



Solicitor to the Inquiry
Post Office Horizon IT Inquiry
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Our ref
9100/31043642

Date
18 August 2023

By email

Dear Solicitor to the Inquiry

Post Office Horizon IT Inquiry - 4 July 2023 Hearing

1. We refer to Ben Foat's second witness statement dated 21 June 2023 and the oral evidence given by Mr Foat during the hearing on 4 July 2023.
2. We set out in the **Annex** to this letter information that Mr Foat indicated that he would follow up on after the hearing.
3. Since the 4 July 2023 hearing, further investigation and confirmatory steps have been undertaken in relation to the subject matter of Mr Foat's statement, and the hearing. In light of that work, there are updates/changes to the position on certain points set out in Mr Foat's statement and/or stated in his oral evidence. Details of this information is also set out in the table in the Annex to this letter.
4. We have provided this in the format of a table as the easiest way to consider the questions that were asked during the hearing and the additional information.
5. We would also be grateful if you would kindly confirm whether the Inquiry intends to publish the information contained within the table and/or circulate it to core participants.
6. Please do not hesitate to contact us should the Inquiry have any questions.

Yours faithfully

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Herbert Smith Freehills LLP

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ANNEX: FOLLOW-UP AND CLARIFICATIONS

Transcript extract	Follow-up/ clarification
<p>Q. --and you're a member of the executive team of Post Office Limited?</p> <p>A. Correct.</p> <p>Q. Is that sometimes called the Group Executive?</p> <p>A. The General Executive.</p> <p>Q. General Executive, thank you. Is that the most senior leadership team within the Post Office that's accountable to the board?</p> <p>A. Correct.</p>	<p>The formal description of the executive team is the "Group Executive", but it is commonly known as the "General Executive".</p>
<p>Q. What about the Hamilton appeals to the Court of Appeal Criminal Division? Did you participate in any way in the disclosure exercises for the purpose of those appeals?</p> <p>A. Yes, I was general counsel at that time. Peters& Peters and HSF, the two law firms, were involved in that process.</p>	<p>HSF was not involved in the disclosure exercise for the purposes of the Hamilton appeals to the Court of Appeal Criminal Division.</p>
<p>Q. How many people within the internal Post Office Legal Support division, if I can call it that, are working on Inquiry disclosure?</p> <p>A. So within the Post Office internal team, it has varied over the years, depending -- as the Inquiry has evolved. It will have varied from anywhere, I think, between four to what I understand is now eight lawyers. Of course, there are many issues that the Inquiry lawyers must attend to in addition to disclosure.</p> <p>Q. You're assisted, I think, by Herbert Smith Freehills, HSF as you referred to them already. They're the Post Office's recognised legal representatives in the Inquiry presently?</p> <p>A. That is correct.</p> <p>Q. Can you give us a similar figure, please, of how many were working or have been working -- I imagine that waxes and wanes as well -- on the Inquiry?</p>	<p><u>Post Office Inquiry legal team</u></p> <p>POL Inquiry legal team consists of lawyers as well as support staff, including paralegals. Currently, POL's Inquiry legal team, and this team has eight lawyers. The way that POL has provided internal legal support in relation to the Inquiry has evolved over time as the Inquiry has evolved. There have been periods where the number of lawyers has been fewer than four.</p> <p><u>HSF</u></p> <p>Mr Foat was informed on 27 June 2023 that HSF had 46 people to assist with a recent review relating to family attachments (comprised of 27 lawyers and 19 analysts). He has since been informed that HSF's current team</p>



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<p>A. Indeed, my understanding is that 46 lawyers are working specifically on these disclosure and remediation issues. I'm happy to come back and give an exact figure but that is my understanding based on what I've been told.</p> <p>Q. Same question, please, in relation to Peters & Peters?</p> <p>A. I think it is much smaller. Again, I'd want to come back but my understanding is that there are at least five.</p>	<p>includes 47 lawyers. HSF also has support staff, including trainee solicitors, paralegals, and legal analysts, that assist with disclosure.</p> <p><u>Peters & Peters</u></p> <p>Peters & Peters' current team includes four lawyers. The size of this team has varied from time to time, and there are other lawyers at Peters & Peters who work on the criminal appeals. Peters & Peters also has support staff, including paralegals, and instruct barristers, to assist with disclosure.</p>
<p>Q. The Post Office responded to Rule 9(11) part 15 on 14 May 2022 by disclosing some documents to the Inquiry and, amongst those documents that were disclosed, was one document that's relevant to the present issues. Can we look, please, at POL00038452. Thank you. This is a version of the guidance that we just saw [POL00115670]. Can you see that?</p> <p>A. Yes.</p> <p>Q. "POL", "Security Operations Team", "Compliance", "Guide to the Preparation and Layout of Investigation Red Label Case Files". "Offender reports and Discipline reports." So it's by no means exactly the same as the guide that I showed you earlier but, in very broad terms, fulfils the same purpose as the guide that we just saw, namely to give guidance on the construction of files and the contents of prosecution files.</p> <p>A. Correct.</p>	<p>POL00115670 was a copy of Appendix 2. POL00038452 is a copy of Appendix 3. They are different documents, not versions of the same guidance, and they do not fulfil the same purpose.</p>
<p>Q. Can I ask you some questions from what you're saying here. So an email has been sent on 7 March 2013 that contained Appendices 1-5 as a zip file, yes?</p> <p>A. Mm-hm.</p> <p>Q. The guide document was Appendix 3, and that caused a hit to a search term, yes?</p> <p>A. Correct.</p> <p>Q. Only Appendix 3, the guide, was disclosed to us, but not the other four documents in the family.</p>	<p>As we anticipate the Inquiry is aware, there were 36 documents in the zip (including Appendices 1 to 5).</p>



