

Friday, 22 September 2023

1
 2 (9.30 am)
 3 MR BLAKE: Good morning, sir. Can you see and hear
 4 me?
 5 Good morning, sir.
 6 SIR WYN WILLIAMS: Good morning.
 7 MR BLAKE: We have Ms Page asking questions this
 8 morning.
 9 SIR WYN WILLIAMS: Yes.
 10 MR BLAKE: Thank you.
 11 STEPHEN DILLEY (continued)
 12 Questioned by MS PAGE (continued)
 13 MS PAGE: Good morning, Mr Dilley.
 14 A. Good morning.
 15 Q. The strategy of focusing on the old case of
 16 *Pictou*, it was something of a legal sleight of
 17 hand; would you accept that?
 18 A. No.
 19 Q. You ostensibly focused the claim on the signed
 20 cash accounts but, meanwhile, you called
 21 witnesses to say that Horizon was working
 22 correctly?
 23 A. We called witnesses, as far as I recall, that
 24 covered cash accounts and their experiences with
 25 the Horizon computer system.

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1 investigation hadn't uncovered an issue with the
 2 Horizon System at his branch.
 3 Q. Indeed, that was something that eventually was
 4 more or less pleaded. If we can just take that
 5 document down and look at the Reply and Defence
 6 to Counterclaim, my reference for that is
 7 LCAS0000190. This is the Re-amended Reply and
 8 Defence to Counterclaim with a statement of
 9 truth signed by you, Mr Dilley, yes?
 10 A. I can't see the statement of truth but if I've
 11 signed it then I shall accept that I have.
 12 Q. Yes, it's on page 3. I don't think we need to
 13 necessarily go to it.
 14 A. Okay.
 15 Q. But if we can scroll down -- well, you can
 16 certainly see it, if you like.
 17 A. Yes, I have signed that.
 18 Q. There we are. Then on page 1, if we go down to
 19 paragraph 3, please, we can see it says:
 20 "With respect to paragraphs 5 and 6 of the
 21 Defence, Fujitsu Services have looked at the
 22 Claimant's computer system and have confirmed
 23 that the losses recorded by the Defendant were
 24 caused by a difference between the physical
 25 transactions that actually occurred and were

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1 Q. Well, let's look at the judgment. It's at
 2 POL00004325. If we look at page 5, please, the
 3 end of paragraph 11. What we get is a sentence
 4 that begins "Since"; do you see that?
 5 A. Yes.
 6 Q. "Since Mr Castleton accepts the accuracy of his
 7 entries in the accounts and the correctness of
 8 the arithmetic, and since the logic of the
 9 system is correct, the conclusion is inescapable
 10 that the Horizon System was working properly in
 11 all material respects, and that the shortfall of
 12 £22,963.34 is real, not illusory."
 13 He then goes on to say:
 14 "I shall nevertheless consider the points
 15 made by Mr Castleton in relation to the
 16 reliability of the Horizon System."
 17 He proceeds to raise them and then dismiss
 18 them, in effect.
 19 A. Yes.
 20 Q. So the result of calling your witnesses was that
 21 the judge found that the Horizon System was
 22 working properly?
 23 A. At Mr Castleton's branch, he was satisfied from
 24 the witnesses of fact that they had not been
 25 able to -- Anne Chambers in particular, that her

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1 recorded on the system by the Defendant or his
 2 assistant as taking place and the cash in hand
 3 that was declared by the Defendant relating to
 4 those transactions, and accordingly those losses
 5 were not caused by the Claimant's system's
 6 software or hardware."
 7 So we have that there and that is said to be
 8 from Fujitsu Services having looked at the
 9 claimant's computer system. What evidence did
 10 you base that on?
 11 A. My recollection is we had -- insofar as the
 12 computer system was concerned, we had two
 13 witnesses from Fujitsu, Anne Chambers and Andy
 14 Dunks. There was also a gentleman called Andrew
 15 Wise, who worked for the Post Office.
 16 Q. Who was Post Office?
 17 A. He was, yeah. So they were witnesses who were
 18 able to talk to the system.
 19 Q. Do you say that Anne Chambers and/or Andrew
 20 Dunks looked at the claimant's computer system
 21 and confirmed that the losses recorded by the
 22 defendant were caused by, et cetera; do you say
 23 that's what they said?
 24 A. It's 17-odd years ago and so I would have to be,
 25 you know -- I can't recall everything that they

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1 said now, but what is before the Inquiry today
 2 is our note of what was said at the trial. So
 3 the Inquiry has that information.
 4 **Q.** This was really the sleight of hand at work,
 5 wasn't it, Mr Dilley?
 6 **A.** Not at all.
 7 **Q.** This case was not about signed cash accounts,
 8 was it? It was about saying that the Horizon
 9 System worked and making Mr Castleton an example
 10 wasn't it?
 11 **A.** No.
 12 **Q.** Putting his head on a spike, so to speak?
 13 **A.** Not at all.
 14 **Q.** Let's turn to the subject of disclosure. You
 15 spoke about the distinction between disclosure
 16 of the Fujitsu product generally and disclosure
 17 of issues at the Marine Drive branch. Going
 18 back to the start of matters, following the
 19 conference with counsel -- and I took you to the
 20 note of that yesterday, remember the conference
 21 which wasn't held with Post Office and then
 22 Mr Beezer wrote a letter about it afterwards?
 23 **A.** Mm-hm.
 24 **Q.** In that letter, if we go to POL00071081, at
 25 page 1, if we scroll down a little, at the

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1 Richard -- Morgan, obviously -- said that he
 2 raised the issue of the integrity of the Fujitsu
 3 product generally and he seems to have
 4 considered that to be something that needed to
 5 be looked into. Did you disagree with that?
 6 **A.** I would have wanted to have been told by Post
 7 Office if it didn't consider the Fujitsu system
 8 to be robust. But when I had -- whenever I had
 9 conversations with them, as the evidence that
 10 I've put in and the attachments amply
 11 demonstrate, the message we got was that Post
 12 Office were confident in their system.
 13 **Q.** I see. Well, then let's look at some more
 14 specific matters. The Tivoli event log, which
 15 had not been disclosed before trial but which
 16 Ms Chambers referred to in her evidence, that,
 17 in effect -- not intentionally but that, in
 18 effect, revealed a failure of disclosure, didn't
 19 it, in the sense that something which she
 20 referred into evidence had not been previously
 21 disclosed and she obviously felt the need to
 22 refer to it and it had not previously been
 23 disclosed? So, in that sense, there was
 24 a failure of disclosure; is that fair?
 25 **A.** I'm thoughtful about the Tivoli event logs. You

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1 bottom there:
 2 "One other point raised by Richard was the
 3 integrity of the Fujitsu product generally.
 4 Just to confirm, I understand that Royal
 5 Mail/Post Office know of no issues with the
 6 Fujitsu system and are confident that it
 7 operates correctly. Please discuss this with me
 8 information you have a different", and I think
 9 it's going to say "view".
 10 **A.** Mm-hm.
 11 **Q.** At the start there Mr Morgan, anyway, felt it
 12 was important to look at the integrity of the
 13 system as a whole?
 14 **A.** Mm-hm.
 15 **Q.** Yes?
 16 **A.** Mm-hm.
 17 **Q.** Did you disagree with that?
 18 **A.** No, not --
 19 **Q.** So you didn't think --
 20 **A.** Not at Mr Castleton's branch and that's why we
 21 went to see Fujitsu, why we've gone to see them
 22 in June. We've gone through the points put in
 23 Mr Castleton's Part 18 response followed by --
 24 **Q.** Yes, hold on just a minute. I'm trying to get
 25 to one specific point here, which is that

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1 have to disclose something in civil litigation
 2 that could help your case, that could harm your
 3 case -- when those disclosure rules were in
 4 place, they've changed now -- or your opponent's
 5 case. The Tivoli event logs didn't help Post
 6 Office's case nor did they harm it, nor did they
 7 help Mr Castleton's case. So, for the sake of
 8 argument, we disclosed them, but -- and I was
 9 content to do so to avoid the argument, but
 10 actually, they became a non-issue.
 11 **Q.** All right, so you don't accept that that was
 12 a failure, despite her referring to them in her
 13 evidence?
 14 **A.** I would have preferred to have had them earlier
 15 and disclosed them earlier but I don't know.
 16 I don't think that was a disclosure failing.
 17 **Q.** Let's also then just consider the message store.
 18 That's something which in this Inquiry we've
 19 become used to. It's a very large set of data,
 20 isn't it, that encompasses all the transactions
 21 that take place in all the branches but
 22 certainly, in this case, in Mr Castleton's
 23 branch, yes?
 24 **A.** I have no reason to doubt what you're saying.
 25 **Q.** All right. Well, if you -- if we look at your

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1 witness statement, you deal with this at
2 paragraph 335. It's WITN04660100,
3 paragraph 335, which I think is on page 149.
4 Ah, yes, so 335 starts earlier in the document
5 but what we're looking at here is you quoting
6 from a covering letter which came subsequent to
7 the original disclosure because you wanted to
8 make sure that Mr Castleton had certain items
9 which hadn't been in the original disclosure; is
10 that a fair summary?

11 **A.** Yes, and on the 22nd -- prior to 22 November,
12 we'd been providing Mr Castleton's solicitors
13 with disclosure, both in May and afterwards, but
14 we put a name on it, on 22 November, and I think
15 I said to Fujitsu "What is it, you know, is it
16 a device? How would you describe it?" And they
17 said it was best described as the message store,
18 and it's at that point in time we put a name to
19 it.

20 **Q.** Yes, I see. So what you said in your letter
21 was:

22 "The message store audit trail referred to
23 as document 1 contains details of everything
24 that is recorded at the counter by Horizon. It
25 is located at Fujitsu. The message store itself

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1 Mr Castleton looking at it.

2 **Q.** All right. Let's go back a bit in and talk
3 about the letter that Lee Castleton's solicitors
4 wrote about week 42. We touched on it
5 yesterday. This is the letter where
6 Mr Castleton had gone through the transactions
7 for week 42 and he had said that he felt that
8 there were missing transactions, yes?

9 You originally wrote to Penny Thomas at
10 Fujitsu --

11 **A.** I did.

12 **Q.** -- and you eventually got back a response from
13 Gareth Jenkins and Anne Chambers, yes?

14 **A.** *(The witness nodded)*

15 **Q.** So if we could have a look at that it's
16 WBON0000027. We can see at the top there that
17 it's -- the author is Gareth Jenkins but, in
18 fact, he does refer to Ms Chambers in that first
19 introductory paragraph there; do you see that?

20 **A.** Yes.

21 **Q.** It says the two of them have undertaken
22 an analysis of all transactions that took place
23 in cash accounts week 42, and this was in
24 September 2006.

25 **A.** *(The witness nodded)*

11

1 is of considerable size and we believe that the
2 Post Office has obtained from Fujitsu and
3 disclosed everything from the message store that
4 falls to be disclosed pursuant to CPR 31.6.
5 However, if you seek any further information
6 from it, please contact Brian Pinder of Fujitsu
7 Services to make an appointment directly (and
8 copy us in). Mr Pinder is at Lovelace Road
9 [et cetera]. He has stated that you would need
10 to specify precisely what information that you
11 require from the message store as it can take
12 some time (hours to days) to retrieve from the
13 servers, although this would greatly depend upon
14 the information required."

15 Then you talk about the court ordering of
16 inspection.

17 **A.** Mm-hm.

18 **Q.** In effect, what you said was you can look at the
19 message store but it's going to be nigh on
20 impossible for you to get anything useful out of
21 it?

22 **A.** I also say we believe that the Post Office has
23 obtained from Fujitsu and disclosed everything
24 from the message store that falls to be
25 disclosed but we didn't have any objection to

10

1 **Q.** If we go down to "Analysis undertaken", it's
2 pretty dense reading but I would like to put on
3 record what they said:

4 "The initial set of data obtained was the
5 extract from the Transaction Log that was
6 submitted to Post Office Limited as supported
7 supporting evidence (ARQ 421).

8 "Subsequently a complete extract of audit
9 data for the period concerned was obtained.

10 This included non-transactional data (including
11 opening figures) and the electronic Cash Account
12 information (which was subsequently submitted to
13 Post Office's back end systems) and represents
14 the same information as was printed on the paper
15 Cash Account which Mr Castleton signed at the
16 time to indicate that it was correct."

17 So, just pausing there, in order to do this
18 work they had obtained a complete extract of
19 audit data for the period concerned, yes?

20 **A.** Yes.

21 **Q.** That was not disclosed, was it?

22 **A.** Well, we disclosed all of the transaction logs
23 and the event logs --

24 **Q.** Yes, that's covered in the paragraph above,
25 which says that "We initially looked at the

12

1 extract from the Transaction Log"?

2 **A.** What I don't now recall discussing with them

3 is -- I don't recall going through this document

4 with Fujitsu.

5 **Q.** Let's carry on --

6 **A.** I can see, you know, the cash account

7 information which they referred to in that

8 paragraph, second paragraph under "Analysis

9 undertaken", for example. The cash accounts had

10 been provided by way of recollection --

11 **Q.** Yes, certainly the cash accounts but not this

12 complete extract of audit data, yes?

13 **A.** Well, we did disclose, didn't we, the existence

14 of the message store --

15 **Q.** You did.

16 **A.** -- and we produced everything from it that we

17 thought was disclosable.

18 **Q.** Let's go down to the next paragraph, and it

19 says:

20 "The figures examined have been compared

21 with both the electronic Cash Account

22 information retrieved and also copies of the

23 paper cash accounts for week 42 (and also weeks

24 41 and 43) held by Post Office Limited ...

25 "This check identified a transaction missing

13

1 I'd explained all the details of the case, what

2 it was about, what was going on. They knew that

3 there was a civil claim. They knew the points

4 Mr Castleton was putting and I went to see them,

5 and I went through the points that Mr Castleton

6 was putting to them. They were well aware that

7 civil litigation was going on, and --

8 **Q.** Did you --

9 **A.** Sorry.

10 **Q.** Did you explain to Anne Chambers, after

11 receiving this report, her disclosure

12 obligations?

13 **A.** I don't recall.

14 **Q.** No. Well, let's go down to the next paragraph.

15 "Having done that, a copy of the Reference

16 Data in use at all branches at that time was

17 obtained that defines how each transaction at

18 the Branch maps onto the various lines of the

19 Cash Account. This Reference Data was then used

20 to summarise all the transactions according to

21 where on the Cash Account Report they would

22 appear, thus enabling the Cash Account Table

23 totals to be reconstructed."

24 **A.** Mm-hm.

25 **Q.** So, in order to analyse week 42's transactions,

15

1 from the ARQ 421 data for a value of 92p on

2 12 January. This transaction did not included

3 its Start Time (a known fault that occasionally

4 happens) and so the ARQ extraction process

5 ignored it. However it would not have been

6 ignored by the accounting functions at the

7 counter and a report would have been generated

8 that night as part of the overnight checks.

9 "Unfortunately, this report is not audited

10 and so is not available for examination.

11 However we do not believe that this report is

12 material to the case."

13 This was a report in relation to a known

14 fault in the system?

15 **A.** Mm-hm.

16 **Q.** This was not investigated or disclosed, was it?

17 **A.** Well, I'm told in that document that the report

18 is not available for examination and that it's

19 not material to the case.

20 **Q.** This is coming from Fujitsu marking their own

21 homework, isn't it?

22 **A.** Well, they know you have to disclose documents

23 that are relevant to the case.

24 **Q.** How do they know that?

25 **A.** Because I'd written to them on 22 November 2005,

14

1 the people at Fujitsu obtained a complete

2 extract of the audit data and a copy of the

3 reference data in use at branches. Neither of

4 those were produced and disclosed to

5 Mr Castleton, were they?

6 **A.** I don't have anything to add to what I've

7 already said on this.

8 **Q.** So Mr Castleton's attempt to analyse week 42 was

9 clearly not going to work, was it? Because he

10 didn't have the same information that the people

11 at Fujitsu had used to do that analysis, did he?

12 **A.** Well, there is actually one further point.

13 I spoke to Mr Turner, who was Mr Castleton's

14 solicitor then at Rowe Cohen Solicitors, on the

15 phone and I told him about this analysis that

16 had been done. We had a phone call and he said

17 to me --

18 **Q.** We'll come to that phone note, actually before

19 we start talking about it. Let's do that.

20 **SIR WYN WILLIAMS:** Hang on a minute. This is

21 becoming, if I may say so, a detailed

22 re-examination of one particular point --

23 a detailed re-examination in this Inquiry of one

24 particular point and, Ms Page, with a little

25 latitude either way, your time slot was

16

1 40 minutes, which is significantly -- you have
 2 had longer than that already. So I think we
 3 need to confine this, if we may.
 4 But, as I see it, Mr Dilley, there seems
 5 little doubt that some, at least, of these
 6 documents were not disclosed. Your answer to
 7 that is you didn't think they were disclosable.
 8 I may or may not, depending on where this all
 9 takes me, have to make up my mind about that,
 10 but that's the reality of this, isn't it?
 11 **A.** Yeah, and Mr Castleton's -- I put this to
 12 Mr Castleton's solicitors --
 13 **SIR WYN WILLIAMS:** No doubt in due course, I will be
 14 shown the relevant document if I need to be but
 15 it doesn't have to be in cross-examination.
 16 **A.** Mr Castleton's solicitors told me then that it
 17 wasn't this week that they were concerned about,
 18 and had --
 19 **SIR WYN WILLIAMS:** Are you actually telling me that
 20 you can remember particular conversations with
 21 Mr Castleton's solicitors now?
 22 **A.** I've got an attendance note that shows I spoke
 23 to Mr Castleton's solicitor about this and,
 24 notwithstanding that they'd written to us in
 25 June about week 42 and we'd commissioned this
 17

1 you told them that they had carried out
 2 an investigation and they were satisfied, in
 3 effect, that, as a result of it, that no
 4 information had come to light which assisted
 5 Mr Castleton's case; is that it, the summary?
 6 **A.** It is, save that I can't remember whether I told
 7 him it was Mr Jenkins and Mrs Chambers that had
 8 done that, but I would have said it was Fujitsu.
 9 **MS PAGE:** Would it assist to bring up the note, sir?
 10 **SIR WYN WILLIAMS:** Yes, but then I think, as I've
 11 said, Ms Page, you will have to persuade me that
 12 you've got any time left after we've done that.
 13 **MS PAGE:** It's POL00069604. If we look at it, it
 14 says, in paragraph 1:
 15 "I referred him to his letter ..."
 16 That's the letter where they raised the
 17 issue of cash accounts for weeks 41 and 42,
 18 yeah, and you deal with the fact that you say
 19 that the figures don't stack up. I don't
 20 propose to read through it all. Presumably this
 21 is something that you've read, yes?
 22 **SIR WYN WILLIAMS:** Sorry, Ms Page, are you
 23 addressing me or the witness then?
 24 **MS PAGE:** Sorry, I was talking to Mr Dilley.
 25 You've read this, haven't you?
 19

1 work --
 2 **SIR WYN WILLIAMS:** Are you saying that --
 3 **A.** They then said it was week 49 that was the
 4 issue.
 5 **SIR WYN WILLIAMS:** Are you saying that you explained
 6 to Mr Castleton's solicitors exactly what work
 7 Mr Jenkins and Ms Chambers had done and he said
 8 "Oh, well, fair enough but you don't need to
 9 disclose that" or something along those lines?
 10 **A.** I don't recall the fine details -- that level of
 11 detail of the conversation but I did explain
 12 that we had looked at it, that they'd been
 13 through it and that they were satisfied with it.
 14 And that's when -- and I did take him through
 15 that, and that's when he said it was week 49,
 16 and I was left thinking "Well, what was the
 17 point of all that then?"
 18 **SIR WYN WILLIAMS:** Well, let me be clear about you
 19 say you're saying, that Mr Jenkins, who hadn't
 20 made a witness statement, as far as I'm aware --
 21 **A.** No.
 22 **SIR WYN WILLIAMS:** -- together with Ms Chambers, who
 23 certainly had made a witness statement, though
 24 I'm not sure of the chronology of whether it had
 25 been served by the time of this conversation,
 18

1 **SIR WYN WILLIAMS:** Fine, thanks.
 2 **THE WITNESS:** Sorry, this attendance note?
 3 **MS PAGE:** Yes.
 4 **A.** Mm-hm.
 5 **Q.** Where do you say that you explained to Mr Turner
 6 that there had been an analysis done by Fujitsu
 7 of the cash accounts?
 8 **A.** I would have done so at the time. But it is not
 9 recorded in this note.
 10 **Q.** I see. So you say that, although you didn't
 11 record it in this note, you told him that and
 12 you can remember that from 2006?
 13 **A.** My memory of that is distant but I would have
 14 said that to him because it was not me that had
 15 done the analysis.
 16 **Q.** Are you prepared to take it from me that there
 17 is an email which shows that the report we were
 18 just looking at from Ms Chambers and Mr Jenkins
 19 was not disclosed --
 20 **A.** Yes.
 21 **Q.** -- and that is the only phone note that I've
 22 found which deals with week 1 and your
 23 discussions about that with Mr Turner?
 24 **A.** Yes.
 25 **MS PAGE:** Well, sir, my point on that is finished.
 20

1 I do have other material. I know that there is
2 a lot of underestimation on the part of counsel
3 as to how long it will take to deal with matters
4 but I do have quite a lot more material.
5 I crave your indulgence.

