannot really give any evidence in relation to them.

40. I have checked my Chambers' diary and can see that I had a long conference on 11 September 2006, and that correlates with the email correspondence and a Bond Pearce attendance note that suggests that I met witnesses on that occasion for them to explain their witness evidence to me.

41. In reviewing the witness statements, I suspect, although I cannot now recall, that I would have been wanting to check that each and every step of the process of delivering and receiving stock and payments was proved. I cannot, however, remember now anything at all about the details.

42. I have no recollection of Ken Crawley or the matters being discussed in Stephen Dilley's email at [POL00069601]. I cannot give any evidence about what Mr Dilley was thinking other than what is reflected on the face of that email.

43. I thought it was difficult to prove a loss only by reference to the Horizon IT System because in oral argument at trial I would be able to do no more than point to a computer print out and say that the print out showed that there was a loss. To my mind that did not prove a loss, it only proved what the sum of the figures produced by a machine showed when a calculation was undertaken and what figure was produced as a result of that calculation.

44. In order formally to prove a loss, I wanted to be able to deploy the best primary evidence of what had been received at the branch, what had been received from the branch, and what remained at the branch, and then show that there was a difference between the totals.
45. Given that there were no photographs or videos to prove transactions, the next best thing was the physical records produced or verified by Mr Castleton himself showing receipts and payments, the stock and cash levels and the balance each day (I think) and each week. Based on the various legal authorities cited at trial, those records were at least probative, and probably determinative, as against Mr Castleton.<sup>1</sup>
46. That was the approach that was ultimately adopted in deploying POL's case, and it is reflected in my skeleton argument for the trial at [POL00069911] and was ultimately accepted by the Judge in his Judgment of 22 January 2007 ("**the Judgment**"). As I recall it, it was also the approach I was advocating in August 2006.
47. I did not consider any legal argument on the burden of proof that the sub-postmasters were required to sign off on, or balance, the accounts in order to continue trading. However, I do not recall that this was raised as a defence by Mr Castleton and at this point in time I do not even know if that was the case as a matter of contract between POL and Mr Castleton. I seem to recall that at no point did Mr Castleton ever suggest or accept in cross-examination that he was

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<sup>1</sup> In the event that they were challenged, then the amended relief sought in the Amended Particulars of Claim included the taking of a formal account which would, had it been necessary, have resulted in a judicial determination of any balance due at the conclusion of a trial of all entries, line by line, in a formal account that Mr Castleton would have been obliged to produce.

producing and signing off false statements of account, whether voluntarily or because he was somehow obliged to do so. Mr Castleton's position on the accuracy of his own figures is reflected in the last sentence of paragraph 11 of the Judgment where the Judge observes that Mr Castleton's own figures actually correspond with those produced by the Horizon system.

48. To the best of my recollection, which is extremely hazy, I think I thought that it was always possible for someone to alter the data recorded on any unsecured electronic device, although I thought it was also then possible that there might be some electronic data showing when and how the change occurred. I think that understanding was from personal knowledge and experience rather than something that I was told by POL.

49. I have absolutely no idea why or by whom the Castleton case was considered a test case – although I note that Mandy Talbot apparently said it had "*almost become a test case in spite of itself*" on page 5 of the attendance note of the con on 11 September 2006 at [POL00069622]. As far as I was concerned, it was a single case to be decided on its own facts, as with every other case. I did not adjust the issues to run it as a "test case", nor was I asked to run it as a test case for anything (I was only ever instructed to bring a claim to recover amounts owing). The Case was not presented to the Court as a test case, and in my view the Judgment does not read as if the judge treated it as a "test case" of anything.

50. After all these years my recollection of what was being discussed on pages 4 and 5 of the note at [POL00069622] is no more than impressionistic. That impression was that there had been one or two occasions when something catastrophic had happened and all data had been lost, that there were 3 or 4 sub-postmasters who had complained about a problem but there did not seem to be anything in their

complaints, and that there was nothing to suggest that there were any Horizon issues at Mr Castleton's branch. I did not get the impression that errors with Horizon were the cause of any problems. In any event, my case strategy was independent of any reliance on records from the Horizon system that had not been personally vouched by Mr Castleton.