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<p>Q. Was that guidance -- was that the guidance that was given, that you -- because there are no hits in another part of the family, you don't look at the other part of the family?</p> <p>A. I would need to take that question away. I am not aware. I do know that there are cases where even though there aren't those hits, the family documents would be checked, but it would depend on the relevant request, it depends on the suite of documents that was contained, so I imagine a zip file. But I'm not instructed with that particular detail.</p> <p>...</p> <p>Q. But is it an outlier, is what I'm driving at? Is it somebody made a mistake or is it because of the instructions they were given were faulty? "If you've got an email that's got two attachments, ten attachments, have a look, reviewer, to see whether the entire suite of documents should be disclosed." Was that instruction given?</p> <p>A. I don't think the instruction was given, and my rationale for saying that is there were cases there they did check. But I take your point and accept that the approach taken in this particular case was that, had the family documents been checked, then it would have identified documents Appendix 1, 2, 4 and 5, but it wouldn't have identified appendix 6, 7 and 8.</p> <p>Q. When would appendix 6, 7 and 8 have been identified?</p> <p>A. Those documents would have only been identified in the -- by the de-duplication process.</p>	<p>Reviewers were not instructed to review (or not to review) families but had the option to do so, for example in order to be able to see the keyword responsive document in context.</p> <p>Lawyers on the review team had regard to family documents where they considered this appropriate. Legal analysts conducting first level review would generally not do so.</p> <p>Since 4 July 2023 hearing, it has since been identified that as part of HSF's review (referred to in paragraph 17 of Ben Foat's Second Witness Statement) duplicate versions of Appendix 3 were initially tagged as "not relevant" to Rule 9 Request 11. This included duplicate versions which had Appendix 6 as a family document.</p> <p>The fact that Appendix 3 was considered unresponsive to Rule 9 Request 11 was reflected in HSF's letter dated 31 March 2022. POL informed the Inquiry that a series of other policy documents (separate to the prosecution policy) which related to the investigative and prosecutorial process had been identified but were not being produced, as not responsive, though asking the Inquiry to notify POL if it in fact wanted them. These documents (which included Appendix 3) were set out in Annex II to that letter.</p> <p>As a result of a technical issue with documents stored on the CCRC database, searches for Rule 9 Request 11 needed to be re-run. As part of this review further versions of Appendix 3 were reviewed and tagged not relevant. However, in respect of one instance of the document, a decision was taken to revise this tagging decision out of an abundance of caution and giving a wide interpretation of the relevant Rule 9 Request 11 question. A version of Appendix 3 (POL-0027763) was thus produced in April 2022 as part of that request.</p> <p>The other versions of Appendix 3 were not produced because POL was focused on providing one copy of the responsive document to the Inquiry rather than several duplicate versions (although these other versions of Appendix 3 had different family documents from the produced version).</p>