6 **SIR WYN WILLIAMS:** Well, I think, actually -- and
7 this a general remark, which applies not just to
8 you, Ms Page, but to everyone who asks
9 questions, including me, for that matter -- the
10 written material is there to be read and
11 digested by me and, as a generalisation, let me
12 just put it like that, after-the-event
13 elaborations of the written material, especially
14 when they're after the event by very many years,
15 don't tend to impress me, wherever they come
16 from, compared with what was written
17 contemporaneously, all right?

18 **MS PAGE:** Would it make matters easier if I were to
19 put something in writing with the other
20 documents I wish to take Mr Dilley to?

21 **SIR WYN WILLIAMS:** When your team comes to address
22 me, no doubt you will address me orally and in
23 writing and at length about your best points, if
24 I can put it in that way, Ms Page, and I'm sure
25 that you will refer to these issues, if you

21

1 questions coming from Ms Dobbin, I think.

2 **Questioned by MS DOBBIN.**

3 **MS DOBBIN:** Thank you, sir.

4 Mr Dilley, my name Clair Dobbin.
5 I represent Gareth Jenkins. I want to ask you
6 about three topics, if I may. The first topic
7 is the meeting that took place at Fujitsu on
8 6 June 2006 and I'm going to ask if we can
9 please bring up POL00071427. Mr Dilley, this is
10 a document that you've seen before, it's just
11 that the reference number is different.

12 **A.** Thank you.

13 **Q.** In terms of what was discussed at that meeting,
14 I think we can see, if we look at the first
15 page, we looked at number 1 yesterday but if we
16 look at 2, there is some discussion about
17 Horizon worked, yes? That's at paragraph 2.

18 **A.** Mm-hm.

19 **Q.** I think we can tell, if we go over the page,
20 that that was a fairly high level discussion,
21 correct?

22 **A.** Yes.

23 **Q.** If we carry on, we can then see that there is
24 discussion of the specific topics that had been
25 referred to in Mr Castleton's Part 20 reply,

23

1 think them important. That, again, goes for
2 every other recognised legal representative and,
3 for that matter, Counsel to the Inquiry.

4 The plain fact is that, if we were to seek
5 to investigate every point which every
6 recognised legal representative thought
7 important in oral evidence, there would be a
8 very, very, very long Inquiry and that is to be
9 avoided.

10 **MS PAGE:** I do understand that, sir. This is
11 an important witness for Mr Castleton --

12 **SIR WYN WILLIAMS:** I understand that.

13 **MS PAGE:** -- and there are quite a number of other
14 matters I'd like to have put. If I may, I'll
15 put them in writing, sir.

16 **SIR WYN WILLIAMS:** Yes. I think, in order to
17 preserve the reasonable progress of the Inquiry,
18 if you put those in writing to me, and I think
19 it appropriate to seek Mr Dilley's further
20 answers in the light of that, either in writing
21 or orally, then I will consider that, but don't
22 think we can just go open-ended today, so to
23 speak.

24 **MS PAGE:** Thank you, sir.

25 **SIR WYN WILLIAMS:** So let's have the next set of

22

1 correct?

2 **A.** Mm-hm.

3 **Q.** If we look -- perhaps if we take, for example,
4 the first topic "non-communication between the
5 PCs" and we look at the note, we can see, for
6 example, that it was suggested that the
7 transaction logs could be retrieved, yes?

8 **A.** Yes.

9 **Q.** Again, I'm not going to go through every one of
10 these, Mr Dilley, but if we just go thorough,
11 for example, and look at screen freezing, which
12 was dealt with on the next page, yes?

13 **A.** Mm-hm.

14 **Q.** If we look at the final paragraph at that
15 section, do you say the one that reads:

16 "At the end of the session it is all
17 communicated ..."

18 **A.** Mm-hm.

19 **Q.** Again, we see reference to it being possible,
20 though it might be difficult, to look at the
21 recovery session in the audit trails, correct?

22 **A.** Mm-hm.

23 **Q.** Again, if we just go over the page, we can see
24 that the discussion ended with the sixth of the
25 topics "balance snapshots", yes?

24

1 A. Mm-hm.
 2 Q. Then the discussion moved on, didn't it, to the
 3 investigation that had been carried out by
 4 Mrs Anne Chambers the year before, yes?
 5 A. Mm-hm.
 6 Q. We have already seen, I think, that she was able
 7 to say at the conference that, in terms of the
 8 analysis she had carried out, she couldn't see
 9 a systems reason to explain the discrepancy; is
 10 that right?
 11 A. That's right.
 12 Q. All right. What that looks like, Mr Dilley, or
 13 how it appears, is that that was a discussion,
 14 essentially, about how the component parts of
 15 Horizon worked in relation to those topics that
 16 Mr Castleton had set out in his Part 20 reply;
 17 do you agree?
 18 A. Mm-hm.
 19 Q. And suggestion as to some of the other material
 20 that could be looked at in relation to that; is
 21 that right?
 22 A. Yes.
 23 Q. Presumably, that was the first post or the first
 24 consideration of the issues that you would
 25 consider in further detail as part of the

25

1 evidence, and I just can't see any response from
 2 him.
 3 Q. Yes, so again, just returning to the point, this
 4 was the first meeting that you had with those
 5 individuals who might be able to help you in
 6 this case, correct?
 7 A. Yes.
 8 Q. You expected, following on from that meeting,
 9 that there would then be the iterative process
 10 of taking witness statements from them, yes?
 11 A. Yes, but I'd flagged that in advance, as well,
 12 to Brian Pinder of Fujitsu, that we would want
 13 to take a statement.
 14 Q. Quite so. I think it's right then that, based
 15 on your understanding of the meeting, you
 16 drafted a witness statement from Mr Jenkins,
 17 correct?
 18 A. Yes.
 19 Q. We have a version of that witness statement and
 20 perhaps we can call it up, it's at FUJ00122284.
 21 I think you have been provided with this
 22 Mr Dilley, haven't you?
 23 A. I have but I don't recall seeing these
 24 annotations at the time, and I certainly have
 25 checked our correspondence file to see whether

27

1 process of taking witness statements from those
 2 people who you thought you might call in the
 3 trial process?
 4 A. Not entirely. We'd written to Fujitsu on -- as
 5 I've mentioned, on 22 November, and told them
 6 what was happening but, at that time, we didn't
 7 have Mr Castleton's Part 20 -- Part 18 response,
 8 so his allegations were even vaguer at that
 9 point in time and we'd asked them to produce
 10 an expert report that we never got.
 11 Q. Yes. So this was your first meeting, wasn't it?
 12 A. This was the first physical meeting that we --
 13 that I'd had with him.
 14 Q. So can we just be clear about the letter that
 15 you're referring to. That was the letter that
 16 had been sent in November 2005 the previous
 17 year?
 18 A. Sorry, 2005, via Mr Samuel. That's the letter
 19 I'm referring to.
 20 Q. Yes.
 21 A. Yeah.
 22 Q. You'd heard nothing from Fujitsu since then,
 23 correct?
 24 A. I hadn't and I turned the page on our
 25 correspondence file before I came to give

26

1 we were provided it and I couldn't see it on
 2 there. That doesn't mean that we weren't but
 3 I just can't remember seeing these responses,
 4 and I think that I did not.
 5 Q. It's quite an important document, isn't it?
 6 A. Yeah.
 7 Q. Can we just look at it and see why it's
 8 important. So if we look at page 1 of the
 9 document, we can see, can't we, that he sets out
 10 how he's made his annotations, correct?
 11 A. Mm-hm.
 12 Q. He says that he's highlighted parts of it that
 13 he wanted to emphasise?
 14 A. Mm-hm.
 15 Q. Yes?
 16 A. Mm-hm.
 17 Q. Now, I don't have time to go through every
 18 single comment that he made --
 19 A. No.
 20 Q. -- and I'm going to pick it up at paragraph 16,
 21 but if there's anything that you want me to draw
 22 to attention, then please do say.
 23 A. Mm-hm.
 24 Q. So if we look at paragraph 16, so first of all
 25 you had drafted for Mr Jenkins your

28

1 understanding of how double accounting worked,
 2 yes?
 3 **A.** Yes, and he's saying that's what -- that's not
 4 what he meant.
 5 **Q.** Exactly, and I think you had understood that
 6 there was a physical document that was the
 7 analogue of every Horizon transaction, correct?
 8 **A.** Correct.
 9 **Q.** What he was setting out was that you had gotten
 10 that pretty much fundamentally wrong, yes?
 11 **A.** Yeah, he was saying double-entry accounting
 12 means something else. But I don't think he's
 13 saying that there wasn't a corresponding
 14 physical document for a transaction.
 15 **Q.** Absolutely. These goes on I think at the end of
 16 that part of his comment to explain to you, for
 17 example, that POL would have some of the
 18 physical documentation in terms of
 19 a reconciliation process, correct?
 20 **A.** Correct.
 21 **Q.** If we go over the page, please, and it's right
 22 to say that you had asked Mr Jenkins a series of
 23 questions in this witness statement as well,
 24 hadn't you?
 25 **A.** Mm-hm, correct.

29

1 You had asked about what was the transaction log
 2 and he explained to you --
 3 **A.** What that was.
 4 **Q.** -- what that was. He had already said, hadn't
 5 he, at the meeting that that was something that
 6 could be obtained?
 7 **A.** And we did disclose transaction logs, yes.
 8 **Q.** Yes, I'm quite sure you did but I think the
 9 point is that at a very early stage he was
 10 pointing to the availability of these materials;
 11 correct?
 12 **A.** Mm-hm.
 13 **Q.** Again, if we go over the page, please, to
 14 paragraph 23. This is consideration of ONCH
 15 and, again, if we look at the very final part of
 16 that paragraph that starts "I think there may be
 17 some confusion here", Mr Jenkins was trying to
 18 clarify to you, wasn't he, what he understood
 19 Mr Castleton's case or what, in fact,
 20 Mr Castleton was saying, correct?
 21 **A.** Yes, correct.
 22 **Q.** Again, on paragraph 26 -- and this is still on
 23 ONCH, thank you -- again, we can see he's
 24 highlighted again an explanation that he was
 25 giving to you about the final report, correct?

31

1 **Q.** You asked him whether or not there was any data
 2 to show whether or not the computer terminals
 3 didn't communicate with each other, and he
 4 explained to you about the EOD check that was
 5 made at the end of the day, didn't he?
 6 **A.** Mm-hm.
 7 **Q.** He went on to explain to you that the audit
 8 trail would have information about that and that
 9 that was something he could check for you,
 10 correct?
 11 **A.** Mm-hm.
 12 **Q.** He also explained that it wasn't in the data
 13 that he had looked at as yet, correct?
 14 **A.** Mm-hm. That's right.
 15 **Q.** If we go on again to look at paragraph 17, you
 16 had asked him another question about what the
 17 postmaster would see; do you see that?
 18 **A.** Yes.
 19 **Q.** Again, he said to you, didn't he, he would need
 20 to investigate that further --
 21 **A.** Yes.
 22 **Q.** -- but he could give you a rough idea, correct?
 23 **A.** Correct.
 24 **Q.** Again, if we could look at paragraph 19. I just
 25 want to draw your attention to this paragraph.

30

1 **A.** Yes.
 2 **Q.** If we follow his words, he, in fact, tells you
 3 that the way that you had put it was too strong?
 4 **A.** He did.
 5 **Q.** I'm going to move on, if I may, to paragraph 35,
 6 which was the section on balance snapshots?
 7 **A.** Mm-hm.
 8 **Q.** You had set out and referred, I think, to some
 9 of the documents in respect of this?
 10 **A.** Mm-hm.
 11 **Q.** We can see that from 36(a):
 12 "Gareth this is document 3."
 13 What he said underneath that was:
 14 "I will need to carry out a more detailed
 15 analysis to explain exactly what is going on
 16 here."
 17 Yes?
 18 **A.** Mm-hm.
 19 **Q.** Again, at the very final paragraph in that, on
 20 that page, he referred again to the fact that he
 21 hadn't examined the detail of the documents.
 22 **A.** Yes.
 23 **Q.** He was saying to you, I think in fact, that the
 24 documents you had referred to weren't, in fact,
 25 complete; is that correct?

32

1 A. Yeah.

2 Q. Then if I may, Mr Dilley, if we go over the page
3 to paragraph 38, what you had drafted for
4 Mr Jenkins was the statement:

5 "There are no grounds for believing that the
6 problems Mr Castleton says he experienced with
7 his computer would have caused either
8 theoretical or real losses."

9 A. Yes.

10 Q. Then there was the reference to the
11 reconciliation of paperwork, which he had
12 already corrected.

13 A. Yes.

14 Q. We can see that what Mr Jenkins said was:
15 "Not sure I can agree to this without
16 looking more closely at what has gone on."

17 A. Correct.

18 Q. It's for all of those reasons, isn't it, that
19 that was an important document?

20 A. It was an important document and it's a much
21 more measured document than the information
22 provided to me in the physical meeting that we
23 had.

24 Q. That document couldn't fairly be described,
25 could it, as Mr Jenkins having an answer for

33

1 process of taking witness statements?

2 A. It's fair to say that this document shows that
3 there was a bigger picture but I left the June
4 meeting with a very clear impression from
5 Fujitsu, really clear, and I recorded that at
6 the time. It's in emails, it's in my evidence,
7 that that's the impression I got.

8 Q. You accept, don't you, that the way you
9 characterised Mr Jenkins' evidence -- or, sorry,
10 Mr Jenkins' approach in your witness statement
11 at paragraph 179, whereby you said he had
12 an answer for everything, you accept, having
13 seen this document, that that can't stand as
14 a general observation?

15 A. I believe -- I don't actually. At the meeting,
16 at the meeting, he had an answer for all the
17 allegations and that's what I mean at
18 paragraph 179. I'm not talking about at
19 paragraph 179 this document.

20 Q. Yes.

21 A. So my observation of -- my understanding of what
22 he was telling me at that meeting, was really
23 strong.

24 Q. Right. So, notwithstanding the fact that we
25 know that at the meeting reference was made to

35

1 everything, could it?

2 A. That document couldn't, no.

3 Q. That's how you characterised his approach,
4 didn't you, in your witness statement?

5 A. Yes, in the June meeting when we met
6 Mr Jenkins -- and my recollection of this is
7 distant -- he was very bullish, very confident,
8 very knowledgeable about the system, and you
9 have to listen to the words and the language
10 people use and the way they say it. And I left
11 that meeting with the sense that Fujitsu -- as
12 a whole, not just Mr Jenkins, but him in
13 particular -- were really confident about the
14 operation of the system at that branch.

15 Q. So there's two things about that, Mr Dilley.
16 First, it may be that your memory of the meeting
17 is faulty, given that it happened so long ago.

18 A. That may be. However, I record quite close to
19 the meeting that that was my memory of it.

20 Q. Well, the second point is that it may be that
21 your understanding of what was being discussed
22 at the meeting was incomplete because, as I've
23 already said, this was the first meeting, the
24 first point in the process whereby the evidence
25 and your understanding would be developed by the

34

1 the further material that could be looked at in
2 respect of what Mr Castleton was saying, first
3 of all, you still maintain, do you, that that
4 was the impression given to you?

5 A. Yes.

6 Q. Then, second, my question was actually this: as
7 a matter of general observation about
8 Mr Jenkins' approach, do you accept that what
9 you said at paragraph 179 can't stand, looked at
10 in light of his witness statement and the
11 comments he made, Mr Dilley?

12 A. My -- what I accept is that my paragraph 179 in
13 which I use the words "Mr Jenkins had an answer
14 for each of the allegations" refers directly to
15 his approach at that meeting. This draft
16 statement is much more measured than how he was
17 at that meeting.

18 Q. Notwithstanding that you had asked Mr Jenkins
19 a number of questions and that he was in
20 a position, obviously, to help you with how
21 Horizon worked, why is it that you're saying
22 you're not sure if you saw this statement or ...

23 A. I don't remember everything from this case quite
24 clearly but I do have a reasonably good memory.
25 I can't remember seeing this. That doesn't mean

36

1 to say that I didn't. I've gone this week and
 2 turned the page of our correspondence file, page
 3 by page, to see whether I got an email from
 4 Mr Pinder or Mr Jenkins attaching this and
 5 I couldn't find one there. So do I 100 per cent
 6 rule out that I didn't see this? No. But do
 7 I believe I saw this? No.

8 **Q.** Why wouldn't you have pursued it and wanted to
 9 check what Mr Jenkins had said, particularly in
 10 response to your questions?

11 **A.** This ultimately moved on. In August 2006,
 12 I spent a lot of time driving around physically
 13 meeting witnesses, interviewing them, taking
 14 notes of meetings and developing witness
 15 statements of fact. Counsel became -- once he
 16 saw how the draft witness statements of fact
 17 were shaping up, he became happier with the
 18 case. I sent to him the draft statement I've
 19 written for Mr Jenkins and there were two points
 20 that counsel had on that. One was that, because
 21 we'd got these witness statements of fact, we
 22 felt that we no longer needed it; and the second
 23 was that Mr Jenkins' evidence was really opinion
 24 evidence. And we were alive -- and counsel was
 25 alive to that and I was alive to that.

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1 **Q.** -- how it's set out? So we can see Mr Pinder
 2 said to him:
 3 "Just been chasing Stephen up re your
 4 attendance and any matters still outstanding for
 5 us [I think that's Post Office Account] as
 6 follows ..."

7 Then he says "(my words)":
 8 "He states that although you would probably
 9 make a good witness, it is for evidential
 10 reasons that you cannot be called. To do with
 11 evidence of 'opinion', 'expert' evidence and
 12 'real' evidence, etc, etc, (complicated legal
 13 issues nothing to do with personalities)."

14 **A.** Mm-hm.

15 **Q.** We can see how Mr Jenkins replies:
 16 "Fine (I won't try and understand what this
 17 means!)"
 18 I think we can tell from that, can't we,
 19 that you must have given Mr Pinder
 20 an explanation which he then tried to pass on to
 21 Mr Jenkins, correct?

22 **A.** Mm-hm.

23 **Q.** So you never had that conversation with him,
 24 whereby you explained the differences between
 25 the type of evidence that witnesses could give?

39

1 Sorry --

2 **Q.** No, I didn't mean to interrupt you, I apologise,
 3 Mr Dilley.
 4 So really is what you're saying that,
 5 because you had decided that you would instruct
 6 an expert, what Mr Jenkins said in response to
 7 your questions or any comments that he had made
 8 on that witness statement really went by the
 9 wayside?

10 **A.** Yes.

11 **Q.** I don't think you spoke to Mr Jenkins to explain
 12 to him why you didn't want a witness statement
 13 from him?

14 **A.** I don't recall speaking to him to say that, no.

15 **Q.** Could we please bring up FUJ00154733.
 16 Mr Dilley, you may have come to realise --
 17 I don't know if this is a Fujitsu thing, whereby
 18 people set out emails they've been sent in the
 19 body of an email, and then reply to them. If
 20 you're familiar with this, you might be able to
 21 tell that what Mr -- this is an email from
 22 Mr Jenkins but he set out in the body of it
 23 an email that was sent to him from Mr Pinder; do
 24 you follow --

25 **A.** Mm-hm.

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1 **A.** Not as far as I recall.

2 **MS DOBBIN:** Yes. Thank you, Mr Dilley. Thank you,
 3 sir.

4 **Questioned by SIR WYN WILLIAMS**

5 **SIR WYN WILLIAMS:** Thank you, Ms Dobbin.
 6 Just one more question from me, Mr Dilley,
 7 and it follows this issue about the distinction
 8 between expert evidence and factual evidence,
 9 which you mention on a number of occasions.
 10 Ms Chambers has told me at the Inquiry and
 11 also written that she felt that she was being
 12 treated as an expert evidence (*sic*). I simply
 13 want to ask you this: at any stage before she
 14 gave evidence, did you explain to her the
 15 difference between a witness of fact and
 16 a witness of opinion?

17 **A.** That may be answered by the attendance note --
 18 may possibly be answered by the attendance note
 19 of the meeting we had at counsel's chambers with
 20 four witnesses -- I think it was in September
 21 2006 -- of whom Anne Chambers was one. It may
 22 not be answered by that note. I can't recall.

