WITN10630100

Witness Name: David John Cavender

Statement No: WITN10630100

Dated: 28 October 2024

**POST OFFICE HORIZON IT INQUIRY**

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**FIRST WITNESS STATEMENT OF**

**DAVID JOHN CAVENDER**

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I, David John Cavender of One Essex Court, Temple, EC4Y 9AR, will say as follows:

## Introduction

1. I am a commercial barrister practicing at One Essex Court in the Temple, London. I was called to bar by Middle Temple in 1993 and before that worked for two years as a trainee solicitor at Herbert Smith. I took silk in 2010.

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 18 September 2024 ("the Request").

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

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4. Before answering the detailed questions contained in the Request, I should emphasise that the relevant events occurred up to 6 years ago about which my recollection varies from good to non-existent. I returned my papers in this matter a very long time ago. That recollection has been improved by reviewing the documents provided by the Inquiry but is still very much incomplete. I will try and make clear in my answers where I have an actual recollection and where I am seeking to reconstruct events based on what I believe was likely to have happened.

## Background

5. I have a wide-ranging commercial practice which concentrates on large scale contractual disputes, but which extends into matters such as civil fraud. I have experience of certain engineering disputes but no prior experience of IT disputes. I have significant experience of Group Litigation matters.

## Retainer and Instruction for Bates v. Post Office Group Litigation Common Issues Trial ("CIT")

6. My Instruction occurred in late 2017/early 2018 and was a gradual process. It occurred following a CMC in October 2017 attended by Mr. Antony de Garr Robinson KC ("ADR") at which Mr. Justice Fraser ("the Managing Judge") set a timetable for future trials that meant that ADR could not attend what became the CIT due to an existing trial for another client.

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7. One of the first things I was instructed to do a "Black Hat Review". There were two parts to this. I had never been asked to do this before, but my sense was that Andrew Parsons (instructing solicitor at Womble Bond Dickinson "WBD") wanted some blue skies thinking about any other problems that might be lurking in the background for POL even if the Horizon system was shown to be robust. Also – he wanted some thoughts on how to manage this large piece of group litigation.

8. This was very early on in my involvement. I don't recall what materials I was initially provided with, but I imagine it was the pleadings and associated documents. I also recall having spoken a length to Andrew Parsons about the background to the claim.

9. I see from the Note dated 15 December 2017 **POL00028064** – the "five things document", that I was asked to give an overview of things done well, things done badly and things to be thinking about for the future. It's clear from the future looking part of this document that I was keen for some forward planning to be done to see how an "omnibus" trial of a number of lead cases to conclusion might be an efficient way of managing the group litigation. In the event the court rejected that approach and went for a series of preliminary issues trials.

10. I see from my subsequent "black hat" Note dated 18 January 2018 **POL00006383** that at that time POL remained confident that Horizon could not be responsible for the losses claimed by the nearly 600 SPMs. But my approach set out in paragraph 15 of this note was to ask even if that was right

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could POL nonetheless be legally liable for losses caused by a system where the people operating it were not properly trained or supported- and where that system had what was later referred to as a lack of "error repellency". My conclusion was that this was indeed a possible route to legal liability for POL.

11. I recall discussing my two notes with Andrew Parsons – but nothing came of them beyond the planning for the "omnibus" trial. I do not know if they were shared more widely. It seemed like a way to get me thinking about the case more generally.

12. By early 2018 the CIT proceedings had already taken shape – with detailed generic pleadings setting out the respective cases (the Generic Defence was dated18 July 2017) and the important October 2017 CMC had taken place. I had no knowledge of the GLO proceedings or of the instruction of ADR prior to my instruction.

13. Although I was instructed on the CIT case and started giving advice on potential lead claimants on 23 November 2017 in the absence of ADR - ADR continued to be involved in CIT matter - but I gradually become more involved (see: 1 February 2018 document on whether to make an application for security for costs in which I was involved **POL00006406).** My first hearing for POL was the CMC on 2nd February 2018 **POL00000602.**

14. At the time of my instruction, I had no experience of:

    (1) Advising public authorities or companies owned solely by His Majesty's Government.

    (2) Criminal law or post-conviction disclosure.

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(3) Group litigation that involved a major IT project.

