

IN THE POST OFFICE HORIZON INQUIRY
BEFORE SIR WYN WILLIAMS

**WRITTEN SUBMISSIONS FOR THE PRELIMINARY ISSUES HEARING
ON BEHALF OF CORE PARTICIPANTS REPRESENTED BY HOWE + CO**

Introduction

1. Howe + Co act for 151 Core Participants, who are current and former subpostmasters, widows or family members of subpostmasters (**'SPMs'**) and former employed managers of post offices whose lives (and the lives of their families) have been devastated by the actions of Post Office Limited, Fujitsu and the Department for Business, Energy and Industrial Strategy (**'BEIS'**).
2. The Chair will appreciate that our clients, like so many SPMs, were falsely accused by Post Office Limited (**'POL'**) of theft, false accounting, or otherwise misappropriating money. They were threatened, in a variety of ways, including with dismissal, civil and criminal action. They were compelled to 'repay' often thousands of pounds for so-called shortfalls, which had supposedly been identified by the flawed Horizon System. Almost all were told by POL that their branch was the only one at which accounting shortfalls had been identified. This was not true. SPMs were coerced into paying POL very large sums to account for these alleged shortfalls. Some of our clients were prosecuted and some were imprisoned, many were sued, some were made bankrupt; all suffered serious financial loss. Sub post offices were usually family businesses, operated by parents, children and extended family members. Families were disrupted and broken as a result of POL investigators maintaining that shortfalls were a result of some member of the family stealing; thus some families turned upon each other and some broke under the strain.
3. Many of our clients endured stigma in their communities which, in many cases, remains to this day. SPMs died before their names could finally be vindicated in the Court of Appeal or court of public opinion in their communities, some attempted suicide, and the children of SPMs were bullied and spat at. The financial, reputational and emotional impact on our clients is incalculable, and is ongoing. Those harms must be put right.

Compensation

4. The victims of this scandal have received nothing approaching appropriate, adequate or timely financial redress for the egregious wrongs inflicted on them by POL. The Inquiry will appreciate that putting right the financial devastation visited upon them is one of the paramount concerns for SPMs, and is a vital and integral part of the justice SPMs seek and deserve. POL and government have repeatedly made statements acknowledging the serious harms done to our clients, and the need to put them right. However, the various piecemeal schemes that have been created are limited, exclusionary and come nowhere close to making good the losses suffered. One stark issue is that High Court litigants received a small fraction of the redress they were due. POL and BEIS have known this since the litigation was settled, yet deliberately exclude those SPMs from the compensation scheme(s). Without the High Court litigation, the Horizon scandal, wrongful conviction of SPMs, and many other important matters would not have been exposed. This is wrong, and must be put right.
5. Presently, SPMs continue to suffer financial hardship, many exceptional hardship, with many still insolvent or teetering on the brink of insolvency. If adequate compensation is left until after this Inquiry has concluded, SPMs will continue to be denied financial justice, and more will die having never achieved justice.
6. We have called on POL to confirm that it (in conjunction with its governmental and other partners) has already commenced urgent work on developing a holistic, full, fair and final compensation scheme. The Chair's attention is drawn to our letter of 22 October 2021, sent to Nick Read on behalf of our clients. That letter is appended to these submissions.
7. Our clients look to this Inquiry to invite POL, BEIS and others to address the Inquiry on the steps that they are taking now, and in the immediate future, to put right the financial catastrophe that was visited on our clients, and to immediately repay to the group litigants their legal costs and legal funding costs.

The four themes identified by the Chair for consideration at the preliminary hearing

8. We have made detailed written submissions on the provisional list of issues. In the event that the Inquiry disagrees wholly or in part with any of our submissions, we request that we are notified and invited to address the Inquiry further. We note that we are invited to make submissions regarding these four points before the disclosure process has started, and whilst we are in a materially disadvantaged position on these issues as compared to POL and BEIS, who know well the issues and problems, which they might prefer the Inquiry to avoid or ignore. That we are putting forward submissions on these issues before disclosure has occurred should lead the Inquiry to exercise great care in

eliminating any issues whatsoever at this stage. The great danger is of a premature decision-making process limiting the Inquiry, which may have to be defended later.

A. Second Sight Investigations Limited “Second Sight”

(i) To what extent should the Inquiry examine the events surrounding Second Sight?