23 **SIR WYN WILLIAMS:** All right, well, we will --

24 **A.** But if we'd have --

25 **SIR WYN WILLIAMS:** Hang on --

40

1 **A.** But, irrespective of whether it is or is not
 2 answered at that statement, I don't have
 3 a direct recollection on the point. But I think
 4 it's entirely possible that it's something that
 5 we or counsel would have said, that "You're here
 6 to make statements of fact and not opinion".
 7 I think in terms of Anne Chambers' feelings,
 8 she -- we did regard her as being knowledgeable
 9 in her subject, yes, but she was asked to give
 10 evidence of fact and what she had found at
 11 Mr Castleton's branch and then, latterly, the
 12 Callendar Square branch.
 13 **SIR WYN WILLIAMS:** I appreciate that, in practice,
 14 the distinction between fact and opinion may
 15 blur. I'm used to that, obviously. I was more
 16 interested in my question in determining what
 17 you may have said to her about what would happen
 18 if she was asked questions which required her to
 19 offer an opinion.
 20 **A.** Yeah, I can't recall specifics at this distance,
 21 I'm sorry.
 22 **SIR WYN WILLIAMS:** That's all right. Thank you.
 23 Is that it Mr Blake?
 24 **MR BLAKE:** It is, sir. Sir, if it assists, just for
 25 the transcript, for any parties' submissions in
 41

1 **MR BEER:** May I call Richard Morgan, please.
 2 **SIR WYN WILLIAMS:** Yes.
 3 **RICHARD HUGO LYNDON MORGAN KC (sworn)**
 4 **Questioned by MR BEER**
 5 **MR BEER:** Thank you Mr Morgan, please do sit down.
 6 As you know, I'm Jason Beer, I ask questions on
 7 behalf of the Inquiry. Can you give us your
 8 full name, please?
 9 **A.** Richard Hugo Lyndon Morgan.
 10 **Q.** Thank you for coming to give your evidence to
 11 the Inquiry today and for the provision of
 12 a witness statement previously. We're very
 13 grateful to you for the assistance that you are
 14 giving to this investigation. You should have
 15 in front of you a hard copy of that witness
 16 statement?
 17 **A.** I do.
 18 **Q.** It's in your name and dated 19 May 2023.
 19 **A.** It is.
 20 **Q.** If you turn to the last page of it, which is,
 21 I think, page 31, is that your signature?
 22 **A.** It is.
 23 **Q.** I think before I ask you whether it's true to
 24 the best of your knowledge and belief, there are
 25 five corrections or amendments that you would
 43

1 due course, the reference to that meeting on the
 2 11 September 2006 at counsel's chambers is
 3 POL00069622.
 4 **SIR WYN WILLIAMS:** Thank you very much.
 5 **MR BLAKE:** Thank you.
 6 **SIR WYN WILLIAMS:** Thank you, Mr Dille, for your
 7 very detailed witness statement and obviously
 8 your detailed evidence. I'm sorry that I caused
 9 you to return this morning but what has occurred
 10 this morning convinced me that if I'd gone on as
 11 I was urged to do, by some at least, my
 12 concentration powers would have waned so I'm
 13 sorry you were inconvenienced but sometimes, as
 14 you know only too well from your professional
 15 experience, these things happen.
 16 All right Mr Blake, where do we go now?
 17 **MR BLAKE:** Thank you, sir. Can we take a 15-minute
 18 break, please?
 19 **SIR WYN WILLIAMS:** Yes, certainly.
 20 **MR BLAKE:** Thank you very much.
 21 (10.31 am)
 22 (A short break)
 23 (10.49 am)
 24 **MR BEER:** Good morning sir, can you see and hear me?
 25 **SIR WYN WILLIAMS:** Yes, I can, thank you.
 42

1 wish to make?
 2 **A.** There are.
 3 **Q.** Can we go through those, please. I think the
 4 first is on paragraph 3 on page 1; is that
 5 correct?
 6 **A.** Yes, just as a matter of completeness I also
 7 corresponded with Linklaters and obtained
 8 confirmation from them that there was no
 9 privilege maintained.
 10 **Q.** So in the first sentence there where you say:
 11 "... correspondence I have had with members
 12 of the legal team for the Inquiry and my
 13 original instructing Solicitors (Bond Pearce are
 14 now known as Womble Bond Dickinson) ..."
 15 You would add in "and also Linklaters"?
 16 **A.** Yes.
 17 **Q.** Thank you. Then on page 18, please.
 18 **A.** Yes, paragraph 56.
 19 **Q.** Paragraph 56. Thank you. What is the amendment
 20 or addition you wish to make to 56?
 21 **A.** So, having seen further documentation since
 22 I produced this, I now see, although I didn't
 23 remember at the time, that there was no expert
 24 evidence called at trial by either side.
 25 **Q.** Thank you very much. You do say there, again,
 44

1 a review of the transcript of the hearing would
 2 confirm the position one way or the other and
 3 you've now seen a transcript or a note of the
 4 transcript?
 5 **A.** I've seen a transcript of one day of the hearing
 6 and a note of the opening -- of the morning of
 7 the opening.
 8 **Q.** Thank you. I think the third correction or
 9 addition is page 21, paragraph 63.
 10 **A.** Yes. So in that paragraph I talk about the
 11 settlement discussions that were conducted
 12 between Bond Pearce and Mr Castleton. I now see
 13 that I was actually copied in on emails which
 14 recorded that Post Office was seeking
 15 an undertaking from Mr Castleton. I don't
 16 remember seeing those emails -- sorry, I don't
 17 remember those emails from the time.
 18 Now, having seen them, I see that I did see
 19 the undertaking. I don't recall being asked or
 20 advising in relation to the undertaking but
 21 I did -- I definitely did see those emails.
 22 **Q.** Thank you very much. At page 22, paragraph 65.
 23 **A.** Yes, having now seen the transcript of one day
 24 of the hearing, it reminds me, or it records
 25 that Mr Castleton did ask for a break at least
 45

1 was, in 2011 --
 2 **A.** Yes.
 3 **Q.** -- which is after most but not all of the events
 4 that we're going to look at, correct?
 5 **A.** Yes.
 6 **Q.** I think, at all times relevant to the questions
 7 that I'm going to ask you, you practised in
 8 Chancery commercial and insolvency law.
 9 **A.** Yes.
 10 **Q.** You tell us that, before the *Lee Castleton* case,
 11 you'd been instructed by Tom Beezer of Bond
 12 Pearce?
 13 **A.** Yes.
 14 **Q.** But you believed this was your first
 15 instruction, the *Castleton* case, is that right,
 16 on behalf of the Post Office?
 17 **A.** Yes.
 18 **Q.** As it turned out, it was to be the first in
 19 a line of cases in which you were instructed by
 20 the Post Office after judgment was obtained
 21 against Mr Castleton. I think that's right?
 22 **A.** I think that's putting it a bit high. I was
 23 approached on a number of subsequent occasions
 24 where an initial preliminary approach was made.
 25 I think there was only one case where
 47

1 on that afternoon to take some medication and
 2 I asked the judge for an adjournment and
 3 an adjournment was granted.
 4 **Q.** So that relates to the last couple of sentences:
 5 "I do not recall him ever saying to me
 6 personally that he did need a break or that he
 7 could not go on."
 8 **A.** Yes, so now, having seen the transcript, it
 9 reminds me that he must have asked me.
 10 **Q.** Thank you. Then page 25, paragraph 77?
 11 **A.** Yes, there's a typo in the last sentence. It
 12 should say, "I just do not think that person was
 13 me".
 14 **Q.** So delete the first "was"?
 15 **A.** Yes.
 16 **Q.** Thank you, with those amendments, are the
 17 contents of that witness statement true to the
 18 best of your knowledge and belief?
 19 **A.** They are true, yes, to the best of my knowledge,
 20 information and belief.
 21 **Q.** Can I start with your career qualifications and
 22 experience. You're a barrister having been
 23 called to the Bar in 1988; is that right?
 24 **A.** Yes.
 25 **Q.** You were appointed Queen's Counsel, as it then
 46

1 I apparently produced a Defence and Counterclaim
 2 but, otherwise, none of the other sets of
 3 instructions ever led to anything substantive.
 4 **Q.** They're set out just so we've got them, I think,
 5 on page 29 of your witness statement.
 6 **A.** Yes, that's it. That's all I can see from my
 7 chambers records anyway.
 8 **Q.** Just slow down a moment. It takes a little
 9 while for the document to be displayed and,
 10 therefore, for people who aren't in the room who
 11 are following to see it. So paragraph 91, you
 12 say:
 13 "According to my Chambers' fee system,
 14 I received the followed other sets of
 15 instructions on behalf of [the Post Office]."
 16 In 2007, a case called *Aslam*, where you gave
 17 some advice by telephone; later in 2007 a case
 18 called *Bilkhu*, where you had a telephone
 19 conference and settled a Defence and
 20 Counterclaim.
 21 **A.** Well, I settled a draft Particulars of Defence
 22 and Counterclaim. I don't have a record of ever
 23 settling the final version.
 24 **Q.** In 2011, you received instructions in *Scott*
 25 *Darlington* and had a consultation in October and
 48

1 December that year?
 2 **A.** Yes.
 3 **Q.** Then, over the page, please. You received
 4 instructions from the Post Office in a case
 5 called *Prosser*, and you gave some preliminary
 6 advice but then that wasn't followed up with
 7 instructions?
 8 **A.** No.
 9 **Q.** June 2012, a short telephone consultation.
 10 We're going to look at that in a moment.
 11 **A.** I'm not sure, was that a telephone -- I'm not
 12 sure whether that was a telephone conference or
 13 in person.
 14 **Q.** Sorry, it was in person, quite right. Can we
 15 look at that please?
 16 **A.** Of course.
 17 **Q.** It's POL00006484. You'll see it's a Bond Pearce
 18 attendance note of a conference at your
 19 chambers, Maitland Chambers, on Tuesday, 12 June
 20 2012. We can see that you are recorded as
 21 having been present, along with Daniel Margolin.
 22 Was he then a junior barrister from your
 23 chambers?
 24 **A.** Yes, he was.
 25 **Q.** A solicitor from Bond Pearce, Gavin Matthews?

1 faulty Horizon data?
 2 **A.** No, I don't. I received a copy of this document
 3 in the supplemental bundle last week or the week
 4 before. I went back and checked my chambers'
 5 records as to what was shown in relation to this
 6 con. I don't seem to have received any formal
 7 instructions in relation to it, there's no
 8 record of the papers being delivered before the
 9 con occurred.
 10 I seem to think, although I don't know why,
 11 that Daniel Margolin was going to be instructed
 12 to produce a written opinion in relation to
 13 something but, aside from that, that's -- what
 14 is shown in this attendance note, that's the
 15 limit of my recollection, I'm afraid. I'm sorry
 16 I just don't have any recollection.
 17 **Q.** So you can't remember now the litigation which
 18 is referred to in that first --
 19 **A.** No.
 20 **Q.** -- bullet point. If we just scroll down to see
 21 whether there's anything else that jogs your
 22 memory. Do you see at the end of the third
 23 bullet point, it says:
 24 "... Access Legal will start to pursue all
 25 the civil cases they're currently sitting on."

1 **A.** I don't remember him.
 2 **Q.** You don't remember him?
 3 **A.** No. I don't remember either Susan Crichton or
 4 Hugh Flemington either.
 5 **Q.** If I can jog your memory at all I will try.
 6 Susan Crichton, an in-house solicitor at the
 7 Post Office, at that time I believe she was Post
 8 Office's general counsel; does that ring any
 9 bells?
 10 **A.** No.
 11 **Q.** Hugh Flemington, also an in-house solicitor at
 12 the Post Office.
 13 **A.** Yes.
 14 **Q.** If we just read through the attendance note:
 15 "It was recognised that an impasse had been
 16 reached in relation to the Horizon litigation
 17 which [the Post Office] is seeking to address.
 18 The question is what is the best way of breaking
 19 that impasse."
 20 Do you remember that, at this time, the
 21 litigation that is being referred to was
 22 a potential group action on behalf of a large
 23 number of subpostmasters against the Post
 24 Office, arising from action taken against them
 25 by the Post Office on the basis they said of

1 Do you remember a firm of solicitors called
 2 Shoosmiths, who --
 3 **A.** I know the name.
 4 **Q.** You know the name of the firm of solicitors?
 5 **A.** Yes.
 6 **Q.** Do you remember the firm of solicitors
 7 Shoosmiths, who were acting, I think, then on
 8 behalf of five clients where they had delivered
 9 letters of claim and said that there were
 10 another 85-odd clients who they were consulting
 11 on in relation to potential claims, and Access
 12 Legal was the part of Shoosmiths, the branding
 13 part of Shoosmiths, that was bringing the claim
 14 or threatening to bring the claims?
 15 **A.** I have no recollection of that at all. As
 16 I say, from my chambers system it looks like
 17 there was a con booked, they turned up for
 18 30 minutes. My impression of all of the
 19 occasions on which the Post Office contacted me
 20 after *Castleton* was they wanted to see whether
 21 there was any expertise that I could bring to
 22 bear on their approach or their litigation that
 23 might assist. And they -- on each occasion,
 24 I gave them pretty much the same answer.
 25 **Q.** Let's look at what is recorded then. So we've

1 read the first bullet point. The second bullet
2 point:
3 "The proposal to instruct an independent
4 expert to prepare a report on the Horizon System
5 is the highest risk response to the issue."

6 Does that appear to be you setting out or
7 framing the issue for discussion, namely whether
8 an independent expert should be instructed to
9 report on the Horizon System?

10 **A.** Look, I'm afraid I genuinely I don't know
11 because I've got no recollection and I don't
12 think I got instructions. So whether this note
13 is recording what I was being told or whether
14 it's recording a conversation, I just don't
15 know.

16 **Q.** It continues:

17 "What will it achieve? It will not be able
18 to address any of the civil/criminal cases dealt
19 with under 'Old Horizon'. Will it seek to
20 review particular cases? If so, which ones?"

21 Would that have been your view at the time?

22 **A.** It seems a sensible expression of what it would
23 achieve.

24 **Q.** So a series of hypothetical questions or
25 questions are set out: what will it achieve;

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1 civil claims.

2 **Q.** You may not have been intimately involved. It
3 may have been that people arrived at your
4 chambers and asked you for a view on things,
5 over the course of half an hour. Why doesn't
6 this read as if it's you giving the advice?

7 **A.** I don't know. I mean, it does -- if you look at
8 the bottom of that page, there is something
9 that's attributed directly to me. I mean, my
10 problem, Mr Beer, is that I just have no
11 recollection of this at all. The document says
12 what it says. You can attribute to me the high
13 level answers if you want to but I just don't
14 remember saying it.

15 **Q.** That third paragraph that we're looking at, do
16 you now see any significant issue with the view
17 that is recorded there?

18 **A.** I agree that, whatever the findings of the
19 expert report, it won't resolve the problem.
20 I agree that the Post Office would be damned if
21 they did and damned if they didn't. If it was
22 a clean bill of health, then it would be
23 a whitewash and, if it was negative, then
24 obviously it would invite claims.

25 I'm not sure about what the false accounting

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1 will it be able to address the civil or criminal
2 cases dealt with under "Old Horizon"; and will
3 it be able to review particular cases? Would
4 you agree that this note appears to record you
5 questioning, for these three reasons, the wisdom
6 of instructing an expert to produce a report?

7 **A.** Yes, it's quite possible, but as I -- it's quite
8 possible but I just have no specific
9 recollection of this meeting.

10 **Q.** Can we turn to the third bullet point:

11 "Whatever the findings of the expert report
12 it will not resolve the problem. [The Post
13 Office] will be 'damned if they do and damned if
14 they don't'. If the findings are that there are
15 no issues with Horizon people will see that as
16 a 'whitewash' whereas if the findings are
17 negative that will open the floodgates to
18 damages claims by [subpostmasters] who were
19 imprisoned for false accounting and Access Legal
20 will start to pursue all the civil cases they
21 are currently sitting on."

22 Again, do you think this paragraph records
23 advice that you were giving?

24 **A.** No, and the reason for that answer is I was just
25 not intimately involved in prosecutions or other

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1 allegations are to do with because I'm not
2 a criminal lawyer and I don't deal with those
3 cases.

4 **Q.** If an independent expert said that there were
5 problems with the integrity of Horizon, that
6 might indeed open the way to damages claims --

7 **A.** Absolutely.

8 **Q.** -- by subpostmasters, who had been convicted of
9 criminal offences of false accounting on the
10 basis of Horizon data?

11 **A.** Mr Beer, I don't know because I wouldn't know
12 the basis upon which convictions were obtained.

13 **Q.** Again, just looking at that paragraph, do you
14 see any significant issues or problems with the
15 advice that's being given there?

16 **A.** I'm not sure that that's necessarily a fair
17 question because I'm not sure that I'm giving
18 the advice. I'm also not in a position to give
19 any advice in relation to the criminal law
20 aspects.

21 **Q.** What would have happened if they had started to
22 discuss the impact of an independent report that
23 showed that there were problems with Horizon
24 data and that had consequences for the pursuit
25 of civil claims that some solicitors were

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1 sitting on in a conference that you were giving?
 2 Would you have said, "Stop, that's nothing to do
 3 with me" --
 4 **A.** Well --
 5 **Q.** "-- I'm not a criminal law expert"?
 6 **A.** I think, if the question is read back, you'll
 7 find that you asked me about in the consequences
 8 of civil claims?
 9 **Q.** Yes.
 10 **A.** Then you've asked the -- you've added to it what
 11 would the consequences be in relation to
 12 criminal claims. I don't advise on criminal law
 13 and I would almost certainly have said, "I can't
 14 give you advice in relation to the criminal
 15 prosecutions".
 16 **Q.** I'm not asking you about advice on criminal
 17 prosecutions and this isn't anything to do with
 18 criminal prosecutions, this third bullet point.
 19 It's about civil claims arising from people who
 20 have been imprisoned, perhaps wrongfully.
 21 **A.** Again, my answer would be the same, that I would
 22 feel decidedly uncomfortable and would almost
 23 certainly say that I'm unable to advise on civil
 24 claims arising from criminal prosecutions.
 25 It's just not an area of law in which

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1 governed by administrative law.
 2 **Q.** So, in any advice that you gave on this
 3 occasion, you would have been approaching this
 4 as a commercial Chancery litigator?
 5 **A.** Yes.
 6 **Q.** Therefore, it would be appropriate to advise
 7 such a party that they should not take a step,
 8 such as commissioning an expert report, even if
 9 it revealed that Horizon data was unreliable
 10 because that might open the Post Office to more
 11 damages claims?
 12 **A.** Yes, I think so -- I think I would. I might be
 13 wrong in that, but ...
 14 **Q.** Can we read on. It is said that:
 15 "[Post Office] will always have this
 16 problem -- some people will never trust
 17 computers and will always believe that they have
 18 an inherent problem."
 19 Was that view that you held at the time?
 20 **A.** I think it's likely that it would have been
 21 a view that I held at that time, yes.
 22 **Q.** It continued:
 23 "A less risky approach is to agree to take
 24 the relevant MPs privately through particular
 25 cases in which they are interested."

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1 I practise.
 2 **Q.** Would you regard it as appropriate in commercial
 3 litigation involving a private corporation to
 4 advise that a step should not be taken because
 5 it might increase the number of claims brought
 6 against the private corporation?
 7 **A.** Yes.
 8 **Q.** Would your view be that any different
 9 considerations apply if the putative defendant
 10 is a public authority or a public corporation?
 11 **A.** Potentially, yes.
 12 **Q.** What are those different considerations that
 13 apply if the putative defendant is a public
 14 authority or a public corporation?
 15 **A.** Well, one might want to think about what the
 16 public law duties are of that public
 17 corporation, but I was being asked to advise
 18 a private company.
 19 **Q.** Is that how you viewed the Post Office?
 20 **A.** Post Office Limited.
 21 **Q.** You didn't see them as a public corporation?
 22 **A.** I didn't see them as a public corporation, no.
 23 **Q.** Where the Government holds a single share in the
 24 company on behalf of the public?
 25 **A.** I didn't see them as a public corporation

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1 Is that, given the limitations that you have
 2 expressed already on the type of role that you
 3 would perform, advice that you would give or
 4 would have given?
 5 **A.** That's likely, yes. The problem with all of
 6 this is that my information or the information
 7 provided to me never extended to identifying
 8 specific problems. It was a generic "There's
 9 a problem with". I never felt that any
 10 individual was ever going to answer everybody's
 11 concerns in a generic sense and so, if there
 12 were particular cases, then it was appropriate
 13 to examine those particular cases on
 14 an item-by-item basis.
 15 **Q.** That's a different point to "Don't instruct
 16 an expert because the expert might uncover
 17 problems with Horizon and you will thereby face
 18 more claims", isn't it, which seems to be the
 19 effect of the third bullet point?
 20 **A.** It does seem to be the effect of the third
 21 bullet point but I'm not sure that that's quite
 22 what it's getting at. With any computer system
 23 there can be problems. There can be screen
 24 freezes, there can be loss of data, and so on
 25 and so forth, in a -- any hypothetical system.

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1 And I'm not -- I'm just giving an example.
 2 Some of those problems might be quite
 3 innocuous, some of them quite cause no loss of
 4 data, no changes, whatever. But if you get
 5 a report that comes back and says "Well, you get
 6 screen freezes or there are power cuts", then
 7 all that does is set a hare running. The only
 8 way to look at a problem like this, in my
 9 opinion, sitting here now, is to look at
 10 specific examples and work out what went wrong,
 11 and that's seems to be what I might be
 12 articulating in the pre-penultimate paragraph:
 13 "A less risky approach is to agree to take
 14 the relevant MPs privately through particular
 15 cases in which they are interested."
 16 So work through specific examples and see if
 17 there's a problem.
 18 **Q.** But without the involvement of an independent
 19 expert?
 20 **A.** Well, there could be an independent expert.
 21 **Q.** The note continues:
 22 "[The Post Office] needs to engage with its
 23 stakeholders by perhaps sending out
 24 a questionnaire about Horizon to
 25 [subpostmasters] getting their views and seeking

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1 **Q.** That certainly suggests that no decision was
 2 reached in the course of this consultation, if
 3 nothing else?
 4 **A.** Let me be frank, Mr Beer. From what I can
 5 remember, which is close to nothing, as assisted
 6 by my chambers records, some people turned up in
 7 chambers and we had a preliminary discussion
 8 about the possibility of being instructed, so
 9 the suggestion that this represents concluded,
 10 considered advice, I think, is putting it
 11 a little high. I don't --
 12 **Q.** Nobody suggested that, other than you.
 13 **A.** Yeah. But the way you're suggesting that this
 14 is a record of a definitive piece of advice,
 15 given after a consideration, I think is perhaps
 16 a little unfair.
 17 **Q.** We're working with what you and your instructing
 18 solicitors have given to us?
 19 **A.** Ah, those are not my -- those are my former
 20 instructing solicitors.
 21 **Q.** Can we turn to the *Lee Castleton* case.
 22 **A.** Of course.
 23 **Q.** Can we turn up paragraph --
 24 **A.** Sorry, I should also say that, so far as I'm
 25 aware, I've provided no documents to the

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1 to address the more sensible ones. This is more
 2 a PR exercise."
 3 Is that advice that you gave?
 4 **A.** I don't know.
 5 **Q.** Would you understand a PR exercise to be
 6 something that is done to look good to the
 7 outside world --
 8 **A.** Yes.
 9 **Q.** -- and to placate the subpostmasters?
 10 **A.** Yes.
 11 **Q.** Would you regard that as appropriate advice to
 12 give to a private corporation?
 13 **A.** No -- well, a private corporation wants to keep
 14 its customer base happy but a private
 15 corporation also wants to find out if there are
 16 problems with its systems. Now, if there are
 17 problems with their -- with your systems and the
 18 stakeholders express and articulate what those
 19 problems are in a way that's identifiable, then,
 20 of course, you should engage with them.
 21 **Q.** The last bullet point records that you're:
 22 "... happy to discuss possible approaches
 23 and merits of each with the Board of [the Post
 24 Office] at any time."
 25 **A.** Yes.