51. I have looked at an email dated 28 September 2006 [**POL00069537**] but have no recollection of what was being discussed. Reconstructing the position now in my mind, I suspect what was going on was that there was no single witness who could say, from their own knowledge, that there was a loss of £x, and that the figure for the loss could only be arrived at by getting a number of different bits of evidence from different people and then submitting to the Court that the consequence of the totality of that evidence was that the loss was proved.

52. I have no idea what the tactical position of POL was in this litigation or what reasoning was behind it. I advised explicitly that the costs were going to be out of all proportion to the amount at stake, but I continued to be instructed to progress the matter to trial. I think I even advised that a drop hands settlement should be attempted, but that does not seem to have been taken up. I do not recall ever asking why POL was pursuing the Case nor do I recall ever being told: I had given what I considered to be best advice and was instructed to continue to prepare a case for trial where that case apparently had merit: in the circumstances I was in no position to refuse my instructions. When in late October it appeared that Mr Castleton might apply for an adjournment because his case appeared not to be ready for trial, I advised that we should try to hold the trial date and I think that was because if there was an adjournment that would simply increase the already disproportionate costs and make the risk/reward ratio even worse.



53. I have looked at [POL00069450] and the reference to "...brinkmanship and trial etc etc", however, I cannot remember what the reference to brinkmanship was actually about or indeed whether that was Mr Dilley's description of the approach or a phrase I had used, but I think it may have been that Mr Castleton had been making generalised allegations about everything being the fault of Horizon but never identifying what specifically was wrong. I think there may also have been a suggestion that Mr Castleton hoped to get an expert to support his position, but nothing had happened. In the meantime, as I have already said above, substantial costs were being incurred, and they would only increase the longer a trial was delayed. Obviously, POL wanted an opportunity to consider and answer any expert evidence from Mr Castleton, but unless and until a trial was imminent, it did not appear that that aspect of his case would ever be focused upon. The intention was therefore either to have a trial in December 2006 on the evidence as it stood, or to seek an adjournment if, but only if, Mr Castleton finally clarified his case. This all seems to be borne out by what is recorded as having been said by me on page 2 of the attendance note of the hearing before Master Turner at [POL00072523].

54. In relation to the email from Stephen Dilley dated 31 October 2006 [POL00069404], I have no recollection of the conversation, circumstances or issues described in it. I have also read the Second Witness Statement of Gregory Booth at [LCAS0000471] and note that it clearly identifies the facts in relation to his problem with Horizon. On the basis of this statement, I think I would have thought that the matter was fairly disclosed and I would not have thought it impacted on the case against Mr Castleton as proof of the loss was to be based upon his own signed documentation.

55. After this length of time I simply cannot remember what expert evidence was obtained and what expert evidence was disclosed by Mr Castleton to POL. I would assume that written records were maintained by my Instructing Solicitors and they might be able to answer this question, but I am unable to assist.

56. I do not recall Mr Castleton relying on any expert evidence at trial, but, again, a review of the transcript of the hearing would confirm the position one way or the other. I note that no mention is made in the Judgment of expert evidence being adduced.

57. I have a vague recollection of enquiries being made of experts. So far as I can recall, the evidence was sought because it would assist in understanding the strengths and weaknesses of POL's case, and it would be necessary to address any expert evidence adduced by Mr Castleton. However, to the best of my current recollection, Mr Castleton never served any expert evidence and accordingly no expert evidence in answer was needed. I cannot now recall whether any and if so what expert evidence was finalised or served by POL for use at trial: again, this is a point that can be clarified by reference to any documents retained by my Instructing Solicitors and any transcripts of the hearing. From the contemporaneous documents provided to me it appears that no expert evidence was ever finalised for POL, but I cannot help with any answer as I have no actual recollection.