**Working relationships with WBD**

15. I consider that I had a good and close working relationship with WBD throughout the litigation which was conducted almost exclusively through Andrew Parsons who was the partner in charge, and who appeared to have a very long and detailed involvement with POL. There was also contact with assistants at WBD such as Amy Prime – but anything important would go through Andrew Parsons. Most of the contact was by telephone or email – but there were occasional in person meetings. Tom Beezer (another WBD partner) become involved towards the end to assist with the recusal application and associated matters when Andrew Parsons was seeking to concentrate on preparing for the upcoming Horizon issues trial.

**CIT conduct - general**

16. On the issue of litigation strategy- I recall advising POL on litigation strategy in my "black hat" review documents as it related to the CIT matter. By the time I become involved the dye was cast and we were into preparing for the CIT which had by then been ordered by the Managing Judge and which was to become the first of three or four trials in rapid succession. To recap the first was the CIT trial. The second was the Horizon issues trial. The third was pencilled is as a possible trial to apply the results of the first two trials to actual SPM cases to establish liability and loss – with a possible fourth trial to deal with issues such as limitation and settlement.

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17. A number of attempts to settle the matter had apparently failed- although eventual settlement was always a central part of the strategy. But the parties were a very long way apart. So, the strategy was to seek to establish in the CIT the effect of the two SPM contracts in terms of the express and implied terms - and the extent of the agency relationship with the SPMs, and its effect. And, to seek to establish that the mutual termination provisions in each of the SPM contracts served to provide a cap at any damages to the period of notice (which was either 3 months or 6 months). If that could be achieved in the CIT trial and the Horizon issues trial established that the Horizon system was robust – that there would then be a good platform for possible settlement negotiations. The premise of this strategy was that the Horizon system was a robust system.

**18.** I recall giving specific advice about group litigation management as set out in the "black hat review." I note that that advice was followed, and POL attempted to take the initiative and get the court to fix a lead cases trial after the planned common issues trail at the CMC on 2 February 2018 **POL00000602**. That was based on my advice. In the event the Judge rejected that approach and ordered the Horizon issues trial to follow the CIT.

19. On the issue of disclosure - I don't recall specific issues where my advice was sought arising out of disclosure or the use of legal professional privilege- save that I note that at the 22 February 2018 CMC **POL00000600** there was the normal debate about the type of disclosure that should be given and the classes of documents that should be provided. I don't recall any such matters being specifically brought to me for advice– such matters would ordinarily be dealt with by the senior junior (Owain Draper) and Andrew Parsons - and brought to

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me in the event of difficulty. That said I note that just before the CIT it appears that the SPMs solicitors, Freeth's, specifically asked that I review a number of redactions that POL had made **WBON0000626**. I assume that I did so. I deal with the Project Zebra point separately below.

20. On the issue of witness evidence - POL's witness evidence for the CIT trial was prepared by WBD with assistance from Owain Draper and (possibly) Gideon Cohen. I was shown advanced drafts of the witness statements and would have made comments on them. One issue that arose was the breadth of these statements. There had been a long running simmering dispute ventilated at a number of CMC's[1] about what amounted to admissible factual matrix evidence to interpret the SPM contracts which the focus of the CIT – and POL were concerned about the probable width of the SPM's witness statements telling their whole story seeking to put the merits centre stage and not limiting their evidence to anything that could possibly equate to factual matrix. In that context I recall making the point that POL statements should also not seek to set out the whole story but be limited to matters relevant to factual matrix.

21. On the issue of implied terms- by the time I was instructed the respective cases on implied terms were well established in the generic pleadings. That case was set out and discussed in the Opinion dated 10 May 2015 **POL00025892**. That case had been set out in the Generic Defence dated 18 July 2017 and this Opinion supported that position. I attended a board meeting at POL on 15 May 2018 at which ADR and I shared our views of the litigation and the existing

[1] See e.g. Skeleton argument for 2 February 2018 paragraph 19-22 **POL00000602**

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strategy. **POL00006382** is a speaking note I prepared before the meeting and **POL00006754** are the minutes of that meeting.