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1 Inquiry. I didn't have any. So, insofar as
 2 that question suggested that I had provided
 3 documents to the Inquiry, it's based on a false
 4 premise.
 5 **Q.** No, it was based on the correct premise that
 6 you've given no documents to the Inquiry.
 7 That's why we're working with just --
 8 **A.** So it's just the documents that my former
 9 instructing solicitors have provided?
 10 **Q.** Correct. Can we turn to paragraph 25 of your
 11 witness statement on page 7, please.
 12 **A.** Yes.
 13 **Q.** If we just read paragraph 25 together, you say:
 14 "Nevertheless, at a very high level, the
 15 issue in the case [the *Castleton* case] was
 16 whether there was a discrepancy of around
 17 £25,000 between (i) the cash and stock
 18 Mr Castleton held at the end of the period when
 19 taken together with cash sent back to the Post
 20 Office and all other receipts received by the
 21 Post Office from the branch and (ii) the cash
 22 and stock Mr Castleton was given at the start
 23 together with the cash and stock that he
 24 received whilst trading. If those cash and
 25 stock numbers could be established by reference

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1 to primary documents, then it was possible to
2 prove what the correct figure [before] the
3 closing balance should be forensically without
4 reference to the Horizon System, and hence
5 whether there was a real, as opposed to
6 illusory, discrepancy."

7 Just taking some parts of that in the second
8 line "cash and stock Mr Castleton held at the
9 end of the period"; was it your belief that
10 evidence could be ascertained of those figures
11 by counting and by documents other than
12 documents produced by Horizon?

13 **A.** Yes.

14 **Q.** Reading on:

15 "... when taken together with cash sent back
16 to the Post Office and all other receipts
17 received by the Post Office from the branch ..."

18 Again, was it your belief that those facts
19 and matters could be established by counting or
20 by documents other than documents produced by
21 Horizon or does that, in part, depend on
22 documents generated by Horizon?

23 **A.** My difficulty at this remove in time is that
24 I can't remember the format of the documents and
25 I think also there may be a mismatch between the

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1 **A.** Yes, I think so, because I think -- and it's
2 something that I picked up rereading the
3 transcript -- I think there was a form P242, or
4 something like that, that was signed by the
5 outgoing and the incoming subpostmasters at the
6 changeover of the accounting periods.

7 **Q.** Exactly, and then completing the rest of (ii):

8 "... together with the cash and stock that
9 he received whilst trading."

10 That would have depended, in part, on
11 records generated by Horizon, wouldn't it?

12 **A.** That goes back to the point about --

13 **Q.** What you can remember?

14 **A.** Yes, and whether it was a record generated by
15 Mr Castleton or generated by Horizon that he
16 then verified.

17 **Q.** You carry on:

18 "If those cash and stock numbers could be
19 established by reference to primary documents
20 ..."

21 Sitting here now, can you remember whether
22 those cash and stock numbers could all be
23 established by reference to primary documents,
24 ie other than documents produced by Horizon?

25 **A.** So, again, we're going to differ about what

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1 way the question is asked and the documents that
2 we're referring to. There were documents that
3 were printouts and those documents were vouched
4 by Mr Castleton on a regular basis, either daily
5 or weekly. I am unclear in my own mind whether
6 those were documents produced by Horizon that
7 Mr Castleton then verified or whether they were
8 documents produced by Mr Castleton that
9 Mr Castleton then signed off on.

10 **Q.** That's a very important distinction, given the
11 legal case that you were to run at trial?

12 **A.** I'm not sure that it was because a verification
13 of a statement of account by an agent carries
14 the same implication as the document actually
15 being produced by the agent, or at least that
16 would have been my submission, I suspect, at
17 trial.

18 **Q.** Reading on under the second part of the sentence
19 (ii):

20 "... the cash and stock that Mr Castleton
21 was given at the start ..."

22 As far as you can remember, was that
23 a matter that could be ascertained without
24 reference to the data produced by the Horizon
25 System.

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1 a document produced by Horizon is. If
2 Mr Castleton has signed off on a document and
3 said, "This is what had happened", then I would
4 call that Mr Castleton's document rather than
5 Horizon's document. There is also a problem
6 that, in my own mind, I have this period of two
7 to three weeks prior to the trial where I had
8 volumes and volumes of documents that I went
9 through and reconciled painfully by myself, but
10 I can't remember what the documents were, only
11 that I did undertake the exercise.

12 And, in my own mind, those are what I would
13 call primary documents, so they were documents
14 on which there was a manuscript verification by
15 Mr Castleton saying that, effectively, these
16 figures are true.

17 **Q.** You say words to that effect in paragraph 26, if
18 we continue reading.

19 **A.** Yes, sure.

20 **Q.** "I think that some of the primary documentation
21 prepared by Mr Castleton must have been provided
22 to me at some point early on and I notice that
23 he signed off on daily and/or weekly figures
24 (I cannot remember exactly what documentation
25 was produced, I only have some recollection that

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1 there was a body of accounting documentation,
 2 and there were some manuscript documents). It
 3 therefore seemed to me that the deficiency could
 4 be proved by simply adding up all the manuscript
 5 figures produced, and all the calculations
 6 signed off, by Mr Castleton and without
 7 reference to any records produced only by
 8 a computer."

9 Are you there saying that there was
 10 a manuscript record for each transaction,
 11 effectively a handwritten mirror or shadow of
 12 what was on Horizon?

13 **A.** No, and if I've given that impression, I'm
 14 sorry.

15 **Q.** If we go further on, to paragraph 27, you say in
 16 the second line:

17 "... I recalled that there was a line of
 18 authorities in relation to accounts stated and
 19 settled accounts. When I researched that line
 20 of authorities, I realised there was authority
 21 for the argument that if Mr Castleton was
 22 tendering his own figures to [the Post Office],
 23 he was vouching their accuracy. I therefore
 24 advised that we should realign our pleaded case
 25 to take this point and we should try to

1 **Q.** And he was simultaneously phoning in to the
 2 helpline and saying that "The figures shown on
 3 these trading statements aren't the product of
 4 transactions conducted by me"?

5 **A.** His evidence at trial was that he had checked
 6 all the figures and they were true and accurate.
 7 I put to him, quite aggressively at one point,
 8 that, in fact, he was making up the figures, for
 9 instance for cash that he had received, and he
 10 maintained his position throughout, as he was
 11 perfectly entitled to do, that his accounts were
 12 true and accurate.

13 Now, of course, because of the way the case
 14 was pleaded, if his accounts were not true and
 15 accurate, then the entire matter would have gone
 16 off for a formal account to find out what the
 17 actual trading position had been throughout that
 18 period. But that turned out not to be necessary
 19 because his sworn evidence at trial was that the
 20 accounts were true and accurate.

21 **Q.** Over the page, please, to paragraph 29, and
 22 scroll down a little bit, the last four or five
 23 lines, you say:

24 "Instead, I needed physical records of cash
 25 and stock in, cash and stock out, and

1 establish the true trading position by reference
 2 to Mr Castleton's own documents (by which I mean
 3 documents produced and/or verified by
 4 Mr Castleton, rather than printouts from
 5 Horizon)."

6 What if the printouts from Horizon were the
 7 documents verified by Mr Castleton?

8 **A.** Well, then he was verifying their truth or
 9 accuracy as that particular date.

10 **Q.** What if he was saying at the same time as
 11 verifying them, "These are not accurate but
 12 I have got to verify them, otherwise I can't
 13 continue trading into the next trading period"?

14 **A.** Well, there you're asking me a hypothetical
 15 question.

16 **Q.** Do you not recall the evidence about the calls,
 17 the many calls, he made to the helpline?

18 **A.** I do recall those. I also recall his evidence
 19 that each and every one of his records of
 20 transactions at the end of the week were
 21 accurate.

22 **Q.** In that they recorded discrepancies and
 23 shortfalls?

24 **A.** In that they recorded the actual figures for the
 25 branch for that particular week.

1 a calculation at the end of the day for what
 2 should be left after it had all been taken into
 3 account. If that was done, then it seemed to me
 4 that the operation of the Horizon System was
 5 irrelevant."

6 That essentially developed into your
 7 principal case strategy; is that right?

8 **A.** Yes.

9 **Q.** I just want to look at the reasons why you
 10 developed that case strategy. Can we go back,
 11 please, to page 6 and the opening paragraph
 12 of -- the opening part of paragraph 22. You
 13 say:

14 "It seemed obvious to me that trying to
 15 prove forensically that an entire computer
 16 network operated properly was going to be a very
 17 difficult, if not impossible, exercise, and it
 18 also seemed that Mr Castleton had not identified
 19 any mechanism by which errors were allegedly
 20 being generated."

21 Then if we could look also at page 9, at
 22 paragraph 29, about halfway through, about seven
 23 or eight lines in, you say:

24 "... trying to recreate an entire hardware
 25 and software system to replicate what was in

1 pace at the time of the relevant events would
2 probably be extremely difficult, if not
3 impossible, and that I didn't see how I could
4 prove that there were actual losses by reference
5 simply to what a computer printout said."

6 Then page 10, please, paragraph 33, about
7 eight lines in:

8 "I think that I thought that even if the
9 network could be reconstituted, I could not
10 prove that it was impervious to external
11 modifications (by which I mean hacking,
12 unauthorised alteration, etc). I was generally
13 concerned that if I was going to have to prove
14 the case by reference to Horizon logs, I wanted
15 to know whether there were possible ways that
16 the system could be manipulated and I wanted to
17 understand whether there was a context in which
18 any other, and if so how many, incidents had
19 been reported. I don't recall ever being told
20 that there were incidents or weaknesses and the
21 issue seemed to fall away ..."

22 Then, lastly on this topic, page 13, please,
23 paragraph 43:

24 "I thought it was difficult to prove a loss
25 only by reference to the Horizon IT System

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1 difficult it was going to be to prove the case
2 if all I had was a piece of paper produced by
3 a computer. Yes, there are provisions within
4 the Civil Evidence Act that would have had
5 enabled me to rely on it but it wasn't a very
6 satisfactory way to go about formal proof of
7 a loss.

8 Sorry, can I --

9 **Q.** If we just go back to paragraph 33 on page 10,
10 please.

11 **A.** Sorry, can I just write something down because
12 I'd like to go back on something?

13 **Q.** Yes, of course.

14 **A.** Sorry, paragraph 33 on page 10? Yes.

15 **Q.** The second half of the paragraph, where you say:

16 "I think I thought that even if the network
17 could be reconstituted, I could not prove that
18 it was impervious", et cetera.

19 **A.** Yes.

20 **Q.** You give essentially three questions that ought
21 to arise, would this be right, if you're seeking
22 to prove, in legal proceedings, a loss based on
23 data produced by computer. There may be
24 external modifications made to the system, the
25 system may have been manipulated, and what about

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1 because in oral argument at trial I would be
2 able to do no more than point to a computer
3 printout and say that the printout showed that
4 there was a loss. To my mind that did not prove
5 a loss, it only proved what the sum of the
6 figures produced by a machine showed when
7 a calculation was undertaken and what figure was
8 produced as a result of that calculation."

9 I referred you to four extracts from your
10 witness statement saying roughly the same thing,
11 but amplifying in places the reasons. When you
12 gave that advice to the Post Office did anyone
13 say, "No, hold on, this is easy. We have people
14 with expertise, either in our organisation or in
15 Fujitsu, who can prove the integrity of the
16 Horizon System and the data that it produces"?

17 **A.** May I unbundle the question slightly? I am not
18 sure that I ever gave advice in strident terms
19 that I couldn't prove it in that way. I think
20 the advice that I gave is that there was a nice,
21 clean cut way thorough to the proof of the loss,
22 by going by way of accounts stated or an agent's
23 running account.

24 I think that a lot of what I've said there
25 is my own internal thought process about how

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1 other incidents that have occurred and may have
2 been reported?

3 **A.** Basically, yes.

4 **Q.** We now know, through the judgments of Mr Fraser
5 in the *Bates* litigation and, in particular, his
6 *Horizon Issues* judgment, that there were, even
7 by this time, a large number of bugs, errors or
8 defects which afflicted the integrity of Horizon
9 System and which either did or were capable of
10 causing discrepancies and shortfalls in the
11 financial and accounting records produced by
12 Horizon.

13 When you advised the Post Office of this
14 legal approach, "Let's not seek to prove the
15 integrity of the data that Horizon produces;
16 let's rely on the accounts that Mr Castleton has
17 vouchsafed", did anyone from the Post Office say
18 words to the effect of "Well, that's a relief
19 because, in fact, we've got some bugs, errors or
20 defects in the system"?

21 **A.** Absolutely not. And I think, by way of
22 clarification of your question, I don't think
23 I ever put it as "Let's avoid using the Horizon
24 System as a means of proving the case", it was
25 "This is a nice, straightforward way of proving

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1 the loss".

2 So I wasn't comparing and contrasting the
3 two positions. I think what happened -- I think
4 what happened, sitting here now -- is that
5 I recognised that there were going to be
6 problems proving the case in one way and
7 I suggested that an agent's account was a better
8 way of dealing with it or that that was the way
9 to prove the case.

10 I'm not sure that at the time I said or gave
11 advice to Post Office that they shouldn't use
12 Horizon because of the difficulties but they
13 should use the agent's account. I just simply
14 said, "You should use the agent's account
15 route".

16 **Q.** When you put it in that more simplified form,
17 did anyone say, "Well, that's good because we
18 may have some real issues in being able to
19 evidence and/or prove that the Post Office has
20 suffered a genuine loss here, as opposed to it
21 being an artifact of the system"?

22 **A.** No, they didn't. In fact, at all times, there'd
23 been a -- well, professed to me, had been a high
24 degree of confidence that Horizon was a sound
25 system.

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1 Horizon produces"?

2 **A.** No, I don't remember anybody ever talking me
3 through what was going on. I don't even
4 remember people telling me about criminal
5 proceedings, if I'm right. I can't recall any
6 occasion in which anybody ever talked about how
7 they did things in criminal trials or even the
8 existence of criminal trials.

9 **Q.** Would you agree that the Post Office should not
10 have proceeded with a civil claim, had they been
11 genuinely concerned that the loss alleged was
12 not a genuine loss or an actual loss to them?

13 **A.** Sorry, so you're asking me a hypothetical
14 question. I'm --

15 **Q.** Yes, that sometimes happens.

16 **A.** I'm sorry.

17 **Q.** And I realised I was asking it, so there's
18 probably no need to tell me.

19 **A.** Thank you, Mr Beer. I think from an ethical
20 position I would have been in some difficulty if
21 I thought that I was being asked to run a case
22 that my lay client had no belief in the
23 integrity of the underlying claim. So --

24 **Q.** So had that been put to you, what would you have
25 advised?

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1 **Q.** So nobody said "Your nice legal point,
2 Mr Morgan, is of, therefore, real practical help
3 to us because otherwise we may be in real
4 difficulties in proof"?

5 **A.** No.

6 **Q.** So your evidence is that you came up with a nice
7 legal point because not of any actual knowledge
8 about problems with Horizon but because you
9 presumed there would be such problems or at
10 least it would be difficult to show that there
11 weren't such problems?

12 **A.** Yes. It's just too -- it's a £25,000 claim and
13 a computer system like Horizon struck me, back
14 in 2006, as being a huge beast with all sorts of
15 things that were going on, not the least of
16 which would be upgrades to software, dropping
17 out of dial-up networks, or ISDN or ADSL or
18 whatever was being used at the time. So why
19 have a difficult case when you can have an easy
20 case?

21 **Q.** Did anyone say, "Well, hold on, in criminal
22 proceedings, Mr Morgan, we don't do it that way.
23 We have to prove the integrity of the Horizon
24 System and we do that by calling evidence to
25 show the integrity and accuracy of the data that

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1 **A.** "I can't continue to act". I'd have withdrawn.,
2 I think.

3 **Q.** It would have --

4 **A.** Depending on quite how it came out but I would
5 have been decidedly unhappy.

6 **Q.** It would therefore have altered your advice that
7 the Post Office should simply rely on the signed
8 cash accounts of Mr Castleton?

9 **A.** I think I'd have told them they'd have to
10 discontinue if they didn't think there had been
11 a genuine loss.

12 **Q.** So if you had found out before the trial that
13 data produced by Horizon, that formed the basis
14 of signed cash accounts, was unreliable or may
15 have been unreliable, what would your advice
16 have been to the Post Office?

17 **A.** I would have wanted to look quite carefully at
18 what was being said by Mr Castleton and, indeed,
19 the note that I took earlier, when I said "Can
20 I just write something down", was in fact
21 something that came back to mind.

22 So the pleadings in this case were quite
23 unusual, in that the accuracy of Mr Castleton's
24 signed figures was positively averred by him in
25 the pleadings. Do you have the Defence, by any

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1 chance?

2 **Q.** We do. We've got the amended Defence.

3 **A.** Yes, that's what I was thinking of.

4 **Q.** LCAS0000294.

5 **A.** Thank you.

6 **Q.** If we flip to the next page, you'll see the
7 substance of the amended Defence and
8 Counterclaim.

9 **A.** Yeah, that's not the relevant paragraph. If you
10 go over to the --

11 **Q.** Next page? You might be thinking of 6.

12 **A.** No, sorry. Could you go back up the page,
13 please? Yeah, it's paragraph 3.

14 **Q.** What's the point you're making on the basis of
15 paragraph 3?

16 **A.** He's admitting that he's producing these
17 accounts.

18 **Q.** Then if we look at paragraph 7A:
19 "The said Cash Account ... for week 51 is
20 not an account stated behind which the Defendant
21 is not entitled to go ..."

22 Then some reasons are set out.

23 **A.** Yes.

24 **Q.** "It does not constitute an absolute
25 acknowledgement ...

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1 please, and look at paragraph 67. Just scroll
2 up so you can get the date, thank you.

3 Conference on the 11 September at your
4 chambers. He says in 67:

5 "At that point in time, we were considering
6 and developing case strategy. I can see from
7 the note we believed we had a difficulty proving
8 the loss. From memory, this was not because
9 those instructing us had any doubt that there
10 was a loss; it was rather a question of how it
11 could be demonstrated. From my note and distant
12 recollection, I believe it was in part because
13 Ms Oglesby had told us that a subpostmaster
14 could change data inputted into Horizon after
15 the event. One idea counsel had was that we
16 should take the starting position (by way of
17 an opening audit) and the ending position
18 (a closing audit) and see what the difference
19 was. An alternative was to rely on the
20 admission in the cash accounts that Mr Castleton
21 had signed."

22 **A.** Mm.

23 **Q.** This evidence seems to suggest that the nice
24 legal point, as I have been calling it, was
25 a consequence of a difficulty or a belief in

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1 "All of the accounting in it was done by the
2 Defendant and not the Claimant ...

3 "The Claimant does not allege that the
4 account was approved by it ...

5 "The Claimant does not allege that the
6 account was entered by it as agreed in its books
7 nor recognised by it in some way as correct."

8 **A.** Yes.

9 **Q.** I think you've got to read 7A with 3?

10 **A.** Quite possibly, but the fact of the matter is
11 that there was no dispute as between the parties
12 that the documents upon which the claimant was
13 relying in the case were documents produced and
14 verified by Mr Castleton personally.

15 **Q.** So you developed this strategy at essentially
16 an abstract or academic level --

17 **A.** Yes.

18 **Q.** -- not because of anything you'd been told about
19 the practical difficulties of proving the
20 accuracy of data produced by Horizon?

21 **A.** That's correct.

22 **Q.** Can we look, please, at WITN04660100. It's
23 Mr Dilley's witness statement from whom we've
24 just heard and he was one of your instructing
25 solicitors. Can we just look at page 34,

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1 a difficulty in proving the loss; can you see
2 that?

3 **A.** Yeah. Yes, I can.

4 **Q.** Was that something that was made clear to you,
5 "Never mind your nice legal point, Mr Morgan,
6 there is, in fact, a difficulty in proving
7 losses using Horizon"?

8 **A.** I don't remember that forming any part of my
9 thought process. Sorry, I don't remember
10 a specific fact of anybody saying subpostmasters
11 could change the data inputted into Horizon was
12 part of the consideration. I think in my
13 witness statement I'd already said that I was
14 concerned about whether data could be changed.