58. At this point in time I have no recollection at all of the "£3,500" point referred to in an attendance note dated 1 December 2006 [**POL00069871**], even after refreshing my recollection by looking at the documents identified in the Request. As an overall recollection of the trial, my impression is that after a lot of work going through the witness statements and all the documents in the trial bundles I was able to

understand and explain each and every entry and prove the total deficiency. However, at this point in time I simply cannot remember a specific line entry or how it was addressed.

59. I have been referred to POL's note of the trial prepared by Thomas Bourne [LCAS0000444] and have been asked to comment on whether POL continued to rely on John Jones' evidence, in particular paragraph 12 of his second witness statement [LCAS0000113] notwithstanding paragraphs 2.2.1(e) and 7.1.5 of the draft BDO report of 29 November 2006 at [POL00069955]. I have no recollection of the evidence of John Jones and paragraph 12 of his second witness statement to which I am referred does not appear to address issues that correspond with those appearing in paragraphs 2.2.1(e) and 7.1.5 of the draft BDO Report of 29 November 2006 [POL00069955] (indeed so far as I can see there is no paragraph 2.2.1(e) in that report). I also have no recollection of the detail of the draft BDO Report, nor do I have any recollection of even seeing it at the time. Nevertheless, I can see from the note of the trial at [LCAS0000444] from page 72 that John Jones was sworn and proved his statements with certain corrections, and on page 73 I apparently took him to the £3,533.30 figure (although I have no recollection of the events recorded). That record indicates that POL did continue to rely on the evidence of John Jones, and Mr Jones confirmed that his evidence was true. As for disclosure or reliance on the draft report at trial, as I have already said, I do not remember even seeing it and I cannot now recall any directions for expert evidence to be adduced. However, as a general observation, my understanding at the time would have been that there was no obligation in civil litigation to disclose draft witness or expert statements, nor was there an obligation to disclose finalised expert statements, even if adverse.

60. I have been referred to Stephen Dilley's email dated 8 September 2006 [POL00069599] and another email at [FUJ00122333] (plus attachments at [FUJ00122334] and [FUJ00122335]). Again, aside from the fact that I have now seen what is written in the email and the witness statement and exhibit of Mr Andrew Dunks (neither of which I recall), I have no recollection of any interactions with Fujitsu.

61. As regards Gareth Jenkins and Anne Chambers, I remember the names and I think that Anne Chambers was a witness at the trial, as appears to be confirmed in paragraph 23 of the Judgment. I do not remember anything more than that, really, and I could not now say what role they had or what their involvement, abilities or knowledge of bugs, errors or defects might have been. I do not remember Penny Thomas at all.

62. My thinking and case strategy were formed on the basis of the case on which I was instructed, namely POL v Castleton, and they were not affected by other cases. I was not told there were any inherent problems with the Horizon system, nor was it ever suggested or requested that I should avoid reliance on the Horizon system. My strategy for the case was based solely on my analysis of the best way to prove the loss forensically. I had the documents that were in the trial bundle, the contract to which Mr Castleton was a party, and the legal argument deployed in my skeleton. On the basis of the documents signed by Mr Castleton, it seemed to me that what may or may not have happened elsewhere was unlikely to affect the outcome in this case. I have read the attendance note at [POL00070137]. I do not remember the events recorded in it (or in the other documents to which my attention was drawn), but I have no reason to doubt the accuracy of what is said there. I note that the Judge also considered the relevance of alleged issues with

the Horizon system arising at other branches and ruled on such at paragraph 22 of the Judgment.

63. I have no recollection of settlement discussions before trial: so far as I can remember anything at all, I think they were conducted without my involvement save to the extent that I was asked to convey the position of POL to my opposing Counsel, and save that I very likely expressed a very firm belief that the case should be settled because even the irrecoverable legal costs on both sides were out of all proportion to the amount at stake. I do not now recall being asked to express any view on any undertaking by Mr Castleton not to repeat allegations or make any further allegations regarding the Horizon system, and I do not recall ever being involved in discussions about whether that was important to POL. I cannot now recall anything about any confidentiality clause or whether it might have been important to POL, but I note from [POL00069763] that Mr Dilley did not think that the Tomlin Order needed a confidentiality clause.

