

Witness Name: Simon Recaldin
Statement No.: WITN09890100
Dated: 30 March 2023

THE POST OFFICE HORIZON IT INQUIRY

First Witness Statement of Simon Recaldin in the Post Office Horizon IT Inquiry

1. I, Simon Recaldin, of **GRO**, say
as follows:

Introduction

2. Except where I indicate to the contrary, the facts and matters contained in this witness statement are within my own knowledge. Where any information is not within my personal knowledge, I have identified the source of my information or the basis for my belief. In particular, my knowledge contained within this statement is informed by Peters & Peters Solicitors LLP ("**P&P**"), who are instructed by Post Office Limited ("**POL**"). I have been assisted in preparing this witness statement by P&P and by Herbert Smith Freehills ("**HSF**") who represent POL in the Inquiry. The facts in this witness statement are true to the best of my knowledge and belief.
3. I am employed by **POL**, as the Historical Matters Unit (sometimes also referred to as the Historical Matters Business Unit) ("**HMU**") Director, a role I have held since 10 January 2022. My role includes managing the delivery of the Historical Shortfall Scheme, criminal appeals process and consequent civil liability and compensation issues, internal and external communications and oversight of

all legal matters relating to historic matters (save for the Inquiry itself). The HMU was established to centralise compensation and criminal appeal related work emerging from the outcomes of the Group Litigation Order judgments and settlement under my role as Director of HMU. As HMU Director, I chair the Historical Matters Committee ("**HMC**") which reports into the Historical Remediation Committee (a sub-committee of the Board), and together, we are responsible for decision making in respect of HMU. I brief POL's Group Executive and Board on matters considered by the HRC. My line manager is POL's Group General Counsel who acts as the POL Group Executive sponsor for Historical Matters.

4. This witness statement has been prepared in response to the request made by the Horizon IT Inquiry (the "**Inquiry**") of 23 January 2023, arising from a request made by the Inquiry pursuant to Rule 9 of the Inquiry Rules 2006, dated 15 December 2022 (the "**Rule 9 Request**") ("**Request No. 31**").
5. Where I refer to specific documents in this statement, copies of those documents are exhibited to this statement (as set out in the index below).

Correspondence with the Inquiry

6. On 15 December 2022, the Inquiry requested under Rule 9 Request No. 31 "*a comprehensive list of information in respect of all prosecutions that have been conducted by or on behalf of the Post Office and Royal Mail Group between 2000 and 2013, so far as is possible from available records*".
7. HSF responded in their letter of 13 January 2023 and noted that they understood "*Request No. 31 to be concerned with POL Prosecutions brought (entirely or in part) on the basis of evidence from the Horizon system. This*

approach is in line with our earlier approach as set out in our letter dated 5 May 2022, in which we noted that there were 706 "Horizon-related prosecutions" which resulted in a conviction between 2000 and 2013".

8. Ms Beaumont of the Inquiry replied by email on 23 January 2023, requesting an explanation of "how the 706 figure has been arrived at (i.e. how has POL identified Horizon Cases and Horizon-related cases that are not "Horizon Cases")."

Background to potential future appellants

9. To explain the context in which the list of 706 Horizon-related cases (now 701 cases¹) was compiled, it is necessary to set out the post-conviction disclosure duties that POL owes to appellants or potential future appellants ("PFA") it originally prosecuted in England & Wales.²
10. POL has a duty, as a former private prosecutor, to identify material that might cast doubt on the safety of any historical conviction, for which it takes responsibility as a former prosecutor. This duty is set out in R (on the application of Nunn) v. Chief Constable of Suffolk Constabulary & Another, which is:
11. To disclose to the defendant any material which has come to light and might cast doubt on the safety of the conviction; and
12. Where there is a real prospect that further enquiry might reveal such material, making that enquiry.

¹ See paragraph 31.

² POL did not prosecute cases in Scotland or Northern Ireland, and therefore does not owe a post-conviction disclosure duty to Scottish or Northern Irish PFAs. This duty is owed by the Crown Office of the Procurator Fiscal and the Public Prosecution Service Northern Ireland respectively. Whilst POL owes no formal post conviction duties in those cases, POL continues to assist those organisations to discharge their duties.