15 **Q.** But you've pitched that at a theoretical --

16 **A.** Yes.

17 **Q.** -- any computer system can have data change --

18 **A.** Yes.

19 **Q.** -- approach?

20 **A.** Rather than "Oh, this is what somebody is going
21 to say in this case".

22 **Q.** Yes.

23 **A.** Also, I mean, Mr Dilley says what he says but
24 why would a subpostmaster change the data to
25 show that he owed money to the Post Office? But

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1 there we are. Anyway, there we are. That's
 2 what he says.

3 **Q.** So you say that, in fact, you developed this
 4 point at the abstract or academic level, not
 5 because of the kind of thing that's recorded
 6 here, that there was actually a difficulty in
 7 proving the loss on this system?

8 **A.** As I sit here now, Mr Beer, yes, that's my
 9 recollection. I don't have any recollection of
 10 developing it as a responsive strategy. My
 11 recollection, correct or incorrect, perfect or
 12 imperfect, is that this was a high level
 13 theoretical issue.

14 **Q.** Can we look, please, at POL00071081. This is
 15 an email dated 21 August 2006 and you are
 16 neither a sender nor a recipient but it refers
 17 to your view or something that you are said to
 18 have said. If we just look under "Overview".

19 **A.** Yes.

20 **Q.** So this is Mr Beezer writing to Ms Talbot,
 21 copying Mr Dilley in:
 22 "Richard Morgan believed the case to be one
 23 with a good chance of success but he did warn
 24 that was dependent upon the accountancy evidence
 25 stacking up in our favour (I return to this

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1 required will be costly and time consuming."
 2 Then if we just look at the foot of the
 3 page, please:
 4 "One other point raised by Richard was the
 5 integrity of the Fujitsu product generally.
 6 Just to confirm, I understand that Royal
 7 Mail/Post Office know of no issues with the
 8 Fujitsu system and are confident that it
 9 operates correctly. Please discuss this with me
 10 if you have a different view."

11 If we just go back to the end of the third
 12 paragraph, please, on page 1. Just scroll up
 13 a little bit. Thank you. So the paragraph
 14 beginning "A further point":

15 "... we should endeavour to move the main
 16 area of focus ... away from [Horizon] if
 17 possible."

18 Then at the end of the paragraph:

19 "One of the issues in this case is that
 20 there were few error notices generated
 21 suggesting that the physical remittances did
 22 match the Horizon inputs."

23 On the Post Office's case, ie that
 24 Mr Horizon (*sic*) had made genuine losses --

25 **A.** Sorry, Mr Castleton had made genuine losses.

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1 below) and also upon acceptance of the costs in
 2 taking this matter to trial. We have discussed
 3 costs before. I also return to this point
 4 below.

5 "A further point made by Richard Morgan was
 6 that we should endeavour to move the main area
 7 of focus in the case away from the Horizon
 8 system if possible. Richard suggested a method
 9 to do that would be to prove (if possible) the
 10 physical cash losses at the Marine Drive branch
 11 by reference to all the other documentation
 12 created around the transactions, not simply by
 13 reference to what was in fact recorded on the
 14 Horizon system. So for example when a cheque is
 15 deposited there is (as I understand it)
 16 a counterfoil filled out which is sent off daily
 17 by the subpostmaster, with all cheques
 18 eventually ending up at EDS. If the Horizon
 19 system was later found not to match the physical
 20 remittances an error notice is generated. One
 21 of the issues in this case is that there were
 22 few error notices generated suggesting that the
 23 physical remittances did match the Horizon
 24 inputs. Clearly, to attempt to look into such
 25 matters in the level of detail likely to be

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1 **Q.** Yes, Mr Castleton had made genuine losses, would
 2 that absence of error notices suggest
 3 an unreliability of the Horizon reporting, as
 4 you understood it?

5 **A.** No.

6 **Q.** Why not?

7 **A.** Because the absence of error notices, according
 8 to this note, suggests that the physical
 9 remittances did match the Horizon inputs.

10 **Q.** Isn't that a problem on the case, that there was
 11 a match between the actual cash and the inputs?

12 **A.** Not that I understand. Sorry, I'm trying to
 13 reconstruct what was going on a long time ago --

14 **Q.** I understand.

15 **A.** -- and this isn't my note and I don't know how
 16 it all works, but I thought the fact was that
 17 the Horizon inputs did match up with what
 18 Mr Castleton was signing off and that did, at
 19 the end of the day, show that there was a loss.
 20 And so the fact that there were few error
 21 notices suggested that the figures produced by
 22 Horizon and the figures produced by Mr Castleton
 23 were the same and did show a loss. But, you
 24 know, that's by the by, isn't it?

25 **Q.** Can I attempt to move things on --

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1 **A.** Of course.

2 **Q.** -- and look at some evidence of what was and was
3 not disclosed to you about any bugs, errors or
4 defects in Horizon and the data produced by it.
5 We've looked already -- no need to turn it up --
6 at paragraph 33 of your statement, where you say
7 you don't recall ever being told about any
8 incidents or weaknesses with Horizon.

9 **A.** Can I just clarify that slightly? I then go on
10 to say that other -- there were occasions when
11 screens had frozen or whatever but nothing ever
12 specific and nothing in relation to Marine
13 Drive.

14 **Q.** Can we look, please, at POL00072741. This is
15 an attendance note of 16 August 2006 of
16 a conference held between you and your
17 instructing solicitors that day. If you just
18 scroll down a little bit, you can see the
19 context. You discuss next key dates and then
20 you, on the first page, run through the
21 particulars of claim with you outlining some
22 passages and then your clients or solicitors
23 referring to some answers or comments upon them.

24 Then if we go over the page, please, the
25 same is done on the Defence and then on page 3

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1 **Q.** Would you agree that that's a question that any
2 person presenting evidence originating from
3 a computer, and which they rely on to prove
4 a loss, would have to ask in court proceedings?

5 **A.** I'm going to give you a one-word answer, which
6 is no. I'm going to go on to explain because in
7 civil litigation it's an adversarial system and
8 each side depends -- or each side's arguments
9 are responsive to those made by the other side.
10 So at the end of the day, it would depend how
11 Mr Castleton articulate his case as to why he
12 said errors were being created by Horizon.

13 But before I went anywhere near taking
14 a case forward on the basis of a single category
15 of evidence, I wanted to understand what the
16 weaknesses might be and what landmines might lie
17 in my path to the trial.

18 So, at this stage, I'm trying to flesh out
19 where could this all go wrong for me.

20 **Q.** Did you ever get an answer back to that
21 question?

22 **A.** Not that I recall, no.

23 **Q.** No, and I can say there doesn't appear to be one
24 recorded in the papers, so far as I can see.

25 **A.** Yes.

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1 the Reply to the Defence. The same on page 4.

2 Then if we go to page 5, it appears that you
3 started to discuss the witness evidence. Can
4 you see under the heading of "John Jones"?

5 **A.** Yes.

6 **Q.** Then if we scroll down -- no, we've got it
7 there, thank you. Do you see under the third
8 paragraph under the heading "John Jones",
9 there's a passage with an asterisk and "RM",
10 which I think, in context, refers to you?

11 **A.** Yes.

12 **Q.** You're recorded as saying:
13 "... we need to know what sort of security
14 or protection Marine Drive had on its dial-up
15 Internet. Was it password protected?"
16 Then this:
17 "Can Fujitsu get in and change the raw data
18 after Castleton inputted this?"

19 **A.** Mm-hm.

20 **Q.** So you were, would you agree, asking some
21 difficult but reasonable questions of the Post
22 Office here and, in particular, can Fujitsu get
23 in and change data after Mr Castleton has
24 inputted it?

25 **A.** Yes.

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1 **Q.** That's obviously not definitive.

2 You asked whether Fujitsu could change
3 data --

4 **A.** Yes.

5 **Q.** -- essentially. We now know that Fujitsu could
6 amend data and that, for a period of time, there
7 was an unaudited and unauditible method of them
8 doing so. Would you expect that information to
9 have been revealed to you in answer to your
10 direct question?

11 **A.** I think I'd have liked to have known it.

12 **Q.** What would you have done if you'd been told
13 Fujitsu can get access to the system to change
14 data and there's not a method of auditing when
15 and in what circumstances they've done so?

16 **A.** I think I would have wanted to take a good hard
17 look around the secondhand motor vehicle I was
18 being sold as the Post Office's case and kicked
19 the tires rather more carefully, to use
20 a metaphor.

21 I think I would have felt decidedly
22 uncomfortable at the very least and would have
23 changed the dynamic of the enquiries that I was
24 making and the advice I was giving, I think.

25 And that's, again, an answer to a hypothetical

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1 question. But on the fortunately very few
2 occasions when litigants have revealed extremely
3 adverse information, it rather alters the
4 dynamic between counsel and lawyers.

5 **MR BEER:** With that striking metaphor in our minds,
6 I wonder whether we could take the lunch break.
7 As you know, sir, we're breaking early at 11.55
8 today and coming back at 12.55.

9 **SIR WYN WILLIAMS:** Yes, that's fine, Mr Beer.
10 12.55.

11 **THE WITNESS:** Would you be kind enough to give me
12 the usual warning, just so that it's on the
13 record?

14 **SIR WYN WILLIAMS:** I will. I think that you are
15 well aware that you should not speak to anyone
16 about the evidence which you have given and
17 which you may give this afternoon, but I should
18 tell you that you shouldn't discuss your
19 evidence with anyone, and I think that's
20 a sufficient warning for someone who is King's
21 Counsel.

22 **THE WITNESS:** Thank you.

23 **MR BEER:** Sir, 12.55. Thank you.

24 (11.56 am)

(The Short Adjournment)

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1 the number of allegations and the number of
2 paper cases that have occurred. Other than the
3 Bajaj and Bilkhu cases how many other
4 allegations have been made and how many have
5 come to trial and the outcomes of those. These
6 need to be of a particular issue of persistent
7 shortfalls allegedly attributable to the
8 computer system."

9 First of all, I take it that, in line with
10 the evidence you've given previously, you don't
11 remember asking questions of that sort at this
12 remove of time?

13 **A.** I've got no specific recollection, no. I'm just
14 trying to think about what -- so I think there
15 must have been mention in my instructions about
16 Bajaj and Bilkhu but I can't remember --

17 **Q.** What would your interest have been --

18 **A.** -- what was said.

19 **Q.** I'm sorry, I spoke over you.

20 **A.** That's all right.

21 **Q.** What would your interest in discovering
22 allegations concerning persistent shortfalls
23 attributable to the computer system have been?

24 **A.** Well, obviously I'd want to know if there was
25 some deficiency in the Horizon System that was

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1 (12.55 pm)

2 **MR BEER:** Good afternoon, sir, can you see and hear
3 me?

4 **SIR WYN WILLIAMS:** Yes, I can.

5 **MR BEER:** Thank you very much.

6 Mr Morgan can we just go back to the
7 document we were looking at shortly before lunch
8 to ask one supplemental set of questions on it.
9 It's POL00072741.

10 If you remember, I was asking you questions
11 about what evidence was and wasn't disclosed to
12 you about bugs, errors or defects --

13 **A.** Yes.

14 **Q.** -- and difficulties with producing data from
15 Horizon, and the extent to which this informed
16 or didn't inform the nice legal point that you
17 developed. We had looked at the questions that
18 you had asked on page 5 about can Fujitsu get in
19 and change the raw data.

20 Can we look at page 6, please. If we look
21 at the foot of the page, please, three
22 paragraphs from the bottom, this is in the
23 context of some other case, and you say:

24 "I would like also to know if it is
25 a genuine one-off and I would like to know if

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1 causing artificial losses. If there was
2 a problem in there, I wanted to know about it
3 sooner rather than later. The last thing one
4 wants to do is to get to three or four weeks
5 before trial and find that there's been some
6 finding somewhere else that there is a real
7 problem. It's all about risk management and
8 understanding the profile of the evidence.

9 **Q.** Where it refers to how many other cases have
10 come to trial and the outcome of those, would
11 you have been interested in both criminal and
12 civil cases, ie it didn't matter where the
13 allegation had been made of a persistent
14 shortfall attributable to the computer system?

15 **A.** I'd like to say yes, I'm not sure that I was
16 necessarily sufficiently alive to the fact that
17 the Post Office was prosecuting people to have
18 that degree of sophistication in my question.
19 I think it would have just been, at that time,
20 the open question, you know, what other cases
21 are there and are they showing there's
22 a problem?

23 Without understanding what the allegation is
24 in each individual case and what the outcome is,
25 one is not going to know whether that's going to

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1 impact on the evidence that's going to be given
2 in the specific trial in relation to which I was
3 being instructed but I certainly wanted to
4 understand the overall terrain within which the
5 dispute was going to occur.

6 **Q.** So you would cast the question and, therefore,
7 the net relatively widely at that stage?

8 **A.** Yes, I'm trying to find out what's going on.
9 I'm saying what -- you know, without being so
10 crude as to say "Give me full and frank
11 disclosure", I want to know are there any
12 unexploded landmines that I'm going to step on
13 if I go down a particular course? Is there
14 anything that's going to come out that I should
15 know about now? Generally, with sophisticated
16 firms of solicitors, they know that that's what
17 you're asking them when you say, "What's out
18 there?"

19 I think I would have assumed that with
20 Mr Beezer and Mr Dilley.

21 **Q.** Did you ever get an answer to this question.
22 We've asked about the Fujitsu having access
23 question; did you get an answer to this
24 question?

25 **A.** I think in relation to this question, and it's
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1 that his computer froze ... whilst he was
2 serving a customer and was partway through
3 a transaction. The transaction had not been
4 settled. It related to a postage label. When
5 he logged back in again, the computer had lost
6 the transaction of £1.27. The computer did not
7 prompt him to try to recover it. Greg is away
8 this week, but I will be contacting him upon his
9 return to obtain a supplemental witness
10 statement about this point. Prior to then
11 Greg's evidence was that he had never known the
12 system to lose a transaction. In this
13 particular case, Greg was up £1.27 because he
14 had taken money from a customer. However,
15 I anticipate the reverse would have happened if
16 he had been paying money out.

17 "Although this is for a small amount the
18 principle on the face of it seems concerning
19 because it suggests that the Horizon System can
20 (albeit rarely) lose transactions. Castleton's
21 solicitors will try to exploit any weakness and
22 we must be prepared for a possible attack on
23 this point. Our counsel has requested that
24 Fujitsu review the Newbury Post Office's Horizon
25 data for those days period to see if you can
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1 only because of documentation that I've read
2 recently, I think that the *Bilkhu* case hadn't
3 even been issued. I hesitate to ask
4 a question -- I think I'm right in that and
5 I don't think I ever got an answer in relation
6 to *Bajaj*.

7 **Q.** But what about the wider question?

8 **A.** I didn't get an answer in relation to that, no
9 at least I -- sorry. That sounds very definite.
10 I do not recall now an answer to that then.

11 **Q.** Can we look, please, at FUJ00155767. It's
12 an email exchange which you're included on.
13 It's just over a month before trial and, if we
14 just go to the foot of the page, please, there's
15 an email from Mr Dilley of 31 October to Brian
16 Pinder and you're on the copy list; can you see
17 that?

18 **A.** Yes, I can.

19 **Q.** If we just read through it together:

20 "One of the witnesses in the *Castleton* case
21 is Greg Booth who was the temporary
22 subpostmaster at Marine Drive branch from
23 21 April to 28 May 2004. [He is now at
24 Newbury].

25 "Greg spoke to me last week and reported
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1 tell whether the system froze and lost the
2 transaction and what the explanation may be.

3 "We have to serve witness statements very
4 shortly. I will have to prepare a supplemental
5 witness statement ..."

6 Now, Mr Booth, I think you'll recall was --
7 Gregory Booth, was one of three subpostmasters
8 that operated the Marine Drive branch
9 immediately after Mr Castleton had been
10 suspended and was ultimately dismissed, and his
11 evidence was, can you help with this, adduced at
12 trial to seek to demonstrate that those who
13 operated the Marine Drive branch after
14 Mr Castleton left did so without difficulties
15 being caused by the Horizon System.

16 **A.** I don't remember now but I'll take your word for
17 it that that is an accurate reflection of the
18 record.

19 **Q.** In due course -- we needn't turn it up -- the
20 judge referred to Mr Booth's evidence, it's
21 paragraph 24 of his judgment, saying:

22 "Mr Booth experienced no significant
23 discrepancies other than two which were
24 deliberately induced to check the operation of
25 the Horizon System having regard to
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1 Mr Castleton's allegations."

2 At the foot of the previous page, your
3 solicitor says:

4 "Although this for a small amount the
5 principle on the face of it seems concerning
6 because it suggests that Horizon can (albeit
7 rarely) lose transactions."

8 Would your view be the same, irrespective of
9 the amount --

10 A. Yes --

11 Q. -- it's the principle?

12 A. Sorry, I didn't mean to overspeak. Yes, and
13 without wishing to try to look too wise after
14 the event, that's why I'm asking for Fujitsu to
15 have a look at it and explain it.

16 Q. It seems that, even before you received this
17 email, you had spoken to or communicated in some
18 way with Mr Dilley because he says, "Our counsel
19 has suggested that Fujitsu review"?

20 A. Yes, that would be what this email suggests.

21 Q. So if matters like this had been drawn to your
22 attention, this was a small sum of money, but
23 revealed a principal issue of concern, would you
24 have treated the other revelations in a similar
25 way?

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1 some definitive answers from Fujitsu. [Richard
2 Morgan] saying that we may finish in court by
3 lunchtime tomorrow."

4 You're recorded as saying that you needed
5 a Fujitsu witness identifying why this was
6 a problem but that Mr Castleton's was not.

7 A. Yes.

8 Q. Did you assume that the problem did not afflict
9 Mr Castleton's branch?

10 A. That's a very simple question with quite
11 a complicated answer. I made no assumptions
12 about what was going on at Mr Castleton's
13 branch. I made no assumptions about what was
14 going on at any other branch. By this stage,
15 I was -- I think the case had started on -- was
16 it the 4th and this is the 6th, so this is the
17 Wednesday. I can't quite remember. So the
18 trial had started. I was --

19 Q. I don't think that chronology is exactly right.

20 A. Isn't it? I can't remember. But the issues
21 were the accounts stated point and Mr
22 Castleton's case was that -- it was called
23 the -- the Horizon System was causing problems
24 but he didn't say how or why. I didn't know
25 what the issue was with -- what's the name of

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1 A. I would hope so, yes.

2 Q. Can we look on, thirdly, please, at POL00070126.

3 This is telephone attendance note on Mandy
4 Talbot by SJD3, who is Mr Dilley, and you; can
5 you see that?

6 A. Yes.

7 Q. "MT [Mandy Talbot] saying that today's news
8 about problems with the Horizon System at the
9 Falkirk branch had come as a bolt from the blue,
10 that she had known nothing about it and that
11 Fujitsu did not give any indication. Could we
12 get a Fujitsu witness to give evidence?"

13 "[Richard Morgan] saying that we need
14 a Fujitsu witness to identify why this was
15 a problem, but Lee Castleton's was not. Was
16 there a latent defect or a software problem from
17 a subsequent update or a hardware problem
18 specific to that branch?"

19 "[Richard Morgan] saying he was concerning
20 about whether we have to give disclosure of this
21 fact. He thought probably yes, but wanted to
22 find out if the judge thought it was relevant.
23 [Richard Morgan] was prepared to put off
24 a decision on this until after his opening.

25 [Richard Morgan] asked [Mandy Talbot] to get

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1 the branch? The Falkirk branch.

2 Q. Falkirk, yes.

3 A. I wanted to know what was going on.

4 Mr Castleton was wanting to call some other
5 subpostmasters about issues that were going on
6 in their branches and the question was whether
7 it was relevant to the *Castleton* trial that
8 other subpostmasters had had problems and, if
9 so, what those problems were.

10 As I recall it, and this is reconstructed
11 from what is said or what appears in the
12 transcripts and the notes of the hearing that
13 were provided to me, the judge ruled on that and
14 said that, although the witness evidence was
15 admissible to show that there were errors or
16 there were problems that had occurred in other
17 branches, there wasn't going to be a trial of
18 the other issues within the *Castleton* trial.

19 So it all happened in a very compressed time
20 frame, as far as I can recall, and there was
21 a ruling on the admissibility or relevance of
22 issues in other branches that meant that this
23 went back onto the backburner. That's my
24 recollection.