64. I have read the emails from November 2006 at [POL00069766], [POL00113911], and [POL00069756]. I have a vague recollection that Mr Castleton was said to be unwell, but I do not recall ever being asked to express any opinion or give any advice on what to do. As far as I recall, the relationship with Mr Castleton was handled by my Instructing Solicitors or people at POL.

65. I have considered the document at [POL00069910] and have no recollection of the PTR on Monday 27 November 2006 and I have no recollection of any instructions on the stance POL wished to adopt in relation to Mr Castleton's application to adjourn the trial. However, it is clear from the email from Mark Turner, Mr Castleton's then solicitor, at [POL00069756] that, having spoken to Mr Castleton's doctor, he believed Mr Castleton had capacity and was able to give instructions. It

also appears from page 1 of the attendance note of 1 December 2006 [POL00069871] that Mr Castleton's own doctor had said to Mr Turner that Mr Castleton was well enough to attend trial (although that was not a document that I apparently saw). I have no recollection of how the application for an adjournment was made or whether I even knew that it was going to be made, but it may just have been made orally by Mr Castleton at the hearing and I am not even sure I made any submissions (but it is fair to say that I actually don't remember anything at all about the hearing). I do not remember Mr Castleton ever seeming to be ill or more stressed than a normal litigant at the PTR or at the trial. I seem to have some vague recollection that I talked to him outside Court before the trial began and explained to him how I would help him by explaining the case neutrally to the Judge and that if he needed a break to let me know. I do not recall him ever saying to me personally that he did need a break or that he could not go on. I also do not recall him identifying to the Judge any similar issue or need during the course of the trial.

66. I have read paragraphs 67 and 68 of Mr Castleton's Witness Statement dated 13 May 2022 at [WITN03730100].

67. At paragraph 66 Mr Castleton refers to arriving at Court "*on the Monday*" and at paragraph 67 he says that the judge "*decided to start that Wednesday*". I can see from my Chambers' diary that the hearing of the PTR was Monday 27 November 2006 and the first day of the hearing was Monday 4 December 2006. I therefore assume that the reference to "*the Monday*" was to Monday 4 December 2006, the first day of the trial.

68. I have no recollection of the conversation that is said to have occurred or of allegedly providing him with his "court bundle" and I find what is alleged hard to reconcile with any reconstruction of what might have happened.

69. As far as I can recollect, I think all the hearings took place at the Technology and Construction Court (the “TCC”) which was then located in Clifford’s Inn on Fetter Lane. I cannot specifically recall those days in November and December 2006, but I find it hard to believe that I would have attended at Court for a trial commencing on Monday 4 December 2006 knowing that Mr Castleton was going to be there but leaving any bundle for him for that trial back in Chambers.

70. Secondly, my recollection is that the court bundle, far from being a single bundle, was perhaps 10 or so lever arch files. I also note from the telephone attendance note dated 1 December 2006 at [POL00069871] that Mr Dilley records a telephone call with Mr Castleton that morning in which Mr Castleton confirmed that he had received the bundle and that Mr Dilley asked him to check carefully and immediately let him know “*if he hadn’t received any of them*” (which suggests that this was the trial bundles, plural).

71. Thirdly, save for conversations with opposing counsel (and even then I try to have a witness present if possible) my practice has always been never to talk to anyone, be they my lay client, a witness or a representative of the opposition, unless that conversation can take place in the presence of my Instructing Solicitor.

72. Fourthly, I cannot imagine walking back from the TCC on Fetter Lane to Chambers in Lincoln’s Inn whilst being accompanied by a lay opponent but not also being accompanied by my Instructing Solicitor: indeed, having been at the TCC with my Instructing Solicitor, I cannot imagine why he would not then have dealt with provision of bundles himself without my involvement, given that it is no part of my instructions to get involved in serving bundles.