13. Following the High Court decision in *Bates & Others v Post Office Limited* [2019] EWHC 3408 (QB), POL instructed P&P to conduct a post-conviction disclosure exercise (“**PCDE**”) in relation to a number of convicted individuals who had referred their cases to the Criminal Cases Review Commission (“**CCRC**”) before, during or shortly after the group litigation commenced in the civil courts, and in relation to all historical prosecutions that had been brought on behalf of POL during the period 1999 to 2013, where Horizon evidence had been relied upon.
14. The PCDE included collating, reviewing, and disclosing relevant documents to appellants and PFAs. As part of this exercise, PFAs had to be defined and the relevant individuals identified.

‘Horizon-related case’ criteria

15. For convenience, POL now defines all cases within the scope of the PCDE as PFAs, even though 110³ have appealed or, in some cases, abandoned their appeals⁴ and, therefore, are no longer ‘potential future’ appellants. On this basis, the PFAs are all the individuals to whom POL owes (or has owed) a duty of post-conviction disclosure. The PCDE criteria was formalised in POL’s Disclosure Management Document dated 19 August 2020, at paragraphs 1 to 5. The essential criteria were that:
 - a. An individual was convicted of a criminal offence.
 - b. POL (or Royal Mail Group pre-separation) was the prosecutor.

³ In addition, 20 cases have been permanently rejected by the CCRC; there are 7 current appeals; and 23 pending with the CCRC – see paragraph 34.

⁴ See paragraph 34.

- c. The prosecution was based wholly or partly on data derived from Horizon.
 - d. The prosecution was undertaken between 1999/2000 and 2013. This is the period from the introduction of Horizon to POL ceasing to act as prosecutor (subject to a small number of limited exceptions).
16. In relation to the criteria at c) above, this included any case where Horizon evidence may have been relied upon by the prosecution (a 'Horizon-related prosecution', as described in HSF's letter of 13 January 2023), not only cases where the reliability of Horizon evidence was essential to the prosecution (a 'Horizon case', as determined in the Court of Appeal judgment in *Hamilton & Others* [2021] EWCA Crim 517 and subsequent appeals⁵). The criterion at c) was intended to be broad in its application in order to capture any prosecution that might have relied upon Horizon. It should be noted that whilst all 'Horizon cases' will be 'Horizon-related prosecutions', the reverse is not true.
17. The methodology for identifying PFAs is provided below. The "706 "Horizon-related prosecutions" which resulted in a conviction between 1999/2000 and 2013" is described within this statement as the "PFA list".
18. POL adopted an inclusive approach to the post-conviction disclosure exercise. Names of all of those prosecuted by POL were included on the PFA list and their names only removed once it could be confirmed that their case fell outside the scope of the PCDE, usually because the case did not result in a conviction, the offending occurred prior to Horizon being installed, or it was not prosecuted by POL (or RMG pre-separation). Where it was unclear whether a case fell

⁵ *Ambrose & Others* [2021] EWCA Crim 1443, *Allen & Others* [2021] EWCA Crim 1874, *White & Another* [2022] EWCA Crim 435 and *Hawkes & Others* [2022] EWCA Crim 1197.

outside the scope of the PCDE, those cases remained in the PFA list, until P&P received information to the contrary.

Methodology

19. I understand that the original PFA list originated from over 100 contemporaneous spreadsheets that were provided to P&P by POL Security or identified during the review of POL Security's SharePoint site.⁶ These spreadsheets are referred to by POL and P&P as 'Casework Spreadsheets'. The Casework Spreadsheets were used by POL Security to record various details about investigations, including but not limited to, the date the investigation commenced; branch details; suspect's name; date of charge; whether there was a decision to prosecute; date of conviction; conviction court; and sentence details.
20. From February to May 2020, P&P undertook a reconciliation exercise of the Casework Spreadsheets. The purpose of the reconciliation exercise was to identify all cases that were potentially within the PCDE into a single consolidated spreadsheet. This consolidated spreadsheet was referred to as the 'Master Search Terms List' ("**MSTL**").⁷ The reconciliation exercise extracted all cases that:
 - a. Appeared to have resulted in a conviction.
 - b. Recorded a decision to prosecute, but there was no further information as to whether the case resulted in a conviction.