25 Q. So just on the chronology, yes --

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1 A. Yes, thanks.
 2 Q. -- this the morning of the opening.
 3 A. Yes, thanks. So the case --
 4 Q. The trial opened on Wednesday, 6 December?
 5 A. Yes, I think there were two pre-reading days,
 6 I think. I thought the first day of the trial
 7 was Monday, the 4th.
 8 Q. Let's put it a different way. I think we can
 9 agree that this was the day on which you opened
 10 the case.
 11 A. Fine, thank you. Sorry, I don't wish to argue
 12 with you. That's just my recollection.
 13 Q. The judgment that you're referring to, I think
 14 if we look at POL00021678, this is a copy of the
 15 judgment --
 16 A. Yes.
 17 Q. -- and --
 18 A. Ah, yes. This remains me of this where I've
 19 reconstructed what happened from. I can't
 20 remember the precise order. Again, if we had
 21 the benefit of the transcripts, we'd see exactly
 22 what had happened.
 23 Q. I think if you turn to page 8, please, and look
 24 at paragraph 22:
 25 "During the hearing, Mr Castleton sought to
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1 Q. Thank you. Yes, that can come down, thank you.
 2 Can we turn, please, to the way that the
 3 case was put on accounts stated and settled
 4 accounts and just go back to paragraph 27 of
 5 your witness statement, please, on page 8. You
 6 say in the second line:
 7 "... I recalled that there was a line of
 8 authorities in relation to accounts stated and
 9 settled accounts ... I realised that there was
 10 authority for the argument that if Mr Castleton
 11 was tendering his own figures to [the Post
 12 Office], he was vouching their accuracy.
 13 I therefore advised that we should realign our
 14 pleaded case to take this point and we should
 15 try to establish the true trading position by
 16 reference to Mr Castleton's own documents ..."
 17 Then paragraph 92, please, on page 31 of the
 18 witness statement. You have been asked whether
 19 there were any other matters you would like to
 20 bring to the attention of the Chair and you say
 21 you've seen various books articles and comments
 22 that make reference to the *Post Office v*
 23 *Castleton* case:
 24 "The general assumption in those materials
 25 seems to be that, in some way, the operation of
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1 adduce evidence of other complaints from
 2 subpostmasters of other post offices about the
 3 Horizon system. I admitted ... the fact that
 4 there were a few such complaints, but I refused
 5 to admit evidence of the fact underlying such
 6 complaints, since that would have involved
 7 a trial within a trial."
 8 A. Yes.
 9 Q. Essentially, was that your submission on behalf
 10 of the Post Office?
 11 A. I -- again, I'm afraid I genuinely can't
 12 remember. I suspect it may have been, though.
 13 I think that's.
 14 Q. But it was permissible to say there had been
 15 a few complaints but what those complaints were
 16 or the facts of them underlying them was not
 17 admissible?
 18 A. I'm not sure that I would have put it exactly
 19 like that, but that's the way it's recorded.
 20 Q. In the event, did you give disclosure of the
 21 facts concerning the Callendar Square or Falkirk
 22 bug?
 23 A. I don't recall giving disclosure. Sorry,
 24 I don't recall my solicitors giving disclosure
 25 is the accurate answer.
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1 the Horizon IT System was an issue in the case
 2 that led to judgment being given in favour of
 3 [the Post Office]. However, a review of the
 4 pleadings, the witness statements and the
 5 judgment should provide enough information to
 6 confirm that the case in fact turned on
 7 Mr Castleton's own signed books, records and
 8 accounts produced by him as the agent of [the
 9 Post Office]."
 10 That matches what Mr Dilley told us
 11 repeatedly yesterday. He said the Post Office
 12 succeeded in its claim, in spite of the computer
 13 system; it succeeded in its claim on the basis
 14 of physical accounting records.
 15 Can we just look at the pleadings, please,
 16 starting with LCAS0000190. This is the
 17 Re-amended Reply and Defence to Counterclaim and
 18 we can see, if we go to page 3 and scroll down,
 19 it's settled by you; can you see that?
 20 A. Yes.
 21 Q. If we go back to page 1, please, and look at
 22 paragraph 3. It's pleaded:
 23 "With respect to paragraphs 5 and 6 of the
 24 Defence, Fujitsu Services have looked at the
 25 Claimant's computer system and have confirmed
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1 that the losses recorded by the Defendant were
 2 caused by a difference between the physical
 3 transactions that actually occurred and were
 4 recorded on the system by the Defendant or his
 5 assistant as taking place and the cash in hand
 6 that was declared by the Defendant relating to
 7 those transactions, and accordingly those losses
 8 were not caused by the Claimant's system's
 9 software or hardware."

10 We ought to look, I think, at just what
 11 paragraphs 5 and 6 of the Defence had said,
 12 LCAS0000294. If we go to page 3, paragraphs 5
 13 and 6, Mr Castleton had pleaded:

14 "The Defendant repeatedly sought assistance
 15 from his managers within the Claimant company
 16 during the period over which the apparent
 17 shortfall accumulated. No assistance was
 18 forthcoming. The Defendant avers that any
 19 apparent shortfall is entirely the product of
 20 problems with the Horizon computer and
 21 accounting system used by the Claimant.

22 "The Defendant further avers that, he will
 23 be able to demonstrate through a manual
 24 reconciliation of the figures contained within
 25 the daily balance snapshot documents created by

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1 right.

2 A. Yes.

3 Q. LCAS0000190, paragraph 3:

4 "... Fujitsu Services have looked at the
 5 Claimant's computer system", et cetera.

6 A. Yes.

7 Q. Again, and appreciating the distance of time,
 8 can you recall anything more than "That was
 9 based on my instructions, which came from my
 10 solicitor"?

11 A. No.

12 Q. Can we look, please, at POL00069801. If we look
 13 at the foot of the page, just scroll up a little
 14 bit, just a tiny about more, there's an email
 15 from you to Mr Dilley of 8 November.

16 A. Yes.

17 Q. Then if you scroll up to the top of the page,
 18 you'll see he says:

19 "I thought it would be easiest [solicitors
 20 often say this] to reply in blue below next to
 21 your original email."

22 A. And, of course, we have the benefit of a black
 23 and white copy.

24 Q. Exactly so. So it is doubtless easiest for
 25 them. If we scroll down, please. I think we

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1 the Defendant during the course of his tenure as
 2 subpostmaster at the Marine Drive branch Post
 3 Office, which were remove from the post office
 4 on the Defendant's suspension, that the apparent
 5 shortfalls are in fact nothing more than
 6 accounting errors arising from the operation of
 7 the Horizon system."

8 So Mr Castleton's case was that the
 9 shortfalls were entirely a product of the
 10 Horizon System, yes?

11 A. That's what he says.

12 Q. In the Reply and Defence to Counterclaim, you
 13 pleaded that that was denied, that the losses
 14 were not caused by the claimant's system's
 15 software or hardware?

16 A. Yes.

17 Q. Can you help us on what material that was based?

18 A. My instructions.

19 Q. Where were those instructions obtained from?

20 A. My instructing solicitors.

21 Q. By what means?

22 A. Well, at this distance in time, I can't recall
 23 but ...

24 Q. But you recall what was pleaded: that Fujitsu
 25 had -- we'd better get the wording exactly

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1 can see from the typescript where you're
 2 speaking and he's replying?

3 A. Yes, I think my points end with question marks
 4 and then the text after that is --

5 Q. Exactly, and I think in original they would be
 6 blue.

7 A. Yes.

8 Q. "At what time of day was Castleton suspended?"

9 "Who arranged for the temporary
 10 subpostmaster to take over?"

11 Scroll down please:

12 "Was the sub post office shut ...

13 "When was the P242 signed ...

14 "Did the branch trade", et cetera.

15 There's a very wide range of issues upon
 16 which you're seeking instructions there but not
 17 the one that I'm asking about.

18 A. Yes.

19 Q. Again, can you recall how that information had
 20 been provided --

21 A. No.

22 Q. -- namely that Fujitsu had examined the system?

23 A. No.

24 Q. In any event, quite aside from the nice legal
 25 point, the reliability of the product of

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1 Horizon, at at least this branch, was an issue
 2 or potentially an issue in the trial?
 3 **A.** Potentially an issue, yes. Although, if you go
 4 back to the defence, you'll have seen that the
 5 averment was that Mr Castleton would be able to
 6 establish from the primary figures that they
 7 were artificial errors rather than real --
 8 sorry, artificial deficiencies rather than real
 9 deficiencies. So his case was based upon the
 10 written figures rather than the product of
 11 Horizon.
 12 **Q.** But, in any event, would you agree that
 13 disclosure had to be given by the Post Office in
 14 relation to the question of, if it possessed
 15 such documents, whether such losses were caused
 16 by Horizon, irrespective of your legal point?
 17 **A.** One would have to look very carefully at the
 18 scope of the disclosure obligation and the
 19 information that was being sought. Now, at this
 20 stage, Mr Castleton was represented by
 21 solicitors and they no doubt explored disclosure
 22 issues with my instructing solicitors but
 23 disclosure was not an issue with which I was
 24 involved or upon which I was instructed, as far
 25 as I remember, anyway.

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1 whereas I just don't know what this document --
 2 I have no idea. It's just a piece of paper that
 3 purports to record what is stated and I just
 4 wondered what the provenance of the document
 5 was, that's all.
 6 **Q.** Shall we look at the piece of paper?
 7 **A.** Mm, by all means.
 8 **Q.** Page 14. In fact to give you some context we
 9 should start at 13. Just under "I'm grateful"
 10 23.38, you are --
 11 **A.** I'm sorry. I'm not sure I'm there. Oh, I've
 12 got it, thank you.
 13 **Q.** You're recorded as saying:
 14 "No, no, of course. For the assistance
 15 perhaps of Mr Castleton what I was trying to do
 16 for the Court is."
 17 The judge said:
 18 "Is give me background.
 19 "You: A very general background as gentler
 20 introduction at this stage as I can. Then
 21 I propose to address your Lordship very briefly
 22 on one point of view that arises on the burden
 23 of proof.
 24 "Judge: Yes.
 25 "And then even if I'm right on that issue of

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1 **Q.** Can we, lastly, on this subtopic look, please,
 2 at LCAS0000197. This is a typed copy of
 3 a recording of, amongst other things, I think
 4 your opening of the case on 6 December 2006. If
 5 we could turn, please, to pages 14 and then 15,
 6 please, starting at 14.
 7 **A.** Do we know who the author of this document was?
 8 **Q.** I believe, from the designation, it's
 9 Mr Castleton's solicitors, ie LCAS means Lee
 10 Castleton, so the Unique Reference Number
 11 I called out. But I can check that if we take
 12 break or when we take a break in the afternoon.
 13 You look quizzical.
 14 **A.** I just didn't understand Mr Castleton to have
 15 solicitors instructed and it's normally --
 16 **Q.** No, no, no, now.
 17 **A.** Oh, right.
 18 **Q.** He's got solicitors in this Inquiry --
 19 **A.** Ah, I see.
 20 **Q.** -- who have obtained a copy of the recording and
 21 have had it transcribed.
 22 **A.** I see. Not by an official transcriber, though.
 23 **Q.** Is there a point on that?
 24 **A.** No, it's just normally I would trust Smith
 25 Bernal as being an authorised transcriber,

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1 burden of proof it might be of assistance to the
 2 court and to Mr Castleton if I complete
 3 a comprehensive opening so the Court has
 4 presented to it in as neutral a way as possible.
 5 "Answer: Yes.
 6 "The primary documents.
 7 "Yes.
 8 "There will come a point at which I will
 9 make some submissions as to my primary case ...
 10 "But I hope that will be of help to
 11 Mr Castleton to relieve him of any burdening of
 12 opening the case.
 13 "Yes, quite.
 14 "And also provide a balanced view of the
 15 primary documents before I make some submissions
 16 as to why we're bound to win, otherwise wouldn't
 17 be here but [hopefully] that's of assistance
 18 [for] Mr Castleton."
 19 Then over the page, judge says:
 20 "The biggest issue in this case seems to be
 21 whether the computer is working properly, isn't
 22 it?
 23 You say:
 24 "Well, that's how Mr Castleton would like to
 25 portray it.

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1 "Judge: Yes.
 2 "You: And it's a matter your Lordship may
 3 have to consider.
 4 "Yes.
 5 "But I'd invite your Lordship to listen to
 6 my opening and understand ...
 7 "The facts. Much like a pocket calculator
 8 a computer is only a tool that reflects the
 9 information that's entered on to it ...
 10 "And the way the system is meant to work is
 11 that Mr Castleton is meant to check the
 12 underlying physical transactions against what's
 13 shown on the printout."
 14 He says:
 15 "I see. Well, I'll leave it to you to
 16 explain that in due course."
 17 Then you say:
 18 "And your Lordship in fact touches the core
 19 of this question the core of this trial ... and
 20 that is is this a trial about an account product
 21 produced by an agent ...
 22 "Which is verified by him or is this a trial
 23 which is a rampage through how a computer system
 24 works and whether this is whether Mr Castleton
 25 can say that the computer has anything to do

1 deployed in the amended statement of Particulars
 2 of Claim.
 3 Q. Yes, yes. I meant orally --
 4 A. Yes.
 5 Q. -- at opening. So was the trial about whether
 6 the Horizon-produced documents included accurate
 7 cash accounts?
 8 A. No. Well, not as far as I understood it. The
 9 trial, or the claim, was based upon
 10 Mr Castleton's signed statements of account.
 11 Q. Where had those documents all come from?
 12 A. Mr Castleton.
 13 Q. No, no, where had the documents that he had
 14 signed, where had they come from?
 15 A. I don't know.
 16 Q. What had produced them: a computer?
 17 A. Thinking back all these years, some of them may
 18 have been produced by a computer, some of them
 19 may have been produced by one of those sort of
 20 typing calculators, some of them may have been
 21 produced purely in manuscript. I think the
 22 lists of amounts of cash by denomination were
 23 manuscript documents.
 24 Q. But the end -- I'm so sorry. The end of week
 25 cash accounts --

1 with this trial at all.
 2 "Judge: When you say it's an account ..."
 3 Then there's an unclear passage:
 4 "... which it may well be but it's still
 5 open to Mr Castleton to say that the account is
 6 wrong ..."
 7 You say:
 8 "It's still open to Mr Castleton to say the
 9 account is wrong in certain limited respects.
 10 "Judge: If the computer's wrong, if it can
 11 be shown that the computer's wrong."
 12 You say: "If he could show the computer were
 13 wrong.
 14 "Yes."
 15 You say:
 16 "... in my respectful submission he could
 17 only do that by producing physical evidence as
 18 to why it was wrong ...
 19 "And that is going to be the nub of the
 20 dispute."
 21 So this is the first time we see the
 22 strategy of relying upon the vouchsafing of the
 23 physical cash account being deployed at the
 24 trial, I think.
 25 A. Being deployed at the trial, yes. It was

1 A. Yes.
 2 Q. -- which were a principal document that you
 3 relied upon as the agent's account --
 4 A. Yes.
 5 Q. -- they were produced by Horizon, weren't they?
 6 A. They may well have been, yes.
 7 Q. They --
 8 A. I -- sorry, I'm not trying to be difficult,
 9 I genuinely can't remember. I think they were
 10 printed documents and I think they were signed
 11 off by Mr Castleton.
 12 Q. Can we turn to a different subtopic, please, and
 13 look at some tactical issues. Can we go back to
 14 paragraph 52 of your witness statement, please,
 15 which is on page 16, and scroll down. Thank
 16 you. You say:
 17 "I have no idea what the tactical position
 18 of [the Post Office] was in this litigation or
 19 what reasoning was behind it."
 20 Yes?
 21 A. Yes.
 22 Q. You say that you:
 23 "... advised explicitly that the costs were
 24 going to be out of all proportion to the amount
 25 at stake, but [you] continued to be instructed

1 to progress the matter to trial."

2 You even advised that:

3 "... a drop hands settlement should be
4 attempted, but that does not seem to have been
5 taken up."

6 Yes?

7 **A.** Yes.

8 **Q.** So you had no idea at all of what the Post
9 Office's tactics were in this litigation, why it
10 was continuing to fight it, why it was
11 continuing to spend money on it?

12 **A.** I thought it was commercial madness.

13 **Q.** And you used that word --

14 **A.** I might well have done, yes.

15 **Q.** -- in an email --

16 **A.** I tend to be quite blunt about my views.

17 **Q.** -- yes, about stopping this madness?

18 **A.** Yes.

19 **Q.** I just want to see whether things were revealed
20 to you about why your client was pursuing this
21 madness.

22 **A.** Sure.

23 **Q.** POL00069490. This is a telephone attendance
24 note of a conversation between Mr Dilley and you
25 on 10 October 2006.

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1 **A.** So you have what is, by High Court standards,
2 a tiny piece of commercial litigation going to
3 trial. You have some generalised allegations
4 that haven't been particularised and you have
5 some directions for exchange of evidence and
6 exchange of expert evidence.

7 It is quite clear that the longer this case
8 drags on, the more of a gaping wound the costs
9 are going to become. They're already wholly
10 disproportionate to the amount at stake and
11 something has got to force the issue, either
12 to -- that will either result in the case
13 becoming clear, the evidence, the expert
14 evidence articulating what it is that the
15 defendant is pointing at, or it needs to be go
16 to trial. What you can't do is just let it roll
17 on and on and on.

18 So press for the December trial, see if that
19 provokes the service of the evidence that's
20 going to be used by way of defence. If it does
21 actually provide a defence, then we might need
22 to seek an adjournment. If it doesn't, then you
23 just go to trial.

24 **Q.** Thank you. Can we turn forward to POL00072432.

25 This is an attendance note on 16 October, so six

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1 **A.** Yes.

2 **Q.** If you just read the first three paragraphs to
3 yourself to get some context, rather than diving
4 straight in.

5 **A.** Yes.

6 **Q.** In the fourth paragraph, it records that you
7 think you thought:

8 "... we should play some brinkmanship and
9 press for a December trial. If they disclose
10 an experts report that harms us as they are
11 [going to be] so late, we can always ask the
12 court to vacate the trial. However at the
13 moment, they have not disclosed an experts
14 report and he thinks we can go to trial without
15 one. However, he wants us to get client
16 approval for this strategy."

17 On the issue of brinkmanship, what do you
18 understand you to have meant in this context?

19 **A.** Yes, so this was a question that was posed to me
20 at the outset and I have thought about it.

21 I don't have a direct recollection now of what
22 was being said but I can reconstruct what
23 I would have been thinking, if that would be of
24 help.

25 **Q.** Yes, please.

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1 days after the conversation we've just looked
2 at. It's not an attendance note upon you; it's
3 Mr Dilley on Mandy Talbot.

4 **A.** Yes.

5 **Q.** If you just read the first couple of paragraphs
6 to yourself to get some context. Then if we
7 look at paragraph 3:

8 "Counsel was much happier with the case now
9 we had all these witness statements and thought
10 they were really thorough and we didn't really
11 need expert evidence ... Counsel therefore wants
12 to play some brinkmanship with the other side,
13 ie push for a December trial, but preserving our
14 ability to get that adjourned if they serve
15 a late report we need to deal with. I said that
16 we could prepare for a December Trial if
17 necessary and I was happy to do so, but I was
18 concerned to make sure that we could reply to
19 any expert report served by [Mr] Castleton.
20 I also thought that our counsel was effectively
21 trying to ambush the other side because he
22 thinks that when we serve these fifteen witness
23 statements on them, they will be knocked reeling
24 a bit. Mandy appreciates the tactics of this.
25 She said that the only thing was with a December

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1 trial is that the Post Office get very busy
2 before Christmas generally. She will speak to
3 her colleagues and come back to me on counsel's
4 tactical ideas."

5 There's a subsequent email, no need to --
6 sorry, subsequent telephone attendance note
7 saying that the Post Office are happy enough to
8 follow counsel's advice and go for the December
9 trial, purely as a tactic. That's POL00069453.

10 The type of brinkmanship spoken of here is
11 of a slightly different flavour, isn't it? Was
12 it part of your strategy to ambush Mr Castleton?

13 **A.** No, not at all. We'd had a CMC, I think, in
14 September or October of this year.

15 **Q.** Of that year?

16 **A.** That year.

17 **Q.** It was a pre-trial review, not a --

18 **A.** I'm grateful -- where Mr Castleton was
19 represented by counsel and we had both said that
20 this case was not suitable for the High Court,
21 and we had invited the master to adjourn it off
22 to Central London County Court. And the master
23 had declined to do that. He wanted to hold it
24 to a trial date in October to December 2006.

25 So it was a court driven direction for
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1 adjust the issues to run it as a 'test case',
2 nor was I asked to run it as a test case for
3 anything (I was only ever instructed to been
4 a claim to recover amounts owing). The case was
5 not presented to the court as a test case, and
6 in my view the judgment does not read as if the
7 judge treated it as a 'test case' of anything."

8 So reading that together, it was your view
9 that this was not a test case in any sense of
10 that word, or those words, for the Post Office?

11 **A.** Yes. It was a single one-off case.

12 **Q.** Can we look, please, at POL00069622, which is
13 the attendance note you referred to there. This
14 is a six-page attendance note of a conference
15 held with you, two solicitors from Bond Pearce
16 and a number of the witnesses that the Post
17 Office was going to use at Mr Castleton's trial.

18 **A.** Yes.

19 **Q.** It's at your chambers. If we just go to page 5,
20 please, and look at the end of the document.

21 Thank you. "Meeting with Mandy Talbot":

22 "Tom [that's Tom Beezer, I think] explained
23 that the big issue in this case was proving the
24 loss. Horizon is like a big calculator and it
25 can be changed after the event (Tom went on to
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1 a hearing and the hearing had been fixed, and
2 there had been directions down to the hearing.
3 It's hardly an ambush when everybody has been
4 told about it by the master giving the
5 directions. And I felt we should hold it
6 because, otherwise, not only were we going to be
7 staying in the High Court and not getting the
8 advantage of the earlier hearing date that the
9 master was keen to achieve when he kept us in
10 the High Court, but we wouldn't be getting the
11 evidence that he'd directed be served.

12 So I don't think -- I mean, with respect to
13 Mr Dilley, I don't think he's correct to
14 describe it as an ambush.

15 **Q.** Thank you. Can we move, please, to page 15 of
16 your witness statement at paragraph 49.
17 Page 15, please, paragraph 49. You say:

18 "I have absolutely no idea why or by whom
19 the *Castleton* case was considered a test case --
20 although I note that Mandy Talbot apparently
21 said it had 'almost become a test case in spite
22 of itself' [in an] attendance note of ...
23 11 September 2006 ... As far as I was concerned,
24 it was a single case to be decided on its own
25 facts, as with every other case. I did not
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1 explain why)."