9. The Inquiry should fully investigate all events surrounding Second Sight. Our clients consider that the Post Office’s decision to terminate Second Sight’s engagement represents an important phase in the conduct of POL, which has not been covered in the judgments of Fraser J.
10. Second Sight was a firm of expert fraud investigators. Its remit was to look into complaints made by SPMs regarding alleged shortfalls arising from the Horizon IT system. Further, POL agreed to the establishment of a working group in order to deal with complaints from SPMs. This was followed by the creation of an interim mediation scheme, chaired by Sir Anthony Hooper. The investigation protocol purportedly gave Second Sight access to documents relating to the particular complainant. Our clients, some of whom were closely involved in mediation, believe that Second Sight was given limited access to the documentation and data it required, including that Second Sight were never told that remote and secret alteration of branch accounts was possible (this only became clear in the group litigation some years later).
11. Second Sight’s first report was critical of Post Office Limited. After the publication of this report, the attitude of POL changed. We understand that POL instructed lawyers to attend mediations and sought to prevent any investigation by Second Sight into SPMs who had criminal convictions or who were under threat of prosecution. This obfuscation was overruled by Sir Anthony Hooper, who insisted on reviewing those cases. At this point, POL replaced its in-house counsel, Susan Crighton, with Chris Aujard. We are instructed that, during Mr Aujard’s tenure, POL ceased cooperating with the investigation and mediation processes. Second Sight were prevented from accessing POL files. POL subsequently dismissed Second Sight and closed the scheme. This action was taken by POL unilaterally, and without any consultation with the Members of Parliament who had called for and promoted the scheme, and for whom Second Sight had ultimately been working.
12. BEIS’s response to Second Sight’s final thematic report are a cause for concern for our clients. We understand that, in correspondence, BEIS confirmed that it expected Second Sight to destroy all the documents that it had uncovered. BEIS has confirmed to Parliament that it was aware of Second Sight’s findings. Further, it is our understanding that per its Terms of Reference, BEIS’s Audit and Risk Committee should have engaged with the Chair of POL’s Audit, Risk and Compliance Committee. Our clients understand

that this did not happen, even following BEIS receiving Second Sight's 2015 report which criticised Horizon.

13. In dismissing Second Sight, our clients submit that Post Office Limited deliberately sabotaged the investigation and mediation process. Furthermore, our clients consider that POL prevented any further access to documentation which might expose it to civil proceedings. Our clients expect that the Inquiry will find that POL had become aware that evidence which had been uncovered in the investigation would expose failings in the Horizon system, and thus sought to prevent information from being discovered, disclosed or made public.
14. Our clients submit that the decision by Post Office Limited to terminate Second Sight's engagement marked a sea-change in the approach of POL to the complaints that had arisen about the Horizon IT system. These events are important, and relevant for the Inquiry, because they may be found to have been a deliberate attempt to cover up failings in Horizon and by POL, which continued throughout the hearings before Fraser J and which were exposed further in the criminal proceedings in the Court of Appeal in Hamilton & Others.
15. Importantly, the SPMs represented by Howe + Co submit that, if the mediation scheme had been conducted in good faith by Post Office Limited, and if the mediation had not been unilaterally terminated, the failings in Horizon would have been identified a decade ago, and the group litigation in the High Court would not have been necessary. SPMs would have received adequate financial redress, and in many cases avoided bankruptcy and financial ruin. It is essential that this issue is investigated.
16. For these and other reasons, it is vital that the Inquiry examine in full the events surrounding Second Sight. Its involvement, and the limitation of its involvement on the part of POL, were central to the degree of harms inflicted on SPMs and, our clients submit, should be properly examined by the Chair. These matters are central to the question of 'what went wrong?' which the Inquiry is bound to investigate.

(ii) Is it sufficient for the Inquiry to investigate the reasons for the decision to terminate the Post Office Complaint Review and Mediation Scheme?

17. Our clients do not consider it sufficient for the Inquiry to only investigate the decision to terminate the Complaint Review and Mediation Scheme. Rather, our clients submit that the Inquiry should investigate beyond the reasons for the decision to terminate the scheme because, for the reasons stated above, it appears to our clients that this is potentially an important part of the evidence which shows that POL acted in bad faith,

and sought to cover up its failings and prevent any disclosure which could have exposed failings in the Horizon system for which POL would be liable.