22. On the issue of "bugs" in the Horizon IT system- at the time of the CIT I had only been made aware of one specific bug – I cannot recall whether it had a name. I recall if affected some 15 or so branches and sometimes resulted in a debit and sometimes a credit for the branch. It was the subject of an internal memorandum as to how to deal with it. I recall the memorandum included Fujitsu in the discussion.

23. I was also aware of the general allegation of SPM's that their losses had been caused by "bugs" which at that stage were not defined and seemed to be wide ranging and affecting various POL products/clients. Bugs and their analysis did not play a significant part in the CIT – save for the fact that the contract had to be construed with one eye to the possibility that Horizon may well be found to contain bugs, errors or defects.

24. On the issue of remote access to the Postmasters branch accounts - I do not recall remote access being raised as a specific issue at the CIT. I think that was because it was recognised as being very much an issue for the Horizon Issues trial.

25. On the issue of settling accounts centrally - I do recall the confusion about the effect of the "settle centrally button". This seemed to turn on whether the helpline was regarded as part of the Horizon "system". It was so regarded by POL and therefore whilst pushing the "accept" and then "settle centrally" button created a debt for the SPM they could immediately register (or register in

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advance) a challenge with the helpline – which based on my instructions, resulted in a hold being placed on that debt. And that helpline was regarded by POL as part of the Horizon system.

26. The case for SPM's was that on the true understanding of the Horizon system (i.e. the computer terminal) there was no option to accepting and settling centrally and that created a debt- which was then pursued.

27. There was, I recall, significant debate about whether that "system" relied on by POL in fact worked in that manner- whether a challenge registered with the helpline did, in practice, have the effect of putting a hold on the debt. That seemed to confuse the content of the contractual position – with whether that contractual position was always honoured by POL (thereby providing a claim in breach of contract). In the event the parties provided a flow chart which set out the agreed position and which the Judge attached to the CIT judgment as Appendix 4.

28. On the issue about the making of allegations of dishonesty against SPM's at the CIT - this was done to a very limited extent to two particular witnesses who were given the warning against self-incrimination – see: CIT judgment paragraph 224 and 328. The general position of POL at the trial as to discrepancies is that they were caused by error or default by the SPM or staff employed by them.

29. Some background is required to explain why these points even arose in a trial about the meaning of the SPM contracts. The witness evidence served by the SPMs included a full account of their dealing with POL, often in considerable detail including allegations that all their losses were due to bugs in the Horizon

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system. Allegations were also made about the inadequacy of training and the helpline and associated matters. An attempt to seek to remove from those witness statements matters other than factual matrix material failed. That application was made by ADR in October 2018 and was dismissed by the Managing Judge who held that all the material was potentially relevant. That was shortly before the CIT trial was due to commence and left POL with a serious problem of how to deal with that material. Plainly, if it was not challenged at all then POL would be taken to have accepted it.

30. The problem was that whilst some sample documents had been disclosed there had not been full disclosure of documents by the lead claimant SPM's or POL relating to all these extra issues and yet that evidence was to be led at the trial. Further, there had been no expert investigation into the accounting difficulties experienced by the lead claimants – and yet factual evidence about that had been led by the lead claimants.

31. I recall having discussions (with the rest of the Counsel team) with Andrew Parsons about this quandary and what his instructions from POL were about it.

32. More particularly, as noted above, there were two of the lead claimant postmasters where POL believed there was evidence that at least part of their claimed losses was due to dishonesty. POL wanted to challenge those SPMs about those matters, and I was instructed to do so. This was an instruction from Andrew Parsons- which I assume must have been based on an instruction from Jane MacLeod (POL General Counsel) who was very hands on by the time we were approaching the CIT.

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**33.** I also seem to remember raising this point about challenging SPM"s at the CIT at the POL board, advising that whilst leaving the evidence unchallenged risked the Judge accepting it (particularly in circumstances where he had held it was relevant to what he was determining in the CIT) cross examining the SPM's in this way on partial material would likely raise the temperature of the hearing. I think, but cannot now be sure, that Tim Parker said words to the effect that we should "do whatever was necessary." This board meeting must have been after the Managing Judge had rejected the strike out application. I note that there was a Board Meeting that I attended on 30 October 2018 – just before the CIT trial started on 7 November 2018 and so it is likely that any such discussion took place at that meeting. This discussion seems to be anticipated at paragraph 2 of the email from Rodric Williams to Ben Foat dated 29 October 2018 **POL00258630.**

34. In the event I did challenge those two SPM's as to their honesty having ensured that they were given the appropriate warning about self-incrimination. I note the Judge remarks in the CIT judgment that if that was POL's case then it had to be put to the first of the SPM's referred to– see: CIT judgment paragraph 269 and 270. The second SPM challenged as to honesty refused to answer a question dealing with the deliberate misstatement of accounts – see: CIT judgment paragraph 328.