2 Just thinking back to the answer you gave
3 about the issue of whether you got an answer to
4 the reasonable question you asked -- can the
5 system be changed after the event -- presumably
6 you don't now recall receiving this explanation
7 nor indeed what the explanation was?

8 **A.** No.

9 **Q.** Again, thinking back, do you think this played
10 any part in the strategy of deploying a nice
11 legal point that there were actual real
12 difficulties on the ground in proving a loss?

13 **A.** No, I don't think I do recall this playing any
14 part because I just think the sequencing is
15 wrong. I think I'd already taken the decision
16 by that stage, that it needed to be by way of
17 settled account or accounts stated.

18 I thought -- look, it's such a long time ago but
19 my feeling at this remove is that that decision
20 or my advice was given in August and that it
21 then, sort of, rolled forward.

22 **Q.** At the foot of the page:

23 "Mandy Talbot said that the difficulty is
24 this has almost become a test case in spite of
25 itself. The Post Office other solicitors' cases
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1 are waiting and watching on this."

2 Then it turns to consider settlement.

3 Did you know of any reason why
4 Mr Castleton's case might be singled out as
5 a test case, instead of other cases involving
6 allegations that there were issues with the
7 Horizon System?

8 **A.** Not -- I don't remember knowing any at the time,
9 no. I don't know any now and I don't remember
10 knowing any at the time.

11 **Q.** Would you expect a client who viewed their case
12 to be a test case to ordinarily inform you of
13 that fact so that you would have knowledge of it
14 when conducting the litigation?

15 **A.** In my professional experience, the only occasion
16 on which a client has told me that a case is
17 a test case is when it's been a Government
18 department and Government departments then ask
19 for particular arguments to be run in particular
20 ways so as to achieve a result that is useful
21 for other cases. And I have not been lead
22 counsel instructed on those cases; I've been
23 acting as junior to the Treasury devil.

24 So I've seen it happen, I've seen it happen
25 for Government departments, I've never

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1 to establish a legal point?

2 **A.** Yes, that's right.

3 **Q.** You weren't given instructions to try to
4 establish the integrity of the Horizon System,
5 either (a) insofar as it worked in the Marine
6 Drive branch or more generally?

7 **A.** Exactly. And, indeed, had I been asked to do
8 that, I think I would have given them a pretty
9 succinct answer as to why I wasn't going to do
10 that and how I couldn't do that, particularly
11 not on the basis of the evidence that I had.

12 **Q.** Well, also, such an approach would be
13 inconsistent with your primary strategy of
14 proving the case on the account?

15 **A.** Yes.

16 **Q.** So I am asking you what became of this. You've
17 got somebody saying to you here, an important
18 person within the Post Office, "This has become
19 a test case".

20 **A.** Well, she -- sorry, or --

21 **Q.** Almost --

22 **A.** There was a conversation in a conference in
23 September 2006 at which Mandy Talbot was
24 present. Mr Lister or Mr Beezer, or whoever it
25 was, took an attendance note and recorded

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1 experienced it for a commercial client and the
2 considerations are rather different.

3 **Q.** Do you now recall what you made of being given
4 this information?

5 **A.** Given what information?

6 **Q.** What's recorded at the foot of the page.

7 **A.** No. Should I?

8 **Q.** What effect would that information have on you?

9 **A.** I don't think it would have any effect at all
10 because I don't think there was anything I could
11 do. I had a case. My obligation was to run it
12 to the best of my ability, in accordance with my
13 instructions. But my instructions weren't "Run
14 it in this way so that we get a precedent to
15 achieve X or Y or Z". My instructions were
16 "There is a debt of £25,500-odd owing by
17 Mr Castleton on the basis of what's shown
18 through his branch, please take the claim to
19 trial".

20 It wasn't -- a Government department would
21 say, "Please take the case to trial and achieve
22 this result on the basis of these arguments".
23 That was -- my discretion as to how the case was
24 put at trial was never circumscribed.

25 **Q.** I see. So you weren't given instructions to try

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1 something that may or may not have been said
2 within that conference. I don't remember her
3 using those words but, there again, I don't
4 really remember the meeting at all. And "almost
5 become a test case in spite of itself", if those
6 were the words used by Mandy Talbot, they
7 don't -- if I was cross-examining, I wouldn't be
8 putting it to the witness that Mandy Talbot was
9 saying that it should be run as a test case.

10 It's more of an observation by an individual
11 as to what she thought was happening to the case
12 but there we are. I mean, I just can't assist
13 you as to what she thought she was saying, why
14 somebody has seen fit to take a note of it or
15 what it means, but it certainly didn't impact
16 upon what I was doing.

17 **Q.** Can we therefore look to some other documents to
18 see whether they provide some help.

19 **A.** Of course.

20 **Q.** POL00072741. This is an attendance note of
21 a telephone conference between you, Tom Beezer,
22 Stephen Dilley and Adrian Bratt on 16 August
23 2006. You discussed the pleadings on page 1
24 and, if we go over to page --

25 **A.** Sorry, can we just -- yeah, so you can see here

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1 that we're already discussing pleading it as
 2 an account by an agent.
 3 **Q.** Yes.
 4 **A.** Yes.
 5 **Q.** If we go over to page 2, please, you discuss the
 6 defence and then the discussion ranges a bit
 7 more broadly than that, if we go to the foot of
 8 that page. You're recorded as saying, this is
 9 two paragraphs from the bottom:
 10 "... this would be better off in the
 11 Chancery/Commercial list of Central London
 12 County Court. We should write to the other side
 13 and explain issues of proportionate use of High
 14 Court time and effectively use our letter as
 15 a shield to the judge."
 16 Mr Dilley:
 17 "This would have settled without the
 18 computer/Horizon issue and the subsequent
 19 subpostmaster's bloggers website."
 20 **A.** Yes.
 21 **Q.** What did you understand or what do you
 22 understand that to refer to: the case would have
 23 settled but for the computer/Horizon issue?
 24 **A.** That Mr Dilley thought there was something that
 25 was stopping the case settling and that -- well,
 133

1 costs recovery as possible, but given that I had
 2 previously told the Post Office that
 3 Mr Castleton's asset position was unclear,
 4 I think that if there is going to be any
 5 movement at all in our negotiating position it
 6 is going to be on costs."
 7 So what this note records you as having been
 8 told, a month or so out from trial, was that the
 9 driver for the Post Office had been to get
 10 a judgment against Mr Castleton to show its
 11 computer system wasn't wrong and to deter other
 12 subpostmasters from bringing a claim. That's
 13 not about recovering the money, is it?
 14 **A.** No, I agree.
 15 **Q.** It wasn't about the sums involved in either the
 16 claim or the counterclaim?
 17 **A.** Yeah, I can see that.
 18 **Q.** And you were being told, according to this note,
 19 it was to get a judgment to show the integrity
 20 of a computer system and about deterrents?
 21 **A.** Yeah, I can see that.
 22 **Q.** Had that been expressed to you previously?
 23 I mean, looking back at some of the things that
 24 we have earlier looked at, the earlier
 25 attendance notes, when you were saying it's
 135

1 interpreting it now, that Mr Castleton was being
 2 led to believe that his losses were illusory by
 3 the fact that other people were saying that
 4 there was something going on.
 5 **Q.** Was there any suggestion made to you at this
 6 time that it was important to the Post Office to
 7 vindicate the reputation of Horizon?
 8 **A.** No and, as I've just been saying, that didn't
 9 form part of my strategy nor was it communicated
 10 to me, nor could I have run it, had it been --
 11 had I been told to do it on the basis of the
 12 material that I had.
 13 **Q.** Can we look, please, at POL00069794. This is
 14 a telephone attendance note of a conversation
 15 with you on 9 November 2006, made by Mr Dilley
 16 and the conversation was with Mr Dilley. If we
 17 can look, please, at the second paragraph from
 18 the bottom, that's Mr Dilley:
 19 "I said that ultimately, the Post Office
 20 driver had been getting a judgment against
 21 Mr Castleton to show that the computer system
 22 wasn't wrong and deter other subpostmasters from
 23 bringing a claim. I therefore thought the most
 24 important thing for them was getting judgment
 25 for the full amount, and that we wanted as much
 134

1 "madness" to continue to litigate this claim,
 2 and they said, "No, it's important for us to
 3 continue it". Do you think, thinking back, that
 4 that's what they regarded this case as about,
 5 the Post Office?
 6 **A.** I genuinely don't think so. I mean, I hadn't
 7 focused on this at all and it certainly hadn't
 8 formed any part of my thought process in
 9 preparing for this hearing. I didn't recall
 10 this as being information conveyed to me. I'm
 11 quite surprised to see it there now.
 12 I don't recall it at the time and had
 13 I focused on that, I think my response would
 14 have been that I couldn't -- I simply couldn't
 15 prove that the system wasn't wrong. It just
 16 wasn't an achievable objective.
 17 **Q.** Can we look next then at POL00069775. You'll
 18 see from page 1 that you're copied into this
 19 email chain here.
 20 **A.** Yes.
 21 **Q.** If we start at the back of the chain, please, on
 22 page 3.
 23 If you just look slightly above that please,
 24 Frankie.
 25 You'll see that the chain starts off with
 136

1 something you're not copied in on: an email from
 2 Mandy Talbot to a range of people within the
 3 Post Office and to Mr Dilley, 10 November 2006:
 4 "... solicitors ... have substantially
 5 accepted our counter offer.
 6 "Castleton is not prepared to have judgment
 7 ... against him ..."
 8 Scroll down, please:
 9 "Castleton is prepared to make an open
 10 statement that [the Post Office] can use as it
 11 chooses exonerating the HORIZON System. I now
 12 [seek] your assistance ..."
 13 Then skipping a paragraph:
 14 "I, Mr L Castleton ... admit that a sum of
 15 money was owed by me to Post Office Limited as
 16 a result of errors which arose whilst I was the
 17 postmaster at the above office. I had thought
 18 that this debt arose due to a malfunction of the
 19 HORIZON System but I [now] accept that I was
 20 mistaken and that the debt arose out of human
 21 error. I declare that the HORIZON System did
 22 not contribute to the errors in any way and
 23 formally withdraw all statements I made to the
 24 contrary."
 25 Then scrolling up, please. Mr Baines, on
 137

1 unreservedly withdraw the untrue allegations
 2 I have made about the operation of the Horizon
 3 system. Previously I thought that discrepancies
 4 that arose at the Marine Drive Post Office
 5 whilst I was postmaster arose due to
 6 a malfunction of the Horizon system, but I now
 7 accept that I was mistaken and that the
 8 discrepancies were caused by human error.
 9 I declare that the Horizon System did not cause
 10 or contribute to the discrepancies in any way
 11 and I formally withdraw all statements I made to
 12 the contrary and undertake not to repeat them,
 13 and/or make any further allegations about the
 14 Horizon System and/or its functioning."
 15 You were sent that.
 16 I can't see any trace of you having replied
 17 to that or offered a view on any of the three
 18 formulations of the statement that it was
 19 proposed should come from the mouth of
 20 Mr Castleton.
 21 Would you agree that this discloses Post
 22 Office's motivation, an important motivation
 23 being to get a publicly declared clean bill of
 24 health out of the settlement?
 25 **A.** Well, I can see what you're arguing but I had no
 139

1 the same day, says:
 2 "Mandy,
 3 "I think the draft says all that it needs
 4 to.
 5 "... a few minor changes ... revised text as
 6 follows:
 7 "I, Mr Lee Castleton ... admit that a sum
 8 of money was owed by me to Post Office Limited
 9 as a result of errors which arose whilst I was
 10 the postmaster at the above office. I had
 11 thought that this debt arose due to
 12 a malfunction of the HORIZON system but I now
 13 accept that I was mistaken and that the debt
 14 arose out of human error. I declare that the
 15 HORIZON system did not contribute to the errors
 16 in any way and formally withdraw all statements
 17 I made to the contrary."
 18 Then scrolling up still further. We can see
 19 Mr Dilley's proposed suggestion. He says:
 20 "1. I don't think Mr Castleton will want
 21 quite as plainly to admit owing the [Post
 22 Office] money ... We can try to get him to say
 23 that if you want, but I doubt he will. I wonder
 24 if we can change it to:
 25 "I, Mr Lee Castleton ... fully and
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1 input --
 2 **Q.** I'm sorry, you can see what I'm?
 3 **A.** Arguing.
 4 **Q.** I'm not arguing anything, I'm asking questions.
 5 **A.** I can see what it says. I can't give you
 6 evidence as to what the Post Office's
 7 motivations were but I can see why you're saying
 8 that that suggests that what they're doing is to
 9 vindicate the Horizon System.
 10 **Q.** Does this not disclose further evidence that it
 11 was revealed to you that they saw this as
 12 something of a test case to get a clean bill of
 13 health for Horizon?
 14 **A.** It discloses to me that they don't want
 15 Mr Castleton to say that the problems were
 16 caused by Horizon.
 17 **Q.** But, of course, this ran directly contrary to
 18 the way that you wanted to run the case, which
 19 was Horizon's irrelevant, this has got nothing
 20 to do with Horizon?
 21 **A.** It ran directly -- well no, it didn't cut across
 22 what I was going to argue at all. It made no
 23 difference at all to what I was going to argue.
 24 As far as I was concerned, I had instructions to
 25 run a case based on the Amended Particulars of
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1 Claim and that was what I was going to do and,
2 at this stage, 10 November, I suspect I was
3 starting to work pretty hard on the primary
4 documents.

5 So, as you'll probably be aware, when one is
6 prepping for a large trial, even though the
7 amount at stake was small, there was a lot of
8 paperwork that needed to be understood. I was
9 focused on getting on with the trial
10 preparation.

11 **MR BEER:** Thank you, sir, might that be
12 an appropriate moment for the afternoon break?
13 It's 2.00 now.

14 **SIR WYN WILLIAMS:** Can I just ask -- sorry, there
15 was just one part of that document I had
16 a question about for Mr Morgan. Can it go back
17 up, it will only take a minute.

18 You see, Mr Morgan, that the paragraph in
19 quotes which Mr Beer was asking you about, in
20 the next paragraph, what's written is as
21 follows:

22 "The real question is whether we need the
23 undertaking ..."

24 Which I interpose to say I'm assuming that
25 relates to the paragraph in inverted commas:

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1 being talked about, and --

2 **SIR WYN WILLIAMS:** All right.

3 **A.** -- I'm hesitant to commit myself to something
4 that I haven't read.

5 **SIR WYN WILLIAMS:** No, I follow. I follow. Right.
6 Thank you.

7 Yes, Mr Beer, we'll have our afternoon
8 break. How are we --

9 **MR BEER:** 2.20, please.

10 **SIR WYN WILLIAMS:** How are we looking generally for
11 this afternoon?

12 **MR BEER:** We're looking good, sir.

13 **SIR WYN WILLIAMS:** Fine. Thank you very much.

14 (2.03 pm)

(A short break)

16 (2.20 pm)

17 **MR BEER:** Good afternoon, sir, can you see and hear
18 me?

19 **SIR WYN WILLIAMS:** Yes, I can. Thank you.

20 **MR BEER:** Sir, can I start by picking up on
21 a document that may assist both you and
22 Mr Morgan to answer the questions that you asked
23 him before we took the break and ask to be
24 displayed POL00081826_018. I can't ask for that
25 to be displayed.

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1 "... in clause 5 of the schedule. Richard
2 [which I assume is you] thinks that by making
3 a song and dance we highlight a sensitivity",
4 et cetera.

5 So it appears as if you were expressing
6 reservations about having that sort of formula
7 in any part of the Tomlin Order.

8 **A.** Mr Chairman, part of the problem with this is
9 that you can see from the top left there's
10 a draft Tomlin Order 10 November attached as
11 an attachment.

12 **SIR WYN WILLIAMS:** Yes.

13 **A.** When I was provided with the bundle of
14 supplemental documents it helpfully has the back
15 sheet for the draft Tomlin Order but not the
16 terms of the order itself. So I haven't been
17 able to refresh my recollection of what --

18 **SIR WYN WILLIAMS:** Are you telling me, Mr Morgan,
19 that -- I might be assuming that clause 5
20 relates to the paragraph in inverted commas
21 above but it may, in fact, not?

22 **A.** Well, I don't know because there's -- there
23 seems to be an undertaking and that doesn't
24 seem -- I -- look, I just can't assist because
25 I don't have the document to read to see what's

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1 Essentially, sir, I'll come back to this in
2 the hope that, in the next half an hour, that
3 document is on to the system, but it is the rest
4 of the Tomlin Order obtained from a different
5 source. It's amongst documents that the Inquiry
6 has recently been provided with, which is why
7 it's not on the display system at the moment.

8 Whilst that's done behind the scenes --

9 **A.** Is paragraph 5 in the same terms as the --

10 **Q.** Yes, and no, so let's look at the document when
11 I can display it. Thank you.

12 You've told us that before you argued the
13 case at trial, you didn't think that this was
14 a test case at all and it was essentially a case
15 that turned on its own facts?

16 **A.** Yes.

17 **Q.** Can we look, please, at POL00070020. This is
18 an attendance note of 22 January 2007 and you'll
19 see that it is described as "Hearing of
20 judgment -- *Post Office Limited v Lee*
21 *Castleton*", an attendance note of Mr Dilley.
22 Then scroll down a little bit, please.

23 "Hearing of judgment -- *Post Office v Lee*
24 *Castleton*". It sets out who's present. Then
25 there's some argument about costs.

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1 A. Yes.

2 Q. Then, over the page, please, more arguments
3 about costs. Then scroll down to the
4 penultimate paragraph:

5 "Thereafter returning to counsel's chambers
6 and having joint telephone conference with Mandy
7 Talbot to update her on the outcome of the costs
8 submissions. She was very pleased. Richard
9 also offering to supply her with a separate note
10 on how she could use the judgment and advising
11 that ... under the new procedure the
12 subpostmasters don't physically sign off the
13 accounts that they supply every month, she
14 should think about getting them to do this. She
15 explained that is what the Legal Affairs team in
16 the Post Office has advised them to do when they
17 change the system but they were overridden by
18 business concerns. RM suggesting that they at
19 least electronically sign some certification on
20 the accounts stating that they accept that they
21 are true and accurate and represented a fair
22 position on profit and loss stock and cash
23 because if this case ever arose again, then it
24 would make it much easier for the Post Office to
25 rely on the *Castleton* precedent and get ...

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1 scroll down.

2 We can see that it's an undated advice
3 written by you, you've helpfully told us in your
4 witness statement by explaining that the
5 chambers' fee system shows that it was sent out
6 on 22 January 2007.

7 A. Yes.

8 Q. So if we go back to the first page, please, you
9 say:

10 "Following judgment ... I have been asked to
11 provide a short written advice on the key points
12 that have emerged from my involvement in the
13 case as a whole and the judgment in particular.
14 I should emphasise that this Advice has been
15 written as a short preliminary overview and
16 should not be relied upon as providing a final
17 and definitive consideration of all steps that
18 should be taken in order to ensure that the Post
19 Office derives maximum advantage from the
20 judgment."

21 Just stopping there, did you know beforehand
22 that the Post Office wished to derive maximum
23 advantage of the judgment, ie before judgment
24 had been handed down?

25 A. No, but, there again, I didn't even know that

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1 judgment against subpostmasters and not incur
2 such great costs next time."

3 Was this is an offer by you to help the Post
4 Office get maximum value out of this precedent?
5 A. Again, it's a very long time after the event,
6 but my -- it's no more than an impression of
7 a recollection, is that after the judgment was
8 given, we had a discussion about whether it was
9 any use and you sort of see it picked up there,
10 there was some exchange where she told me or
11 somebody told me that the Post Office's whole
12 system had changed and that they were no longer
13 going to have cash accounts or no longer going
14 to have daily cash accounts and weekly accounts,
15 and so on and so forth.

16 And my response was that that meant that
17 *Castleton* was not going to be of any use unless
18 they had the cash accounts that we'd relied on
19 at trial to achieve the same accounting position
20 and that was the note that, in due course,
21 I produced and I think that's somewhere in the
22 bundles.

23 Q. Can we look at that, please, it's WBON0000023.
24 If we just scroll to the last page, please. One
25 page up, sorry, that's the back sheet. Can you

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1 we'd won.

2 Q. I'm sorry?

3 A. There again, I didn't even know that we'd won
4 before the judgment was handed down.

5 Q. No, but were they not telling you that they
6 regarded this as a case, that it was
7 an important precedent or could be seen as
8 a test case --

9 A. Not that --

10 Q. -- and that it was a case which the Post Office
11 wished to use to deter other postmasters from
12 bringing claims?

13 A. Having seen the email that you took me to before
14 the break, I can see that that was one of their
15 objectives but it wasn't the basis upon which
16 the claim was run. Having won the case, this
17 advice is given in order to provide a steer as
18 to how it might be relied on if the same
19 procedure is followed in the future.

20 Q. Reading on, paragraph 2, please. You say:

21 "The first point is that it is easier to sue
22 a subpostmaster on an account produced by him
23 than try to prove that a loss has arisen in the
24 business. Trying to prove such a loss, if it is
25 possible at all, is extremely difficult

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1 forensically and will inevitably be expensive
2 and time-consuming.