18. We submit that the Inquiry should investigate the whole course of the scheme. Our clients submit that the 'events surrounding Second Sight' as in sub-issue (i) in this theme, and the decision to terminate the Complaint Review and Mediation Scheme are inextricable. Our clients consider that the decision to dismiss Second Sight and to terminate the Post Office Complaint Review and Mediation Scheme arise from the same or substantially the same pattern of conduct, change of personnel or otherwise. Thus, in order to properly examine one, the Inquiry must examine the other.
19. By beginning the investigation into these matters at the termination of the Complaint Review and Mediation Scheme, we submit that the Inquiry would be starting with the effect and not the cause.
20. Practically, this approach would not be burdensome. As, in our submission, the two issues are so closely linked, the Inquiry team would not be examining a wholly new or distinct topic.
21. Further, the Chair should investigate the role of BEIS and the government in the decisions that were taken. POL is wholly owned by government, and BEIS appoints its CEO, 2 directors at board level, and the Permanent Secretary of BEIS is POL's accounting officer. SPMs represented by Howe + Co maintain that it is simply inconceivable that government was not aware and not consulted in relation to the decisions to withdraw from co-operation with the process, to dismiss Second Sight, and to terminate the scheme.

(iii) Should the Inquiry examine whether and to what extent the scope and findings of, and the disclosure made in relation to, the independent investigation(s) undertaken by Second Sight were appropriate?

22. The Inquiry should examine all aspects of the involvement of Second Sight, including the findings made by that organisation and the disclosure made to it. The involvement of Second Sight is particularly significant because our clients believe that its findings and the initial disclosure which it received led to the decisions of Post Office Limited (and, our clients consider, BEIS) to restrict disclosure, may be found to have sabotaged the scheme, and may be found to form a cover up, and affected the proper conduct of proceedings in the criminal and civil courts in a manner that may be found to have been abusive, in bad faith, and contrary to the public interest.

B. Reliance upon legal advice

- (i) **Is it necessary for the Inquiry to investigate whether and to what extent Royal Mail Group and Post Office Limited acted on legal advice when they:**
- a. **Formulated policies and guidelines on the civil and criminal liability of SPMs, managers and assistants alleged to be responsible for shortfalls shown by Horizon; and**
 - b. **Brought civil and/or criminal proceedings against SPMs, managers and assistants alleged to be responsible for shortfalls shown by Horizon?**
- (ii) **If so, should the nature of the legal advice received be investigated?**

23. Our clients' primary position is that the provision of legal advice is directly relevant to the Inquiry's Terms of Reference. The advice that was given to POL when it formulated policies and guidelines on the criminal and civil liability of SPMs, managers and assistants and when they brought criminal proceedings is clearly encompassed in the Terms of Reference at issue (A):

'A: Understand and acknowledge what went wrong in relation to Horizon, leading to the civil proceedings in Bates and others v Post Office Limited and the quashing of criminal convictions, by drawing from the judgments of Mr Justice Fraser in Bates and others, the judgments of the Court of Appeal (Criminal Division) in R v Hamilton and others, other judgments in which convictions have been quashed, affected postmasters' experiences and any other relevant evidence in order to identify what key lessons must be learned for the future.'

24. In our submission, questions (i) and (ii) fall clearly within the Inquiry's scope and must be investigated. The Inquiry should investigate whether POL acted on legal advice and, if so, the nature of the legal advice and the instructions given to those who provided the advice and the basis of the expert evidence should be investigated.

25. It is now known that POL brought successful private prosecutions against 918 SPMs between 1991 and 2015 for false accounting, inflating figures, and theft, based on data from Horizon, which was known to contain bugs, errors and defects. It appears that POL prosecuted the majority of SPMs between 1999 and 2012, during which time 735 SPMs were successfully prosecuted, an average of one per week. In light of Fraser J's judgments and his referral to the Director of Public Prosecutions, we understand that:

- a. over 2,000 further unrelated SPM cases are understood to be under review by POL and its lawyers in relation to "shortfalls" identified though the Horizon system in Post Office branch accounts over the years since 1999;
- b. over 60 SPM cases were referred by the Criminal Cases Review Commission to the Court of Appeal for consideration as a result of convictions that are unsafe due to defects in their prosecutions based on an abuse of process argument, with

the many convictions that POL had to accept are unsafe overturned without challenge in March 2021;