⁶ A copy of POL Security's Sharepoint site was collected as part of the PCDE. The spreadsheets provided to P&P each included "Casework" within the document title. To ensure P&P had identified all spreadsheets, they conducted a search across all material collated as part of the PCDE for documents named "Casework", and included these within their review.

⁷ As it recorded the search terms that were to be used with regard to each PFA.

21. P&P then categorised the extracted cases for the purpose of prioritising the collection and review of data. The categories are summarised in the table below:

Category	Cases included
1	Current appellants or cases under consideration for referral by the CCRC.
2	Audit Shortfall Cases (described in the Casework Spreadsheets as Audit Cash Loss; Audit Shortage/False Accounting) dated between 2011 - 2014.
3	Audit Shortfall Cases dated between 2008 – 2010.
4	Audit Shortfall Cases dated between 2004 – 2007.
5	Audit Shortfall Cases dated between 1999 – 2003.
6	All Other Cases (e.g. Misuse of Postage Labels; Stock Inflated; Suppression of Banking Documents; Crown Office Cash Loss; DWP Fraud/DWP Overclaims; Banking Fraud etc.) dated between 2011 – 2014.
7	All Other Cases dated between 2008 – 2010.
8	All Other Cases dated between 2004 – 2007.
9	All Other Cases dated between 1999 – 2003.

10	'Out of Scope' cases including cases that did not involve the use of Horizon data or cases prosecuted by the CPS, DWP/DSS or Royal Mail Group (" RMG ") post-separation (e.g. burglaries; robberies; theft of postal packages etc.)
11	'Out of Scope' cases prosecuted in Scotland and Northern Ireland, by the Crown Office of the Procurator Fiscal Service (" COPFS ") or the Public Prosecution Service Northern Ireland (" PPSNI "). ⁸

22. The cases included in Categories 1 to 9 initially formed the total number of PFAs and were the basis for the PFA list. The cases in Category 10 that were prosecuted by the CPS, DWP or RMG, and the cases in Category 11 prosecuted by COPFS and PPSNI were collated into separate lists and sent to those non-POL prosecutors, to enable them to consider their own post-conviction disclosure duties to those individuals. The PFA list has been (and continues to be) continually refined and updated since May 2020 for the reasons set out at paragraph 18, above (see also paragraph 33 below).

Contacting PFAs

23. On 6 May 2021, POL sent letters to all PFAs for whom POL could verify contact details to a satisfactory level of certainty, to advise them that they may be able to apply to overturn their convictions, that POL would disclose material to them in accordance with the PCDE and setting out the routes potentially available to them to try and do so. POL enclosed guidance documents, produced by the

⁸ As noted above, POL did not prosecute cases in Scotland or Northern Ireland, and therefore does not owe a post-conviction disclosure duty to Scottish or Northern Irish PFAs. This duty is owed by the Crown Office of the Procurator Fiscal and the Public Prosecution Service Northern Ireland respectively.

- CCRC, which explained the potential routes to appeal, how to make an application to the CCRC and set out the CCRC's reasons for referring previous POL cases to the appeal court. Where POL did not receive a response, it aimed to send a chaser letter after 28 days and, where required, a final chaser letter after a further 14 days.
24. For PFAs who could not initially be traced or where letters were returned as undelivered, POL carried out additional tracing using external agencies. POL carried out a second mail out to any verified or alternative addresses in April 2022, with a third mail out in February 2023. There are a small number of PFAs that POL has not contacted as it has been unable to identify a verified address. POL continues to review any new material received for these PFAs to try to identify an address.
 25. During the verification process, POL identified that some PFAs are now deceased. POL carried out additional tracing to identify and contact next of kin. Where next of kin were identified, they were contacted in April 2022
 26. POL is working closely with the CCRC and has also agreed a package of support for PFAs through Citizens Advice. CCRC have also contacted individuals, to see if they were willing to respond to someone other than POL. Several PFAs responded to either POL's letters or the CCRC's letters and said that they did not wish to be contacted by POL again. Their cases remain on the PFA list.