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<p>A. ...So when you have -- and we talk about families of documents. So when you have what's called a primary or parent document, so a cover email, and it contains a series of attachments, so you might send photographs of plants, which are the attachments. What happens in what's called the top-line de-duplication process, if you have an attachment, an email that -- sorry, you have an email, which is your parent document and then you have, let's say, three attachments which have three different plants -- insert whatever sort of plant you want -- what should normally happen is that, where you have literally the exact same replica of that, so there is another version that is identical, that has exactly the same cover email with the same attachments of those three plants, that would then be de-duplicated and that's called the top-line methodology. That didn't happen here. What happened in this particular case is that, where there were versions -- so instead of having an exact replica of the cover email with the three different attachments, where there were versions where there was the cover email but, let's say, four plants that were attached to the email, the item line methodology that was used meant that it would consider them as the same when they were not. And they would therefore de-duplicate and, therefore, that is why the Inquiry did not get to see and, indeed, the reviewers didn't get to see Appendix 6, 7 and 8.</p>	<p>Paragraph 18 of Ben Foat's Second Witness statement states that "<i>The duplicate versions of Appendix 3 were tagged as "Duplicate" by POL's eDiscovery provider, KPMG, and so they were considered unnecessary to review</i>".</p> <p>Since Mr Foat gave evidence on 4 July 2023, and as we explained in our letter dated 14 July 2023, Peters & Peters have noted the possibility that, in relation to POL00105216, the non-review of duplicates and their respective family documents may have arisen from an approach adopted by reviewers rather than item level de-duplication being applied by POL's eDiscovery provider.</p> <p>Peters & Peters has clarified that the review of POL00105216 took place in 2020 as part of the Post Conviction Disclosure Exercise ("PCDE").</p> <p>While Peters & Peters has confirmed that, other than POL00105216, no other duplicate or near duplicate version of Appendix 3 appear to have been reviewed as part of the PCDE, it remains unclear why these duplicate/ near-duplicate versions of Appendix 3 were not reviewed and / or whether this was due to deduplication on searches run by the POL's previous eDiscovery provider.</p> <p>In any event, POL notes that the way to remediate the issue remains the same as cases where item level de-duplication processes was applied, and the remediation is underway.</p>
<p>Q. The guide to which Appendix 3 -- so the guide, which is Appendix 3, was itself undated, wasn't it. There's no date on it.</p> <p>A. Yes, I believe so.</p> <p>Q. Yes, it's undated. Wouldn't it be important, therefore, to disclose the email of 20 March 2013 to show that that document and the other four documents which were part of the family were in circulation at that point, March 2013?</p>	<p>POL00038452 is not dated on its face. The document's metadata which was disclosed to the Inquiry in the production index together with the document contains document date/time information (i.e., 07/03/2013 14:10) under the column heading "Document Family Sort Date". This date/time is taken from the parent email of the document. This date/time information is available on the Inquiry's core participant platform.</p>
<p>Q. This material appears not to be within that pool. So was that the problem, looking at too small a universe, or was it the de-duplication exercise that meant that this</p>	<p>The documents (and their families) referred to in paragraphs 44(a), 44(c), 44(d) and 44(e) of Ben Foat's Second Witness Statement were contained in</p>



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<p>material was included and, therefore, even though there may have been a hit against it, was not disclosed to us?</p> <p>A. My understanding is that it would be the de-duplication exercise.</p> <p>Q. And on what basis do you reach that understanding?</p> <p>A. Sure. Because the -- I agree, it wouldn't necessarily be picked up in the CCRC or the PCDE exercise, but that isn't the only database that sits within Relativity. So Relativity, as I said, has over 54 million documents. The CCRC database has over 5 million documents. There are over 160 different data repositories within Relativity, as well as all of the mail boxes. And so, whilst I accept that these emails may not have been picked up in the CCRC database, my understanding -- but I'm happy to be corrected on the point -- is that it wouldn't have been identified because of the de-duplication error. But I'm happy to take that away and report back to the Inquiry.</p> <p>Q. If we just look, then at paragraph 16 of your witness statement, which is on page 5, you say in the second line: "To identify such documents, [Peters & Peters] and HSF ran search terms across a Relativity database which I will refer to as the CCRC database ... The CCRC table is hosted on Relativity by POL's eDiscovery and provider KPMG ... The CCRC database contains materials collated for the purposes of the criminal appeals. Searches were and are one across this database," et cetera.</p> <p>It only refers to the CCRC table there, rather than other parts of the document universe within Relativity. So I'm trying to establish whether that's the problem or the de-duplication exercise which you have attributed the blame to.</p> <p>A. Yeah. As I said, I'm happy to come back to it, having taken instructions. But my understanding with these requests is that the documents that weren't disclosed ultimately, in all cases, had the de-duplication been correct, then those appendices would have been disclosed but I'm happy to come back and report back to the Inquiry with specifics.</p>	<p>the CCRC workspace. They therefore appear to have been impacted by the non-review of duplicates and their respective family documents.</p> <p>The document referred to in paragraph 44(b) of Ben Foat's Second Witness Statement (an email dated 31 August 2011 sent by Andrew Wise) was not contained in the CCRC workspace:</p> <ul style="list-style-type: none"> - As explained in previous correspondence with the Inquiry (including our letters dated 12 August 2022 and 30 June 2023), as part of the Royal Mail Group/POL separation, there was a wholesale change to the email servers that POL used. Most of the archived email data pre-dating 2012 was retained by RMG and now no longer exists. The earliest email available to be harvested from Andrew Wise's mailbox is dated December 2011 (i.e., after the date of the email referred to in paragraph 44(b)). - POL are continuing to investigate where the document was saved and whether further repositories may need to be harvested. <p>We note that the document referred to in paragraph 44(a) is dated 23 May 2011 and is an earlier email in the same chain as the email referred to in paragraph 44(b). For the avoidance of doubt, this email was not collected from Andrew Wise's mailbox. It was recovered from the deleted items of another custodian (Robert Daily).</p>