35. The remaining SPMs were not challenged based on dishonesty. It was simply put to them that the losses were due to errors or mistake by them or their staff.

36. The object in making these points was twofold. Firstly, – to challenge the point that all SPM losses were due to Horizon – and put a positive case on

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dishonestly albeit in a limited way to two particular SPM's. Secondly, to demonstrate to the Judge that when he was construing the express terms of the SPM contracts and seeking to imply terms, that he had well in mind the active possibility of theft – and that the obligations in the SPM contracts needed to cope with that possibility.

37. Due to the unsatisfactory way in which these matters were raised against an incomplete documentary record and where there had been no expert investigation into the lead SPM's losses - at the end of the trial I made the submission that the Judge was not in a position to make any adverse findings against SPM's and should not do so. I should add that given he was hearing a trial limited to the meaning and effect of the SPM contracts this was not the right time to be making such findings or adverse comments, in any event. That strategy was agreed with WBD and Jane MacLeod (POL General Counsel).

38. The admission of the wide-ranging SPM evidence, the need of POL to test it at least to an extent, and the trenchant findings of the Judge against the POL witnesses in relation to such matters, provides the background to the subsequent recusal application which I deal with below.

39. I am asked about POL's decision making in relation to the general conduct of the CIT and its preparation set out above. This appeared to me to have been made by Jane MacLeod ( POL General Counsel) in liaison with the committee of the PO board charged with managing the litigation.

40. In giving advice on the general conduct of the CIT the Counsel team advised POL to take account of all relevant matters when considering the issues set out

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above. It was approached as a normal piece of commercial litigation where the terms of the contract (here the two SPM agreements) were disputed.

41. As to the adequacy of my instructions my view was that given the limited scope of the CIT that my instructions and the provision of documents was adequate.

42. In terms of conferences or other legal disclosures – there was a close relationship between the Jane MacLeod (POL General Counsel) and Andrew Parsons, my Instructing Solicitor at WBD. I cannot now recall all the conferences or telephone discussions with them beyond that set out in this statement. But I am clear that everything was discussed and then Jane MacLeod went back to the POL board committee as necessary. As noted above, there were limited occasions when I (or other advisers) attended the POL board to advise on these matters – and then it was only ever to speak to documents that had already been provided to them e.g. at the board meeting on 15 May 2018 (referred to at paragraph 21 above) where the written merits opinion was discussed.

**Project Zebra report**

43. As to the "Project Zebra" report and associated issues of privilege - I don't think this matter was raised with me in October 2018 – although I see that I am cc'd on the email of 23 October 2018. This was in the immediate run up to the CIT and so I would have been heavily engaged with trial preparation. From document WBON0000626. it seems that references to the Deloitte report in the Zebra action summary were redacted on the advice of ADR and Owain Draper

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on the basis that the Deloitte report is covered by litigation privilege/ legal advice privilege - and so references to the Deloitte report or its findings in a subsequent document (i.e. the Zebra report) could be redacted on the same basis. I recall that at trial I was asked to personally check the status of this document and did so as set out at paragraph 38 and 39 of the CIT judgment. I do not specifically remember, but I assume that I was persuaded by WBD and Owain Draper that the dual basis of litigation privilege and legal advice privilege was properly maintainable on the grounds set out above. The debate with the Judge on this got slightly side tracked in how the title "zebra" could be privileged.

**The recusal application**

44. The starting point for the recusal application was my note of 10 March 2019 **POL00022688** hastily written following the provision of the draft CIT judgment two days prior - and the note being circulated the day before the Horizon issues trial was due to commence. That note was obviously something Andrew Parsons had asked me to provide – and at paragraph 7 and 8 I deal with the possibility of a "stay" which was something Andrew Parsons must have asked me about.