Reporting of the PFA number

27. On 20 May 2020, following the review of all identified Casework Spreadsheets, P&P reported to POL's Board that the number of PFAs was 940.⁹ In the explanatory notes provided to POL, P&P noted that this figure would be subject to change as cases were reviewed as part of the PCDE, and where documents became available to confirm whether the PFA continued to meet the PFA criteria. Cases are removed from the PFA list if (i) there was no conviction; (ii) POL was not the prosecutor; (iii) the prosecution did not rely on Horizon data wholly or in part; or (iv) the prosecution was not undertaken between 1999/2000 and 2013. These changes can be seen by reference to a number of documents internally and in the public domain as follows:

- a. On 22 May 2020, POL responded to a Freedom of Information Request (FOI2020/00186), which requested, by year, the number of prosecutions of subpostmasters, their assistants or Post Office workers (i.e., those in Crown Post Offices) brought by POL and/or RMG since 1990. The number provided in response to this request was 918. This number differed from the number reported to POL by P&P, because this did not include cases where the convicted individual's job role was unknown or where their role was not listed in the request. POL also stated in the response that the data was likely to be incomplete and therefore should be treated with caution.

⁹ As explained at paragraph 15, this includes all concluded, ongoing and potential future appellants.

- b. In November 2020, P&P began sending weekly email updates on the PFA number to the Historical Matters Programme Manager at POL. In the first update on 4 November 2020, the PFA number was 888.
- c. In March 2021,¹⁰ P&P started circulating a dashboard which recorded the number of appeals, CCRC applicants and changes to the PFA number. This dashboard was circulated to POL by email on a weekly basis and from August 2021, shared with HMC each fortnight.
- d. On 25 March 2021, during *Hamilton & Others [2021] EWCA Crim 517*, POL disclosed a note to the Court, which had been drafted by P&P, providing updated figures on the number of PFAs. This note indicated that there were 736 cases within the PCDE which did or may have relied on Horizon data.
- e. In the same month, POL established a working group to plan the initial mail-out to PFAs who had not commenced appeal proceedings. In preparation for the mail-out, P&P drafted a note to record the methodology used to identify PFAs to whom POL owed a duty of post-conviction disclosure and whom POL would be seeking to contact. The methodology recorded in that note was approved by POL through HMC on 21 April 2021. A final copy of the "2021.05.06 Methodology for identifying Potential Future Appellants" is exhibited to this statement.
- f. On 25 January 2022, in response to a further Freedom of Information Request (FOI2021/01130), POL clarified that the total number of

¹⁰ Between November 2020 and March 2021, following receipt of the Horizon installation dates in the branches, 133 cases were removed from the PFA number because the relevant investigation had commenced prior to Horizon being installed in those branches.

postmasters convicted potentially on the basis of evidence from the Horizon system (in some cases alongside other evidence) was 706. Although this response specifically referred to postmasters, this number included all other convicted individuals, regardless of their role, including where their role was unknown.

Ongoing verification and the current PFA number

28. As explained above, cases are removed from the PFA list if P&P can confirm from a review of material available that those cases fall outside the scope of the PCDE, i.e. because (i) there was no conviction; (ii) POL was not the prosecutor; (iii) the prosecution did not rely on Horizon data wholly or in part; or (iv) the prosecution was not undertaken between 1999/2000 and 2013.
29. There are still many names on the PFA list, where it has not been possible to confirm whether these do meet the PCDE criteria. However, until such time as further material becomes available to confirm the position, the names remain within the PFA list and therefore form part of the PFA number (see below paragraphs 31 and 32).
30. An example of the type of material that assists in determining whether an individual meets the PCDE criteria is the branch files. These were not initially collected as part of the PCDE as it was not considered they would contain relevant information. They have subsequently been included within the PCDE as relevant material was discovered within these, particularly for limited information cases. P&P is completing the processing of branch files for all current PFA cases.