73. Fifthly, Mr Castleton says “*When we arrived there he pulled me aside*”, suggesting that his version is that we travelled there together. Yet having walked back to my

Chambers, there is nowhere, location wise, for me to have "*pulled [Mr Castleton] aside and told [him] not to go on Wednesday.*" The corridor to my room had a security lock on it and I would not allow a member of the public access to that, and I cannot imagine a conversation taking place in the reception area to Chambers. I also cannot imagine from whom, or why, I might have needed to "*pull Mr Castleton aside*": it simply makes no sense to me that I would have wanted or needed to pull him aside, as I would have wanted any conversation to be as public as possible for precisely the reason that any private conversation runs the risk of a dispute over whether anything, and if so what, was said, as now appears to be occurring, albeit 17 years after the event.

74. Finally, I doubt I would have told Mr Castleton to meet me outside my Chambers to give him his court bundle, even had it been a single bundle and even if I had been in the position of having Mr Castleton's bundles delivered to me by my Instructing Solicitors (and I have no idea why they would have done that). I would not want to wait around outside chambers for someone to turn up, far less stand there outside with a set of bundles in December, and particularly when that is something that could be dealt with perfectly well by my clerks and Chambers' receptionists.

75. As I have said, I have no recollection of the alleged conversation, and for the reasons set out above, I would be surprised if it took place as described. Any conversations that did take place would, I expect, have taken place with my Instructing Solicitors present.

76. In the circumstances, Mr Castleton's evidence differs from my recollection, my belief as to the likelihood of what he says having occurred and my reconstruction of the possible scenarios.



77. So far as I am able to remember, I did not provide Mr Castleton with a copy of his bundle or bundles, nor did I meet with him, either inside or outside Chambers, in December 2006, nor did I pull him aside, nor did I have the alleged conversation with him on that or any other occasion. In the circumstances I cannot provide an account of the alleged conversation with him. I have no knowledge whether anyone else met with Mr Castleton to provide him with any bundles, or if so who they were or when and where they met him. I just do not think that was person was me.

78. In the circumstances, I currently believe Mr Castleton is regrettably mistaken in his recollection and his account is not accurate.

79. Save to the extent that there was mention in some of the emails at the time of my instruction to error messages that had occurred in the past in relation to the operation of Horizon at one or two other branches for reasons that were identified (and I can't recall anything beyond what is said in the emails to which my attention has been drawn), so far as I can now recall I did not at the time, and do not now, have any knowledge of any alleged bugs, errors or defects in the Horizon IT system, other than that I now know that Mr Justice Fraser has made certain findings in relation to that system. Put the other way round, had I known at the time of alleged bugs, errors or defects in the Horizon IT system then I am sure that I would still remember knowing of them, but, as I have said, I do not. I do know that Mr Castleton said that other sub-postmasters had made complaints about the operation of Horizon and the Judge addressed that issue in paragraph 22 of his Judgment.

80. I had, and have, no reason to believe anything other than that POL, with the assistance of my Instructing Solicitors, gave proper disclosure in accordance with

the Civil Procedure Rules. So far as I can recall (and I am sure that I would recall, had it occurred), nothing ever came to my attention, either before or after the trial, that had not been disclosed and that I believed should have been.

81. Regarding pages 47 to 48 of the transcript of the Inquiry hearings from 19 May 2022 **[INQ00001025]**, I do not recall saying the words Mr Castleton attributes to me and I don't believe that I would have said them as it was not part of POL's pleaded case and there was no advantage in making the allegation. I note in passing that the end of paragraph 3 of the judgment of His Honour Judge Havery Q.C. dated 11 January 2007 records correctly that I, on behalf of POL, disclaimed any dishonesty on the part of Mr Castleton, and that position is therefore established definitively as a matter of public record. However, if necessary or appropriate the matter can, no doubt, be established by calling for a copy of the transcript and seeing what was actually said by whom, to whom and in what context. In the circumstances, I currently believe Mr Castleton is mistaken in his recollection.