- c. a further 460 SPM convictions are understood to be under review because they are considered to be “of concern”; and
 - d. the Metropolitan Police have an ongoing criminal investigation into potential perjury in civil and criminal proceedings against SPMs.
26. How this happened, to what extent (if any) the prosecuting lawyers had any information, and to what extent the lawyers were kept in ignorance of the Horizon’s systemic failings are matters that require full and proper investigation in this Inquiry.
27. In the event that POL formulated the policies and strategies which led to the targeting of SPMs for investigation and the bringing of civil and criminal proceedings without any legal advice, that issue would go directly to Point A in the Terms of Reference.
28. In the event that legal advice was given, it is necessary for the Inquiry to determine by whom the advice was given (whether internal or external advice was sought), and whether those instructed to advise were properly instructed and provided with the information necessary for those instructions.
29. An equally important matter for the Inquiry to consider in relation to legal advice is the extent to which the two advices from Simon Clarke were acted upon by Post Office Limited. POL failed to disclose those advices in the Bates & Ors group litigation, but they were the subject of submissions by Mr Stein QC in the Hamilton & Ors. In the Court of Appeal, it emerged that Mr Clarke had advised POL in 2013 that the overall picture being presented about the robustness of the Horizon IT system by POL’s expert witnesses in criminal prosecutions of SPMs was flawed and unreliable. Indeed, Mr Clarke concluded as follows:
- “accordingly Dr J’s credibility as an expert is fatally undermined, he should not be asked to provide expert evidence in any current or future prosecution”.*
30. The failure of Post Office Limited to act upon or disclose the Simon Clarke advices is a significant matter that falls within the Inquiry’s Terms of Reference, and accordingly should be investigated.
31. We submit that the Inquiry should further investigate the extent to which government was party to, or a recipient of, any legal advice or provided legal advice to the Post Office in relation to the abusive prosecutions and civil claims against SPMs.

32. The Inquiry should take a robust approach to any issues of privilege which arise from the investigation of this aspect of the scandal, or assertions of privilege made by any core participant. It should be noted that POL did not seek to rely on privilege in the appeal before the Court of Appeal in Hamilton & Ors, although it argued that disclosure for the purpose of the Court of Appeal hearing should be limited to period up to 2013, with limited exceptions.
33. We submit that privilege in matters relating to prosecutions has already been waived to those Appellants in the Court of Criminal Appeals, in order to allow them to properly argue their cases and that, once waived, it would be illogical and impermissible to attempt to reclaim privilege. Further, we submit that POL has waived privilege in all cases dealt with before the civil and criminal courts. Any criminal acts or potential criminal acts uncovered in the course of this Inquiry, which concealed knowledge from the courts would, we submit, destroy any assertion of privilege.
34. Subject to a position statement from institutional CPs, or agreement to waive privilege, we suggest that there may be a need for a discrete and dedicated hearing to discuss privilege, and how far and to what extent it can be claimed by POL and BEIS or any other CP in this Inquiry. In our submission, this is true whether the privilege asserted relates to criminal prosecutions, civil actions or the High Court litigation discussed below.
35. If there is any concern that that fully investigating this theme may take a significant period of time, we respectfully submit that these concerns can be managed or allayed. For example, in the Accountability and Reparations investigations (Phase 1 and Phase 2) of the Independent Inquiry into Child Sexual Abuse, the conduct of litigation and the topic of legal advice was examined and investigated in detail. That public inquiry looked at litigation conduct and legal advice across the whole spectrum of civil actions and CICA claims related to child sexual abuse over an extended period, until the date of the investigation. Written and oral evidence was taken from a significant number of solicitors, junior and leading counsel as to the conduct of litigation and legal advice given across this wide area and time frame. This was achieved efficiently, and extensive oral evidence was taken in a matter of days. In our submission, it is eminently possible to undertake a thorough investigation in a manner which would not disrupt this Inquiry's timetable.
36. This is also true of theme (C), below.

C. Conduct of the Group Litigation

(i) Do the Inquiry's Terms of Reference permit an investigation of the conduct of the Group Litigation?

(ii) If so, should the conduct of the Group Litigation by Post Office Limited (and others) be investigated?

37. We submit that the conduct of the Group Litigation falls squarely within the Terms of Reference of the Inquiry and that the conduct of the Group Litigation should be investigated.