31. These branch files, and any other new repository of data, may contain further documentation to assist P&P in determining whether a case is outside the scope of the PCDE, particularly in early cases (i.e. where the prosecution took place between 1999 to 2004), where POL holds limited information.
- a. In January 2023, P&P obtained a copy of a branch file for a case which was counted within the 706 PFA number. After reviewing the branch file for that individual, P&P reported that the relevant branch was located in Scotland and that the individual was prosecuted by the Scottish Crown Office and Procurator Fiscal Service (COPFS), not POL. As a result, the information was shared with COPFS.
 - b. In early March, P&P identified a further case that fell outside the PFA criteria. This was a limited information case. As the investigation into the individual post-dated the installation of Horizon by 13 days, it was not possible to determine with certainty whether this was a Horizon related case. After reviewing the branch file, it became clear that the prosecution was not reliant on Horizon.
 - c. In late March, P&P identified three further cases that fell outside the PFA criteria. All three cases were originally limited information cases and determined to be outside of the criteria following the review of their branch files. The first was found to have been prosecuted by the Crown Prosecution Service (CPS). The latter two were co-defendants and it was determined that their prosecution was not reliant on Horizon.
 - d. These five cases have therefore been removed from the PFA number, which now stands at 701.

32. In addition to the review of the material, P&P has undertaken, and continues to undertake, other verification exercises in parallel via external sources. This includes writing letters to the conviction courts recorded for PFAs to request confirmation that a conviction was secured, details of the offences, date of conviction and confirmation on the identity of the prosecutor. P&P also requested Horizon instalment dates for the branches in which the PFAs were employed. Where the Horizon instalment date post-dated the date that the PFA's investigation commenced, the case was removed from the PFA number. The reason being, that if Horizon was not installed at the branch at the time the investigation commenced, inevitably the offending under investigation occurred prior to Horizon being installed, and therefore it cannot be a Horizon-related conviction.
33. There are still a significant number of cases where there is limited material and where P&P has, as yet, been unable to confirm conviction details. P&P will continue to assess whether cases fall within the PCDE criteria on receipt of new material and information. As such, the PFA number is still subject to change.

PFA Number – Concluded Appeals

34. The number of PFAs (701) represents all the individuals formerly convicted by POL, to whom POL owed a post-conviction disclosure duty, as a former private prosecutor in England & Wales. It therefore includes all cases, including those whose appeals: have been successful with the convictions overturned (81); have been rejected following a contested hearing with the conviction upheld (4); have been abandoned by the applicant/appellant following receipt of the

Respondent's Notice (19¹¹); have had an application for permission to appeal rejected by the Single Judge (6¹²); are pending with the Court of Appeal Criminal Division or Southwark Crown Court (7¹³); are pending with the CCRC (23); or have been permanently rejected by the CCRC (20).

35. The actual number of POL PFAs, who are yet to appeal, presently stands at 541.

Statement of truth

I believe the content of this statement to be true.

Simon Recaldin

Signed:

GRO

Dated: 30 March 2023

¹¹ One additional case was abandoned by the applicant/appellant following receipt of a Respondent's Notice. As this was a pre-Horizon case (and therefore does not fall within the criteria of the PCDE), it is not counted within the 701.

¹² 3 of the appellants renewed their application for permission to appeal to the full court, but then subsequently abandoned their applications prior to any hearing.

¹³ These are cases where the appeal has yet to be determined in which either an appeal has been referred to the Court of Appeal Criminal Division or Southwark Crown Court by the CCRC, or where grounds of appeal have been lodged with the Court of Appeal Criminal Division.

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No.	URN	Document Description	Control Number
1.	WITN09890101	2021.05.06 Methodology for identifying Potential Future Appellants	

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