45. That note is aimed at the possibility of seeking permission to appeal and the merits of so doing as well as the possibility of seeking the recusal of the managing judge. I noted (at paragraph 11) that there was a very high threshold to pass when considering recusal and that it would be worth getting the views of

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separate counsel on the matter given that I had been centrally involved in the CIT trial (paragraph 23).

46. I don't specifically recall – but I feel sure that I would have spoken to Andrew Parsons about the contents of the Note subsequently but cannot now recall what was said. But the result was that he went ahead and got instructions to involve separate independent senior counsel to consider the issues of appeal and recusal. As set out further below, once Lord Neuberger and then Lord Grabiner became involved my views on recusal became slightly irrelevant- I did attend various meetings and did actually attend the recusal application, but it was very much to provide continuity rather than advice.

47. POL understandably wanted to hear from different and more senior people - independent of me. Once Lord Grabiner became involved, he used Gideon Cohen as his junior and I was sidelined with a view to ensuring that Lord Grabiner could make up his own mind and would not be, and would be seen not to be, influenced by me.

48. That task first fell to Lord Neuberger. I believe he came to my room on 12 March 2019. He had a copy of the CIT judgment which he had clearly read and gone through as it had markings, underlining's and yellow tabs on it. He may also have had other documents. I do not now recall.

49. We had a discussion, and I gave him a detailed outline of the background to the case and the issues that arose including the specific procedural background. This would likely have included the failed attempt to exclude the wider aspects of the SPM evidence, the decision to cross-examine the SPM's and manner in

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which the Judge had dealt with the evidence and nature of the underlying complaint against the Judge. I am likely to have used my Note of 10 March 2019 **POL00022688** as a guide. I recall that Lord Neuberger already had a good grasp of the case and asked a number of questions which I answered. I recall thinking that he appeared to have already absorbed a good deal of the relevant detail.

50. I subsequently, together with Gideon Cohen, prepared a Note which was designed to be a briefing Note for Lord Neuberger to provide more granular detail than I had provided to him orally. That note was dated 13 March 2019 **POL00023097.** I don't recall if I spoke with Lord Neuberger again having supplied the note.

51. Lord Neuberger subsequently produced his note – Observations on Recusal Application dated 14 March 2019 **POL00025910.**

52. I am asked about the strategy or purpose in making the recusal application and asks whether the "claimants' costs or delaying the Horizon issues trial" were taken into account when deciding whether to pursue the application.

53. My purpose in asking the question about a possible application for recusal[2] was that given the Judges trenchant negative views about POL and its witnesses contained in the CIT judgment about matters other than those strictly before him (i.e. the terms of the SPM agreements and the agency relationship) I, and I believe Lords Neuberger and Grabiner, had real concerns whether any of the

[2] See: paragraph 11 of my Note: **POL00022688**

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subsequent trials which the Managing Judge was due to hear, could be seen as fair.

54. As for costs, I had no real idea of the Claimants cost position – all we knew was that they had well recognised funders backing them in litigation which was going to be long running - and have up to four consecutive trials. If I had thought about it at the time – I would have expected them to have secured funding for the series of trials given the earlier trials would be limited to determining points of principle and would not bring the SPM's (or their funders) financial relief. The making of the recusal application had nothing whatever to do with the Claimants costs position.

55. As to the Horizon issues trial – it was certainly no part of my thinking nor to my knowledge that of other advisers, to make the application for recusal to delay the Horizon issue trial- which would in any event have served no useful purpose. The reason why the application had to be made during the Horizon issues trial was to seek to prevent the SPM's arguing that POL had waived their objection.

56. I am asked about my oral briefing of Lord Grabiner "on 12.03.18". On the basis that that must be a reference to 2019 - I do not believe I did so. My recollection is that Lord Grabiner became involved, and I briefed him later on- after Lord Neuberger's note when POL realised that recusal was a real possibility and Lord Neuberger could not appear on any such application. Also, the email of 12 March 2019 from my clerk Robert Smith **WBON0000659** seems to suggest that at that stage Lord Grabiner KC is simply being put on a "first refusal" basis. And

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**WITN10650101** dated 15 March 2019 is an instruction from my clerk Rob Smith for me to bring Tony (Grabiner) up to speed.