82. I have been asked to consider the following documents:

- a. A letter from Stephen Dilley to me enclosing Tivoli events logs dated 22 December 2006 **[POL00072516]**;
- b. an email from Stephen Dilley to me dated 3 January 2007 **[POL00070062]**;
- c. a letter from Stephen Dilley to Lee Castleton dated 4 January 2007 **[POL00071881]**;
- d. a draft letter from Stephen Dilley to Lee Castleton dated 8 January 2007 **[LCAS0000478]**;
- e. an email from Stephen Dilley to Mandy Talbot, copied to me and others dated 8 January 2007 **[POL00070049]**;

- f. an attendance note dated 8 January 2007 [POL00070050];
- g. a letter from Stephen Dilley to me enclosing further copy of Tivoli events logs dated 9 January 2007 [POL00072541];
- h. an email from Stephen Dilley to Mandy Talbot, copied to me and Tom Beezer dated 9 January 2007 [POL00081865]; and
- i. and email from Stephen Dilley to Mandy Talbot on 12 January 2007 at [POL00073768].

83. I have no recollection of the Tivoli logs or what Mr Castleton thought those logs were meant to show or how they were relevant to Mr Castleton's case. So far as I recall, my case strategy throughout the trial had been to base POL's proof of the loss on records produced, or whose accuracy had been verified, by Mr Castleton personally. My recollection now is that Mr Castleton's position at the time was that his figures were true and accurate. My recollection at this point in time is that I did not understand the case being made by Mr Castleton or how he could say that there was no loss if his own figures were accurate.

84. I have no clear recollection, but I do vaguely recall that the trial was re-opened for further cross-examination of witnesses. I see from the documents identified to me that those 2 witnesses were said to be Anne Chambers and Ruth Simpson. I have no recollection of the topics upon which they were examined, but from the preceding email traffic it seems reasonable to suppose that it was something to do with the Tivoli events log (the purpose and content of which I cannot remember). Again, if this point is important to the Inquiry, it can no doubt be established definitively by reference to the transcript of the hearing.

85. In terms of the overall picture in this case, as far as I can recall I was comfortable at the time with the advice that I gave, and that was accepted, to seek to prove

POL's case as an account stated by reference to Mr Castleton's own signed accounting records, and in the alternative for an account to be taken by the Court.

I have not seen anything since to change that view.

86. I suppose that, had I been really aggressive in my advice and conduct of the case, I would not have called any witnesses at all for POL, but then I suspect I would have been criticised for (supposedly) trying to hide the impact of Horizon and/or deprive Mr Castleton of his day in Court and his opportunity to make his case that somehow the problems all lay with Horizon.

**Involvement in / advice on other civil cases against SPMs**

87. I have gone back to my Chambers' diary and my fee notes to try to remind myself of what happened and when after the Case concluded. Regrettably, over the past 17 years the data from 2006 and thereafter has been migrated onto at least one new platform and some of my records are not intelligible to me. I therefore provide this answer on a very impressionistic level of what I vaguely recall happening by reference to some diary entries.

88. I think the fee line entry for my Advice identifies that it was sent out on 22 January 2007 [POL00090437]. I think (but I may be mistaken) that I had a conference with representatives of POL after that, and my hazy recollection is that it was bright and sunny, from which I think it might have been in the spring or summer time, presumably of 2006, but I can find no fee line entry. It is possible that it was immediately after judgment was delivered, but I really cannot be sure.

89. My impressionistic recollection is that, at that conference, I was asked something along the lines of, how should POL manage their systems in order to rely on the judgment? My recollection of my advice was that the only way to be confident of

being able to prove anything was to require each sub-postmaster to maintain and sign their own physical records and accounts.

90. I should emphasise that this recollection is very, very vague and I cannot be sure that I have not over the years created a memory from another meeting and superimposed the gist of my written Advice, but this is what I think happened to the best of my recollection. Given the absence of a fee line entry, I also cannot be sure of the timing of any meeting, even if it did take place, unless it took place on the day judgment was handed down.