38. It is impossible to ignore 'the improper litigation strategy' adopted by POL despite its awareness, and government's awareness, of the Horizon scandal. The conduct of the litigation by Post Office Limited was the subject of a number of critical findings by Mr Justice Fraser, who found *inter alia* that: "*The Post Office has appeared determined to make this litigation, and therefore resolution of this intractable dispute, as difficult and expensive as it can.*" Bates v Post Office (No 3) [at 544].

39. Only one of the many issues that require investigation, particularly in relation to the conduct of litigation, is the question of remote access. The truth concerning remote access only emerged in 2019, in group litigation that was brought in 2017. The High Court found that POL's original witness statements were deliberately inaccurate. This issue represents a part of the culture at POL, which goes directly to the Terms of Reference as regard 'what went wrong'.

40. The conduct of POL in the group litigation was, our clients believe, a deliberate strategy to spend them out of court and delay or prevent the resolution of proceedings in the claimants' favour. A number of our clients raised POL's conduct in the litigation to the Parliamentary Ombudsman, asserting that POL's conduct improperly included:

- a. instructing four QCs, numerous juniors and two law firms (Womble Bond Dickinson and Herbert Smith Freehills) at great expense;
- b. engaging third party litigation strategists at considerable expense to design a litigation strategy that would slow the proceedings down and increase the claimants' professional costs;
- c. ensuring that the claimants' solicitors, Freeths LLP, entered into a protocol with Second Sight which limited the claimants' access to Second Sight's information;
- d. claiming initially not to know what the litigation concerned, and subsequently refusing to agree to a group litigation order, which would have meant running every claim individually and at great expense;
- e. applying to have the claimants' evidence struck out before it had been served;
- f. applying for security for costs against the claimants' funder;

- g. attending a number of hearings to deal with the issue of costs because POL refused to prepare its budget on the same basis as the claimants, despite numerous requests to do so;
 - h. employing a team of “shadow experts” to look at the Horizon evidence before its disclosure, the costs of which POL reserved the right to claim, leading to a problematic disclosure process; and
 - i. making an absurd and hopeless recusal application, which was rightly criticised by Lord Justice Coulson in the Court of Appeal.
41. Further criticisms made by Fraser J included a ‘*culture of excessive secrecy at the Post Office about the whole subject matter of this litigation*’ (*Bates v Post Office (No 3)* at [561])
- “These are examples, in my judgment, of a culture of excessive secrecy at the Post Office about the whole subject matter of this litigation. They are directly contrary to how the Post Office should be conducting itself. I do not consider that they can be a sensible or rational explanation for any of them.”*
42. The examples and references within Fraser J’s to this issue are too numerous for the scope of this document, but those set out above demonstrate that the Inquiry should consider these issues and that these issues fall for consideration in the following parts of the Terms of Reference as highlighted in bold, below:

Scope of the Inquiry

Government wants to be fully assured that through the Inquiry there is a public summary of the failings associated with Post Office Ltd’s Horizon IT system. The Inquiry will draw on the findings made by Mr Justice Fraser from the *Bates and others v Post Office Limited Group Litigation (in particular Judgment (No3) ‘Common Issues’ and Judgment (No 6) ‘Horizon issues’)*, the judgments of the Court of Appeal (Criminal Division) in *R v Hamilton and others*, and other judgments in which convictions have been quashed. It will consider all other relevant evidence, listen to those that have been affected, understand what went wrong, and assess whether lessons have been learned and whether concrete changes have taken place, or are underway, at Post Office Ltd.

The Inquiry shall:

*A: Understand and acknowledge what went wrong in relation to Horizon, leading to the civil proceedings in *Bates and others v Post Office Limited* and the quashing of criminal convictions, by drawing from the judgments of Mr Justice Fraser in *Bates and others*, the judgments of the Court of Appeal (Criminal Division) in *R v Hamilton and others*, other judgments in which convictions have been quashed, affected postmasters’ experiences and **any other relevant evidence in order to identify what key lessons must be learned for the future.***

[...]

C: Assess whether Post Office Ltd has learned the lessons from the criticisms made by Mr Justice Fraser in his judgments following the ‘Common Issues’ and ‘Horizon Issues’ trials and those identified by affected postmasters and has delivered or made

good progress on the organisational and cultural changes necessary to ensure a similar case does not happen in the future.