57. When I did brief Lord Grabiner, he would have had my, and Gideon Cohens, background note, and I believe had read the judgement. I cannot now recall exactly what I told him, but I believe I would have gone through the same matters I told Lord Neuberger a few days earlier – set out at paragraph 49 above.

58. I have read the recusal note prepared by WDB dated 17 March 2019 **POL00022970.** That does generally accurately summarise the views attributed to me save where it says my view is that the Managing Judge demonstrated "bias". My view was that the Managing Judge demonstrated *apparent* bias – which is a completely different thing.

59. I am asked about the conference on 18 March 2019 with Jane MacLeod (POL General Counsel). I have no distinct memory of this conference. Accordingly, I cannot add anything to the attendance note of this meeting at the first two pages of **POL00006397**. I have no reason to question the accuracy of the attendance note. I am also asked about the advice "you gave". It is clear from the attendance note that I did not give any advice at this meeting. My overall memory is that by this stage POL wanted advice to be given by Lord Grabiner KC, independently and not influenced by me- and that is what happened.

60. I am asked about the telephone conference on 20 March 2019 with the POL board and subsequent matters. I certainly did not attend that telephone conference- and the WBD note does not suggest that I did attend. My

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recollection is that Lord Neuberger and Lord Grabiner separately advised the POL board in telephone conference. I was not in attendance at either telephone conference. I understand that that was deliberate as POL wanted the views of new counsel to be unhindered by whatever I had said previously.

61. Subsequent to those telephone conferences the decision to proceed with the recusal application was made by the POL board which was subsequently made. That decision was communicated by Tom Beezer in an email dated 20 March 2019 **WBON0001806.**

62. I don't specifically recall any further communications although I am sure there would have been continued communication. But as I have said previously – Lord Grabiner KC took over the presentation of the recusal application and the preparation of the necessary documents with the assistance of Gideon Cohen. I recall being shown them in draft – which I reviewed for continuity and sense.

63. I am asked about Tom Beezers email of 20 March 2019 to Gideon Cohen. I was not guiding the process or the tone by this stage. But I was always in favour of plain non-inflammatory language being used to describe contentious events.

64. I am asked about the views attributed to me in the email chain from Ken McCall to Alisdair Camerons email of 13 May 2019 **POL00103539** that POL should "…stick to our guns". It is correct that my advice was that the appeal should be against what we considered to be the legal errors contained in the judgment and *some* of the adverse factual findings the Managing Judge had made - based on what we considered to be incomplete materials and on subjects which were not properly part of the CIT. It was these factual findings Lord Neuberger was

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referring to as having been used by the Managing Judge to justify the imposition of the 21 implied terms – see: the justification, "…for the raft of adverse factual findings he has made" (paragraph 6 Observations on Recusal Application) **POL00025910**. To that extent, my advice to POL was that they should indeed stick to their guns and seek to appeal the implied terms and their supposed factual underpinning- and not abandon that factual aspect of the appeal entirely as Alisdair Cameron was recommending in this email.

**General**

65. I am asked about my reflections on the advice given. The advice I and ADR gave to POL about the proper construction of the two SPM contracts was, it seems to me, sound advice based on an orthodox approach to the interpretation of contracts. The Managing Judge took a radically different approach, struck down certain terms as unfair and implied no less than 21 terms which had the effect of radically altering the commercial relationship between the parties. That was unprecedented.

66. It appears he did so because of what he saw as the one-sided nature of the contracts and the bad behaviour of POL. He even implied a term of good faith into an express, mutual 3 or 6-month termination provision, something that had never been done before – and has not been done since. It was on any view radical and unexpected. The advice I then gave to seek to appeal certain aspects of the CIT judgment should be seen in that light. I believe Lord Grabiner KC and Lord Neuberger also advised on this aspect. The latter said that many

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of the points were arguable and some were strongly arguable.[3] Notwithstanding that - the Court of Appeal refused to grant permission to appeal when different Leading Counsel subsequently sought permission.

67. As noted above, when I conducted the CIT, I was only aware of the existence of one specific bug – and even that seemed to produce a both debits and sometimes credits in the SPM account and was of very limited impact in terms of SPMs numerically.