91. According to my Chambers' fee note system, I received the following other sets of instructions on behalf of POL:

- a. On 3 April 2007 in a matter called Post Office v Aslam, where I considered the papers and advised Mr Bellgrove (who I do not remember) by telephone once. Nothing further seems to have happened. I have no recollection at all as to what it concerned.
- b. On 4 December 2007 in a matter called Mr Bilkhu v Post Office Limited. Apparently, I had a telecon and settled draft Particulars of Defence and Counterclaim on 6 December 2007 and gave some further advice in January 2008, but that appears to be the limit of my involvement in that case, and I have no recollection at all as to what it concerned.
- c. On 19 October 2011 I received instructions in a matter called Scott Darlington & Ors v Post Office Ltd. Although I have no recollection of the matter, I appear to have advised in a 2-hour consultation on 26 October 2011 and again on 12 December 2011, but no hearing appears to have then taken place, I had no further involvement, and I have no recollection at all about this matter.

- d. On 29 November 2011 I received instructions in a matter called Prosser v Post Office Ltd. I gave some preliminary advice in 2 calls which I cannot remember, and my clerks gave a fee quote for attending the hearing of an appeal in Cardiff for which I was not subsequently instructed. Nothing further appears to have happened on this matter, and I cannot remember anything about this case.
- e. On 12 June 2012 I had a very short consultation (it looks like it may have been only 30 minutes) on something where I don't even appear to have received any papers. The matter is entitled simply Post Office and there are no other fee line entries for work done. I have no recollection of the matter.
- f. On 20 March 2014 I was contacted by Linklaters to advise Post Office Limited. My records show 3 short telecons, although I think (although I might well be mistaken) that I had also had a short in person consultation with Christa Band of Linklaters and Paula Vennels of POL (I can find no fee line entry for this). I have no specific recollection of what was happening beyond thinking that I was asked what could POL do about any arguments being raised in relation to the accuracy of the Horizon system, to which my answer was that they should follow the Advice that I had given in 2007 and keep a physical paper trail of accounts signed by the sub-postmaster. Given that I can find no record in my diary, I should emphasise that this memory of a meeting and the identity of the participants may be a "false" memory, possibly something I reconstructed having been told there would be a meeting. As of now, I am really not at all sure that a physical meeting ever took place, and given the absence of a fee line entry I think it is more likely

than not that my memory is mistaken and that my involvement extended no further than telling Christa Band what I would say in consultation.

**Other matters**

92. I have been asked whether there are any other matters that I would like to bring to the attention of the Chair of the Inquiry. In recent years I have seen various books, articles and comments online that make reference to the *Post Office Limited v Castleton* case. The general assumption in those materials seems to be that, in some way, the operation of the Horizon IT System was an issue in the Case that led to judgment being given in favour of POL. However, a review of the pleadings, the witness statements and the judgment should provide enough information to confirm that the case in fact turned on Mr Castleton's own signed books, records and accounts produced by him as the agent of POL.

**Statement of Truth**

I believe the content of this statement to be true.

Signed: **GRO** \_\_\_\_\_

Dated: 19 May 2023

Schedule 1

1. [FUJ00122279]
2. [FUJ00122280]
3. [FUJ00122281]
4. [FUJ00122282]
5. **[FUJ00122333]**
6. **[FUJ00122334]**
7. **[FUJ00122335]**
  
8. **[INQ00001025]**
  
9. **[LCAS0000113]**
10. [LCAS0000122]
11. **[LCAS0000190]**
12. **[LCAS0000294]**
13. **[LCAS0000295]**
14. [LCAS0000428]
15. **[LCAS0000444]**
16. **[LCAS0000471]**
17. **[LCAS0000478]**
18. **[LCAS0000624]**
19. **[LCAS0000811]**
20. **[LCAS0000859]**
21. [LCAS0000945]
22. [LCAS0000974]
  