[...]

E: Assess whether the processes and information provided by Post Office Ltd to postmasters are sufficient:

i. to enable both parties to meet their contractual obligations

ii. to enable postmasters to run their businesses. This includes assessing whether Post Office Ltd's related processes such as recording and resolving postmaster queries, **dispute handling**, suspension and termination are fit for purpose. **In addition, determine whether the quality of the service offer for postmasters and their relationship with Post Office Ltd has materially improved since the conclusions reached by Mr Justice Fraser.**

[...]

F: Examine the historic and current governance and whistleblowing controls in place at Post Office Ltd, **identify any relevant failings, and establish whether current controls are now sufficient to ensure that failing leading to the issues covered by this Inquiry do not happen again.**

*The Inquiry will consider only those matters set out in the preceding sections A-F. The Inquiry will not consider any issue which is outside the scope of the powers conferred upon the Inquiry by the Inquiries Act 2005. The Horizon group damages settlement (**albeit the Inquiry may examine the events leading to the settlement**), and/or the engagement or findings of any other supervisory or complaints mechanisms, including in the public sector, are outside the Inquiry's scope.*

43. In particular, the Terms of Reference specifically state that the '**events leading to the settlement**' may be examined by the Inquiry. This is important because our clients maintain, consistent with the criticisms made by Fraser J, that Post Office Limited pursued a policy of seeking to make the litigation '*...as difficult and expensive as it can*', effectively to spend the claimants out of Court, using public money.
44. Our clients strongly maintain that this strategy ultimately succeeded, and forced the claimants to settle the claim prematurely. We are advised that Post Office Limited reportedly spent over £100,000,000 defending itself against allegations that Horizon contained bugs and defects which, we submit, POL knew to be true, and which POL had known to be true for some time, perhaps from before the introduction of the system.
45. Our clients submit that the Inquiry should investigate whether BEIS were aware of Post Office Limited's litigation strategy, and whether BEIS sanctioned that conduct. It is clear from the Shareholder Relationship Framework Document¹ between BEIS and Post Office Limited that POL is required to notify BEIS in respect of all actual and threatened litigation. The Shareholder Framework Document provides:

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874283/post-office-limited-shareholder-relationship-framework-part-1.pdf

Reporting on legal risk and litigation

13.4 Notwithstanding the provisions of any protocol agreed under the terms of paragraph 14.2 below, POL shall also provide a quarterly update to the Shareholder's Representative on any active litigation and any threatened or reasonably anticipated litigation.

46. Additionally, the Shareholder Framework document provides:

Notification

12.2 POL's Board shall, prior to taking any final decision on a Relevant Issue (as defined in paragraph 12.3 below), give the Shareholder written notice setting out all relevant details of the Relevant Issue and the preliminary decision (if any) reached by the Board, not less than 10 Business Days before the taking of any such final decision.

12.3 An issue is a "Relevant Issue" if, in the reasonable opinion of the Board:

- (i) it is not set out in reasonable detail in an approved Group Business Plan;*
- (ii) it is an issue which may have a material adverse effect upon the business or financial prospects of the Group or any Group Company; or*
- (iii) it relates to regulatory matters, such as any Group Company being referred for regulatory investigation by a relevant regulatory authority.*

47. We submit that the conduct of Post Office Limited in the civil proceedings, its use of public funds to try to delay, protract and outspend SPMs and the likely knowledge and complicity of BEIS in that conduct are all matters of significant public concern which fall to be investigated by this Inquiry.

48. We conclude this issue by noting that our clients are particularly concerned that the Inquiry investigates the 'events leading to settlement' and in particular that the Claimants were forced into settling a mediation commenced prior to release of the Horizon Issues judgment by a POL litigation strategy designed to "win at all costs". This resulted in the Claimants (despite winning their cases on almost all counts) each recovering a very low proportion of actual losses incurred as a result of POL's actions.

D. Divergences across the United Kingdom

(i) Should the Inquiry investigate whether and to what extent there existed divergences in the policies and practices adopted by Royal Mail Group and Post Office Limited within the four countries of the United Kingdom when taking action against SPMs, managers and assistants alleged to be responsible for shortfalls shown by Horizon?