68. If I had been aware of the full catalogue of bugs and errors found by the Managing Judge to exist in Horizon (and some of which it now appears POL to have been aware) and to be capable of causing loss to the SPMs, I would not have been willing to cross examine them on the broad basis that the losses were down to their mistakes or errors. A much more detailed and nuanced approach would have been required.

69. On recusal – as noted above – this issue was born out of the failed attempt by POL to exclude the broad evidence introduced by the SPM's that, in the view of the POL legal team, went far beyond matrix of fact – and how that evidence, and evidence in reply that was given by POL witnesses was dealt with. It was in describing that evidence that POL contended the judge was guilty of apparent bias making numerous critical comments and trenchant criticisms of POL which appeared to have nothing at all to do with the construction of the SPM contracts with which he was principally dealing in the CIT- and was very much related to

[3] See: paragraph 5 of Observations on recusal application **POL00025910.**

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the subsequent trials that he was yet to hear. The limiting of the CIT judgment to matters that were "necessary" was a point I had anticipated and raised with the Managing Judge at the trial – see: paragraph 35 of the CIT judgment. At the end of the day, recusal was a subject about which POL was advised by two very senior and experienced lawyers on what POL found to be a difficult decision.

70. In hindsight I wish we had the capacity to obtain guidance on how to deal with the evidence that caused this difficulty in advance of the CIT – whether by appeal to the Court of Appeal (which was not practicable given the impending trial a few weeks later) or by seeking guidance from the trial judge. On that last possibility, I think if I had done that then it is likely that I would have been told to take my own course. The Judge having allowed it all in and said it was relevant (after a contested application) – it was very unlikely that he was going to give a direction that I need not test it in cross-examination, or that it could be ignored.

71. I have no other matters to bring to the attention of the Chair.

**Statement of Truth**

I believe the contents of this statement to be true.

Signed: GRO

Dated: 28 October 2024

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| 2 | POL00006383 | Post Office Black Hat Review -Note | POL-0017688 |
| 3 | POL00006406 | Steering Group: Decision Paper- Security for Costs | POL-0017711 |
| 4 | POL00000602 | Alan Bates and Others and Post Office Limited, Skeleton Argument for Post Office CMC | VIS00001616 |
| 5 | POL00000600 | Alan Bates and Others and Post Office Limited, Skeleton Argument for Post Office CMC | VIS00001614 |
| 6 | WBON0000626 | Email chain from Owain Draper to Amy Prime, cc'd David Cavender, Gideon Cohen and others re Freeths correspondence | WBD_000496.000001 |

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| | | re POL redacted documents | |
| 7 | POL00025892. | Common Issues Opinion (Anthony Robinson QC; David Cavender QC; Owain Draper; Gideon Cohen | POL-0022371 |
| 8 | POL00006382 | Speaking note for Post Office Litigation Sub-Committee Meeting. | POL-0017687 |
| 9 | POL00006754 | Minutes of Lit subcommittee meeting | POL-0018012 |
| 10 | POL00258630 | Email chain from Rodric Williams to Ben Float re postmaster litigation board briefing | POL-BSFF-0096693 |
| 11 | POL00022688 | Bates- note 100319.docx Counsel's Advice- Notes RE: Appeal | POL-0019167 |
| 12 | POL00023097 | Note to background to possible recusal application | POL-0019576 |
| 13 | POL00025910 | Observations on Recusal Application | POL-0022389 |
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|---|---|---|---|
| | | **Andrew Parsons and Tom Beezer Re: Post Office Group Litigation-Appeal** | |
| **15** | **WITN10650101** | **Email from Anthony Grabiner to David Cavender, Gideon Cohen, Rob Smith and David Neuberger (CC'd)., Re: Post Office - Preliminary thoughts** | **WITN10650101** |
| **16** | **POL00022970** | **WBD note on Recusal** | **POL-0019449** |
| **17** | **POL00006397** | **Womble Bond Dickinson – Bates & Others v. Post Office Limited Note of Conference with Lord Grabiner QC of 18 March 2019 at One Essex Court** | **POL-0017702** |
| **18** | **WBON0001806** | **Email from Tom Beezer to Gideon Cohen et al RE: Application docs** | **WBON0001805_0001** |
| **19** | **POL00103539** | **Email chain with Alisdair Cameron** | **POL-0103122** |