23. [POL00021678]
24. **[POL00069404]**
25. [POL00069431]
26. **[POL00069450]**
27. [POL00069469]
28. [POL00069470]
29. [POL00069490]
30. **[POL00069513]**
31. **[POL00069528]**
32. **[POL00069537]**
33. **[POL00069555]**
34. [POL00069592]
35. **[POL00069599]**
36. **[POL00069601]**
37. [POL00069603]
38. [POL00069612]



- 39. [POL00069613]
- 40. [POL00069618]
- 41. **[POL00069622]**
- 42. [POL00069651]
- 43. [POL00069672]
- 44. [POL00069720]
- 45. [POL00069724]
- 46. [POL00069752]
- 47. [POL00069754]
- 48. **[POL00069756]**
- 49. **[POL00069763]**
- 50. **[POL00069766]**
- 51. [POL00069771]
- 52. [POL00069779]
- 53. [POL00069782]
- 54. [POL00069783]
- 55. [POL00069794]
- 56. [POL00069796]
- 57. [POL00069798]
- 58. **[POL00069871]**
- 59. [POL00069910]
- 60. **[POL00069911]**
- 61. [POL00069951]
- 62. [POL00069954]
- 63. **[POL00069955]**
- 64. [POL00069968]
- 65. **[POL00070049]**
- 66. **[POL00070050]**
- 67. **[POL00070062]**
- 68. [POL00070126]
- 69. [POL00070133]
- 70. [POL00070135]
- 71. **[POL00070137]**
- 72. [POL00070139]
- 73. [POL00070175]
- 74. **[POL00070446]**
- 75. **[POL00070764]**
- 76. **[POL00070767]**
- 77. **[POL00070792]**
- 78. [POL00070824]
- 79. **[POL00070896]**
- 80. **POL000070928]**
- 81. **[POL00070954]**
- 82. **[POL00070969]**
- 83. **[POL00070978]**
- 84. [POL00071001]
- 85. **[POL00071002]**
- 86. **[POL00071003]**
- 87. **[POL00071004]**

- 88. [POL00071010]
- 89. [POL00071011]
- 90. [POL00071033]
- 91. [POL00071040]
- 92. [POL00071053]
- 93. [POL00071065]
- 94. [POL00071081]
- 95. [POL00071118]
- 96. [POL00071438]
- 97. [POL00071597]
- 98. [POL00071650]
- 99. [POL00071881]
- 100. [POL00072516]
- 101. [POL00072523]
- 102. [POL00072541]
- 103. [POL00072741]
- 104. [POL00072675]
- 105. [POL00072741]
- 106. [POL00073008]
- 107. [POL00073744]
- 108. [POL00073757]
- 109. [POL00073768]
- 110. [POL00081865]
- 111. [POL00090437]
- 112. [POL00113911]
  
- 113. [WITN03730100]

List of URNs for documents referred to in statement

1. [FUJ00122333]
2. [FUJ00122334]
3. [FUJ00122335]
  
4. [INQ00001025]
  
5. [LCAS0000113]
6. [LCAS0000190]
7. [LCAS0000294]
8. [LCAS0000295]
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20. [POL00069555]
21. [POL00069599]
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23. [POL00069622]
24. [POL00069756]
25. [POL00069763]
26. [POL00069766]
27. [POL00069871]
28. [POL00069911]
29. [POL00069955]
30. [POL00070049]
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40. [POL00070954]

- 41. [POL00070969]
- 42. [POL00070978]
- 43. [POL00071002]
- 44. [POL00071003]
- 45. [POL00071004]
- 46. [POL00071010]
- 47. [POL00071011]
- 48. [POL00071033]
- 49. [POL00071040]
- 50. [POL00071053]
- 51. [POL00071081]
- 52. [POL00071881]
- 53. [POL00072516]
- 54. [POL00072523]
- 55. [POL00072541]
- 56. [POL00072741]
- 57. [POL00072675]
- 58. [POL00073008]
- 59. [POL00073768]
- 60. [POL00081865]
- 61. [POL00090437]
- 62. [POL00113911]
  
- 63. [WITN03730100]