49. Core Participants represented by Howe + Co submit that the Inquiry should investigate this issue.

50. In order to fulfil its terms of reference, it is vital that the Inquiry properly examine the variation in treatment meted out to SPMs by Royal Mail Group ('RMG') and Post Office Limited, whether or not that treatment was in accordance with policy. We submit that a full and comprehensive investigation into the conduct of RMG/POL should include conduct suffered by all SPMs. The Inquiry's terms of reference are not limited to one country, or one jurisdiction, and as a result the Chair should be examining the policies and practices adopted in all countries within the devolved union.

51. The Inquiry is aware that we act for SPM core participants based in the four countries within the United Kingdom. We are instructed that there was significant divergence in the practices adopted by POL/RMG, and its staff. The conduct, policies and practices adopted by POL/RMG appear to have been divergent, with such divergence being utilised to exert pressure on SPMs based on their geographical difference.

52. For example, one SPM based in Northern Ireland, Deirdre Connolly, was alleged to have stolen from her branch. POL staff accused Ms Connolly of having used the stolen monies to fund a proscribed paramilitary organisation. In the context of the time the allegation was made and Ms Connolly's home area, the potential impact of such an untrue accusation cannot be overstated. It is not an exaggeration to state that Ms Connolly's life could have been at risk from the accusation. Whether the accusation was made with knowledge of its gravity, to exert undue pressure, or simply as a result of sectarian prejudice and/or xenophobia, is a matter which should be investigated by the Inquiry. This was an accusation which preyed on issues within this SPM's local community, and simply would not have carried the same gravity if the SPM was based (for example) in the south-east of England. This treatment exemplifies the regional differences in policies and practices of POL/RMG staff, and our clients submit that the Inquiry should investigate the extent to which such focussed allegations and/or pressure were exerted on SPMs.

53. We have also learnt from our clients that they were audited and shut down at times which coincided with regional closure polices and reviews. Our clients submit that the Inquiry should investigate whether there were any concerns, other than SPMs' conduct, which gave rise to the decision to audit, investigate or bring proceedings against SPMs.
54. Further, the scale at which SPMs were investigated for alleged criminal conduct, prosecuted criminally, or pursued in the civil courts for shortfalls, provides a compelling reason for the Inquiry to examine divergence across the United Kingdom. The differences within the criminal and civil justice systems are such that the policies and practices adopted by POL/RMG were or should have been divergent. Our clients submit that the jurisdictional differences are such that it would not be appropriate for the Inquiry to examine the treatment of SPMs across the UK as one homogenous or universal whole.
55. Further, our clients instruct us that the issue of divergence of treatment is important one for another reason. They submit that the Inquiry should investigate the gender, ethnic and racial identity of those threatened, investigated, prosecuted and/or pursued by POL in the civil courts, and importantly whether and to what extent that conduct disproportionately affected women and minority ethnic SPMs. The SPMs for whom we act consider that this an important issue, which should not be overlooked by the Inquiry.
56. We submit that the issue of regional divergence goes hand-in-hand with the issue of racial and/or gender bias, and that ignoring or failing to examine one of those issues may undermine the propriety of the investigation of the other. We submit that the Inquiry is duty-bound to consider the question of discrimination and to report on whether and if so to what extent it played a part in the Post Office Scandal.

The Inquiry's title

57. Lastly, the Chair will be aware that POL is wholly owned by BEIS, which is the sponsoring department of this Inquiry. At all material times, BEIS appointed and appoints the CEO and board members, and BEIS was and is the accounting officer for POL. POL is a creature of BEIS. It appears, and we believe that the evidence will show, that BEIS was either fully aware, or should have been fully aware, of the substantial failings of Horizon before its inception and throughout the period of this scandal. Any investigation of POL must necessarily be an investigation of BEIS, its state of knowledge, its action and/or inaction.
58. These failings in the Horizon IT system are symptoms of wider failings, including the failure of government oversight and supervision of POL. Therefore, this Inquiry is not solely about Horizon or IT systems, but about the abuses visited on our on SPMs and their families by a national institution, wholly owned and controlled by government. Our

clients submit that the Post Office Horizon IT Inquiry should be renamed the 'Post Office Inquiry' in order to properly describe the purpose and focus of this Inquiry.

Sam Stein QC

Nexus Chambers

Christopher Jacobs

Landmark Chambers

David Enright

Howe & Co

29 October 2021