3 "The second point is that the Post Office
4 derives a significant advantage in litigation if
5 the subpostmaster bears the burden of proof to
6 show that the account sued on by the Post
7 Office, such as the Cash Account (Final), is
8 wrong, rather than the Post Office having to
9 prove that the account sued on is right.

10 "This reversal of the burden of proof can
11 only occur if the Post Office is suing on the
12 subpostmaster's own account, ie on a formal
13 account produced by the subpostmaster and
14 tendered by him to the Post Office as his
15 confirmed statement of the trading that has
16 occurred."

17 Then over the page.

18 "As such, a Cash Account (Final) (or any
19 other account produced by a subpostmaster) is
20 only likely to be treated as a final account for
21 a given period if it is (i) produced by the
22 subpostmaster (ii) at least in circumstances
23 where he is contractually required to produce
24 and verify the figures as accurate, but
25 preferably there he formally certifies the

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1 Chancery background. It's more that the
2 principal/agent relationship entitled the
3 principal to rely on the accounts stated by his
4 agent as being final and definitive and, in
5 order to show that the account is that of the
6 agent, it would be rather sensible to have it
7 signed by the agent.

8 So I'm -- this note is written as a Chancery
9 practitioner giving advice as to the formal
10 situation on which an account stated arises as
11 between an agent and a principal, not the
12 reflection of the position as between
13 a subpostmaster and the Post Office, although,
14 as reflected in the terms of the contract as
15 then in existence between the Post Office and
16 subpostmasters that had been relied on in the
17 *Castleton* case, that seemed to arise as a matter
18 of necessary implication, from what I can
19 remember of the contract. But I haven't reread
20 the contract in the last 17/18 years.

21 **Q.** In relation to this advice, was it based on the
22 assumption that the loss of which the Post
23 Office complained was a genuine one --

24 **A.** Yes.

25 **Q.** -- and not an artifact of the computer system?

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1 figures as such, and (iii) where the
2 subpostmaster physically signs off the accounts
3 as such, alternatively signs electronically.

4 "The third and final point is that if and
5 when it is decided that a subpostmaster is to be
6 suspended or removed from post, he should be
7 required, in accordance with the terms of his
8 contract, to produce and sign a final account to
9 the date of his removal, whether or not the Post
10 Office has conducted its own audit. The purpose
11 of requiring this is simply to rely on the
12 reversal of the burden of proof and remove the
13 necessity (though not the desirability) of
14 having to call the auditors to prove the loss."

15 You say here that subpostmasters should be
16 required to sign the cash accounts. Was that
17 language reflective, as you understood it, of
18 the Post Office's attitude, as you had come to
19 understand it, that they were happy to impose
20 conditions on a postmaster that may have the
21 effect of, for example here, reversing the
22 burden of proof and thereby obtain a dominant
23 position or a position of power over the
24 subpostmasters?

25 **A.** No. This is almost a, sort of, reflection of my
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1 **A.** Yes. Again, as a -- as somebody practised in my
2 field, I can't conceive of people signing off on
3 documents that aren't true.

4 **Q.** What about somebody signing off on documents
5 because they have to continue to do so to trade
6 into the following week and they phone
7 a helpline dozens and dozens of times and say,
8 "These things I'm signing off, they're not
9 correct".

10 **A.** Yes, I mean that's something that seems to have
11 emerged subsequently in the Post Office --
12 sorry, in the case in front of Mr Justice
13 Fraser. I mean, I haven't followed that in any
14 great detail but I can quite understand why
15 people might say that it's signed under duress,
16 and so on and so forth.

17 When this matter came back to me on the
18 Rule 9 Request, one of the things I did was go
19 back and look and see whether Mr Castleton had
20 himself had given an indication that the figures
21 he'd signed off were inaccurate or that he'd
22 signed off on them because he was under some
23 duress or there was some other reason. And
24 I just -- I mean, I didn't at the time, and
25 I still I don't, get any hint of that in the

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1 pleadings or the evidence.

2 I mean, there are all sorts of reasons why
3 figures might be wrong, or so on and so forth.
4 But, at no stage during the trial, so far as
5 I can recall, did Mr Castleton say that his
6 figures were wrong. Had he done so, the
7 consequence would have been that the trial would
8 have been adjourned, the matter would have been
9 remitted to a master for an account to be taken
10 and we would have gone through the same process
11 and established what the actual loss was, by
12 reference to amounts by way of cash and goods
13 within the business, what had been taken out,
14 what had been paid in, what had been transferred
15 out, what had been transferred in. There would
16 have been a process of verification of the
17 account on the old account stated procedure.

18 So we would have got to an answer, it might
19 not have been the same answer, but it -- the
20 whole process of the Amended Particulars of
21 Claim was to establish what the actual real loss
22 was.

23 **Q.** Just on that point, we'll come back to the note
24 in a moment, can we look, please, at
25 LCAS0000197. This is a transcription of the
153

1 expert and we'll be hearing from in due course.

2 "Mr Castleton: could I, my Lord?"

3 The judge says: "Yes.

4 "Mr Castleton: My Lord sorry throughout this
5 period the actual trial balance I'll be the
6 final balance for this week is actually produced
7 on a Wednesday evening and at this point this is
8 when the subpostmaster is allowed to address any
9 issues throughout the week's trading ...

10 "If there are any shortfalls then he's able
11 to ring a helpline that's run by the Post Office
12 in order to explain any problems that he's had
13 over the former week and any balancing problems
14 that have occurred prior to the Thursday
15 morning. You'll see that all those cash
16 accounts are actually timed and dated on the
17 followed morning which is a Thursday.

18 "I see.

19 "Because through ...

20 "You'll find that all of those losses have
21 had phone calls and assurances from the Post
22 Office themselves that they would look into the
23 reason as to why those losses were occurring.

24 "Yes.

25 "So they were all reported.

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1 recording of the opening, again. Can we just go
2 to page 11, please, and look at the foot of the
3 page. Thank you.

4 You're, in this part of the opening,
5 Mr Morgan, taking the judge through some
6 week-end balances and doing it week by week,
7 referring to accountant periods, and you've
8 dealt with 52.

9 The judge asked, second box from the bottom:

10 "... I see. I don't quite know what a trial
11 balance is. Do I need to know that?"

12 You say: "Well, my Lord, if I may I'll bring
13 your Lordship back to the delights of the Post
14 Office accounting system as I hope I make my
15 opening more coherent. I'm afraid it is quite
16 a technical trial in looking at how these
17 figures are made up ...

18 "And not that your Lordship needs any
19 reinforcement but it's taken me some number of
20 weeks ...

21 "To work out how all the figures go
22 backwards and go forwards but I hope I'll be
23 able to give your Lordship ...

24 "A rational and relatively simple
25 explanation. Of course Mr Castleton is the
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1 "Yes."

2 Then it stops.

3 That appears to be Mr Castleton, in the
4 course of the opening, saying that, although the
5 week-end accounts were signed off --

6 **A.** Yes.

7 **Q.** -- all of the losses had phone calls made to the
8 helpline with assurances from the Post Office
9 that they would look into the reason why the
10 losses were occurring. Then, in evidence, at
11 POL00069279, this is a transcript of
12 Mr Castleton's evidence, and can we look at
13 page 37, please, and look at E. This is you
14 cross-examining Mr Castleton still. You asked:
15 "Do you also accept that when you produce
16 the document at 2979 that was a draft report
17 produced so as to enable you to check the
18 figures before you put them into the final cash
19 account?"

20 "**Answer:** No, because (inaudible) final cash
21 account. I am sorry, but that is not the case.
22 The cash account generates itself. It is
23 generated from the transaction (inaudible)
24 Chesterfield."

25 "**Question:** If you take up bundle 6B --
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1 "Answer: Yes.

2 "Question: I suggest that in fact the cash
3 account is generated by your machine at Marine
4 Drive branch, it is not generated by
5 Chesterfield?

6 "Answer: If you look at (inaudible) witness
7 statement you will find that the series of
8 checks that the computer does through Marine
9 Drive Post Office branch through Chesterfield
10 corresponds; it is not generated in-house. And
11 you will also find me checking these figures now
12 that check to check is not a generated or figure
13 that we actually place into the computer, it is
14 a check that has done daily on separate
15 information that the computer then reproduces in
16 the cash account."

17 Then scrolling down, again at E, you asked:

18 "Did the cash accounts correspond to the
19 physical evidence of the transactions you had
20 undertaken?

21 "Answer: Not always, no. We need to
22 differentiate between cash account and the daily
23 transaction on the logs and also the stock ...
24 figures produced by the balanced snapshots."

25 Then over the page, please. At C:
157

1 Defence as well, is that the figures that were
2 signed off by him were what was actually present
3 and were a fair and true reflection of what had
4 occurred.

5 Q. He was signing off that there was a discrepancy,
6 that there was a shortfall --

7 A. Yes.

8 Q. -- and contemporaneously reporting that it
9 wasn't his responsibility. He was reporting
10 that back to the Post Office wasn't he? That's
11 what he was saying.

12 A. But there was a discrepancy between what he'd
13 got and what he ought to have --

14 Q. Yes.

15 A. -- and that's what a loss is.

16 Q. Even if it was generated by Horizon?

17 A. Well, that may be where we differ because, at
18 the end of the day, what he actually has and the
19 business that he's done, if there's
20 a discrepancy between that and what he ought to
21 have, then that's a shortfall.

22 Q. Even if one of those is produced by a computer
23 which he says is faulty?

24 A. Well, I'm -- sorry, hang on. I'm not quite sure
25 what you say is the bit that's faulty.

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1 "Question: So you check all the figures in
2 the final balance against fiscal records?

3 "Answer: Yes.

4 "Question: And only when you are happy with
5 that do you proceed to print out to cash account
6 final?

7 "Answer: And if there is anything I don't
8 agree with I make a phone call to helpline,
9 which is what we repeatedly did."

10 So, thinking back, given the intervention in
11 the opening, on the evidence that was given
12 there, wasn't it the case that Mr Castleton was
13 saying, "Yes, I signed the accounts that were
14 produced for me by the Horizon System, not
15 within my branch. I was signing that there was
16 a discrepancy, a shortfall, between the cash and
17 the stock which the system said I should have,
18 and the cash and stock which I, in fact, had and
19 I was reporting that at the time". It's not
20 something that's only emerged years later, is
21 it?

22 A. Well, my impression of his evidence, and that
23 may be a false impression and it's the
24 impression that the judge formed and it's the
25 impression that one gets from reading the

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1 Q. A document that I'm signing, which says I should
2 have this amount of cash and stock, £1,000, I've
3 in fact got £500 of cash and stock. I'll sign
4 that to say "The system says I should have
5 £1,000, I've in fact got £500". Sign that, true
6 and accurate. I get on the phone and say "The
7 bit of the account which says I should have
8 £1,000 is wrong. It's been created in the
9 following ways".

10 I mean, I'm not going to go through all of
11 Mr Castleton's calls to the helpline --

12 A. No, no.

13 Q. -- where he repeatedly explained to them on the
14 day that the event happened why the system was
15 creating phantom figures. But that was his
16 case, wasn't it? It wasn't only something that
17 emerged years later before Mr Justice Fraser and
18 it may be that it wasn't very well articulated
19 by Mr Castleton, being a litigant in person, but
20 showing you the two things I have, the opening
21 and the evidence, the evidence and the point
22 were there, weren't they?

23 A. I didn't understand them to be there in that way
24 at the time, nor did I understand them to be
25 there on the basis of paragraph 3 of the amended

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1 Defence and Counterclaim at LCAS0000294.
 2 **Q.** Lastly, could I ask you some questions on
 3 a discrete topic, namely the treatment of Anne
 4 Chambers and Mr Jenkins. Please can we look at
 5 POL00071438. This is an attendance note made by
 6 Mr Dilley in respect of a conversation with you
 7 on 11 August 2006.

8 It concerns the draft witness statements of
 9 Anne Chambers and Gareth Jenkins. If you just
 10 read the first couple of paragraphs to orientate
 11 yourself, then look at the third paragraph:

12 "In relation to Gareth Jenkins' statement,
 13 we need to firstly say he holds a position with
 14 the job title of distinguished engineer. It
 15 might be that we decide to put all the
 16 information he is saying into the expert's
 17 report given that it is really opinion
 18 evidence."

19 So you have been provided with these two
 20 draft witness statements from Fujitsu employees.
 21 The advice that you're recorded as having given
 22 there, would that reflect your view that, to the
 23 extent that Mr Jenkins' witness statement
 24 contained opinion evidence, that couldn't be
 25 given by him, it had to be given by

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1 **MR STEIN:** Mr Morgan, my name is Sam Stein. I ask
 2 question on behalf of a very large group of
 3 subpostmasters and mistresses. Can I take you
 4 within your statement, please, to page 30. If
 5 we can have that on the screen, please. I refer
 6 to page 30 of Mr Morgan's statement, paragraph
 7 (e) to start off with. Thank you.

8 Mr Morgan, you've been asked some questions
 9 about this part of your statement, which is in
 10 reference to 12 June 2012, where you had a short
 11 consultation and you refer to it there as being
 12 "The matter is entitled simply Post Office".

13 **A.** Yes.

14 **Q.** Now, you've been asked some questions about
 15 that. So moving on from 2012 to 20 March 2014.
 16 Now, at this point in your statement, you say
 17 this, that you were "contacted by Linklaters to
 18 advise Post Office Limited" and your records are
 19 showing three short telecons and you think,
 20 although you might be mistaken, that you also
 21 had a short in-person consultation with Christa
 22 Band of Linklaters and Paula Vennells of POL.

23 At that time, Paula Vennells of POL was the
 24 Chief Executive Officer; is that right?

25 **A.** Part of my difficulty with this is that I'm not

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1 an independent expert?

2 **A.** If it was truly opinion evidence, yes.

3 **Q.** Why would opinion evidence have to be given by
 4 an independent expert, rather than Mr Jenkins?

5 **A.** Well, technically, anybody can give any evidence
 6 they want in a civil trial but, ordinarily, it
 7 would be excluded if it was opinion evidence,
 8 unless it was given by an expert who was able to
 9 give an independent expert view.

10 **Q.** Why couldn't Mr Jenkins give an expert view?

11 **A.** Because he's not an independent expert.

12 **Q.** The decision was taken, in the event, not to
 13 call Mr Jenkins. Did you hold a view on whether
 14 Anne Chambers was giving, according to her,
 15 draft statement opinion evidence or evidence of
 16 fact?

17 **A.** At this distance in time, I can't even remember
 18 what she was saying.

19 **MR BEER:** Thank you very much, I understand.

20 Sir, those are the only questions that
 21 I ask. I understand there are two Core
 22 Participants who wish to ask questions. First,
 23 Mr Stein.

24 **SIR WYN WILLIAMS:** Right.

Questioned by MR STEIN

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1 sure that this is a true memory. I mean, what
 2 I've tried to do is I've tried to give as full
 3 and accurate an account as I can but then say
 4 I actually don't think this is a true memory.
 5 The problem is I've seen Paula Vennells on TV,
 6 and I sort of feel that I was meant to meet her
 7 but I just can't find any record of actually
 8 meeting her. And I'm sure, given the way my
 9 clerks like to make sure that everything is
 10 recorded, that, if there had been a meeting,
 11 I would have had it in there. But since I had
 12 some sort of feeling about it, I thought
 13 I should describe it.

14 **Q.** Right. Well, let's see what you're able to get
 15 to. Your statement does say that you also had
 16 a short in-person consultation with Christa Band
 17 and Paula Vennells, which appears to be a bit
 18 more than a vague daydream of a meeting, doesn't
 19 it?

20 **A.** Well, I don't know. What I've said is that
 21 I think, although I might well be mistaken, that
 22 I also had a short, in-person consultation.

23 **Q.** Okay.

24 **A.** And then what it also says is "But I've got no
 25 record of it. I've got no record of a room

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1 booking. I've got no record of a fee line".
 2 I would have made a fee line for it if I'd met
 3 somebody and given them advice.
 4 **Q.** Let's move on to the remaining bits of (f), as
 5 you have it at page 30. You go on to say, and
 6 you're emphasising really, that you don't have
 7 a great recollection of this. You say:
 8 "I have no specific recollection of what was
 9 happening beyond thinking that I was asked what
 10 could POL do about any arguments being raised in
 11 relation to the accuracy of the Horizon System,
 12 to which [your] answer was that they should
 13 follow the advice you had given in 2007 and keep
 14 a physical paper trail of accounts signed by the
 15 subpostmaster."
 16 Then you go on to talk about the fact,
 17 jumping then a little bit:
 18 "... I should emphasise that this memory of
 19 a meeting and the identity of the participants
 20 may be a 'false' memory, possibly something
 21 I reconstructed having been told there would
 22 a meeting."
 23 Okay?
 24 **A.** Yes.
 25 **Q.** You again emphasise after that:
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1 the subpostmaster.
 2 And that is the core of what I was saying.
 3 In fact, that was probably all I was saying.
 4 I didn't receive any papers, I didn't receive
 5 any instructions. It was "We'd like to talk to
 6 you about Horizon".
 7 "Do you still keep a physical paper trail of
 8 accounts signed by the subpostmaster because
 9 that's what I'd suggested you do".
 10 **Q.** Right. So we start with the date, the reference
 11 to that in March 2014. So working on that as
 12 being at least some contact to you, what I'm
 13 going to ask is -- and see if I can find out
 14 whether particular points may have been raised
 15 with you, that actually might stand out, might
 16 be important.
 17 **A.** Sure.
 18 **Q.** I'm going to take you to a document, that was
 19 provided to our document provider and it is
 20 POL00006798 -- and, Frankie, if you can go to
 21 page 13, internal pagination in the document,
 22 page 13.
 23 Now, this document is written by a barrister
 24 called Simon Clarke and it is dated 15 July
 25 2013, okay?
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1 "... I am really not at all sure that
 2 a physical meeting ever took place ..."
 3 Again, a reference to the fee line.
 4 **A.** Yes.
 5 **Q.** So what we do know is this, as far as we can
 6 tell, that there's some contact to you in 2014,
 7 March 2014, and, as best as you're able to, this
 8 was a meeting that wasn't terribly memorable,
 9 because you're saying "Well, best I can do is
 10 that if they want anything from me they should
 11 look back at my earlier advice in 2007".
 12 **A.** Can I try and give the evidence --
 13 **Q.** You can clarify it any way you like.
 14 **A.** So it's something I keep on going over in my
 15 mind, as to whether it took place or not. The
 16 phone calls definitely did take place. I think
 17 the first was did I remember what the Post
 18 Office case was and the second or third one was,
 19 you know, "What we'd like to talk about is how
 20 one goes about tidying this up", or not --
 21 I don't even know whether it was tidying it up.
 22 It was just -- you know, and my entire point was
 23 that the one case that I did that actually
 24 involved the Horizon System relied upon physical
 25 accounts, a physical paper trail signed off by
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1 **A.** Mm-hm.
 2 **Q.** Now, you can take that from me or I can take you
 3 to page 14 where it has that --
 4 **A.** No.
 5 **Q.** All right. Now, paragraph 38, page 13
 6 internally within it, there's a reference there
 7 to Mr Jenkins, okay?
 8 **A.** Mm-hm.
 9 **Q.** Now, this is a reference to the Fujitsu employee
 10 who you had some reference to already in your
 11 evidence and, going back in time to
 12 Mr Castleton's case, had some involvement in the
 13 *Castleton* case; okay?
 14 **A.** I don't recall him.
 15 **Q.** Well, you've just been asked a number of
 16 questions about Mr Jenkins, the Fujitsu expert
 17 who you were saying could not be used as
 18 an independent expert?
 19 **A.** Oh, that's Gareth Jenkins, is it?
 20 **Q.** Yes.
 21 **A.** Ah!
 22 **Q.** Ah.
 23 **A.** Right, okay.
 24 **Q.** Right, so we're talking about the same person.
 25 **A.** Okay.
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1 Q. Okay. Now, in this advice, Mr Clarke, who is
2 a barrister working at a firm called Cartwright
3 King, is setting out particular views that he's
4 come to with dealings with this Mr Jenkins.
5 Now, you'll see there at paragraph 38, second of
6 the two -- if I call them bullet points, second
7 of the two points:

8 "Accordingly, Dr Jenkins' credibility as
9 an expert witness is fatally undermined; he
10 should not be asked to provide expert evidence
11 in any current or future prosecution."

12 Okay? So the date of this opinion being
13 given is 15 July 2013, and it's quite a serious
14 opinion being given of someone in Mr Jenkins'
15 position, an employee with strong knowledge
16 about the Fujitsu Horizon system, okay? Now,
17 you mentioned in your evidence earlier on that
18 you're not a criminal practitioner but you're
19 certainly a civil practitioner --

20 A. Yes.

21 Q. -- and you're certainly a civil practitioner
22 who's had dealings with, at least, we know, the
23 *Castleton* case, you've been talking about, and
24 we know also that the Post Office came back to
25 you at an earlier point in 2012?

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1 started a couple of minutes ago and I was asking
2 you about what you recalled about this meeting,
3 and, frankly, you're saying really "I don't
4 recall very much".

5 A. Yeah.

6 Q. If you'd been told at around this time in 2014
7 that "Regarding Mr Jenkins we've got real doubt
8 about this guy. I mean, I don't know what would
9 be the succinct way you would put it, Mr Morgan,
10 but there's a real problem here"; that might be
11 fight memorable, do you agree?

12 A. If I'd been told that, yes.

13 Q. Second question: did the Post Office ever come
14 back to you as a senior civil practitioner with
15 at least some knowledge of these systems and
16 say, "Look, we've got this problem with this
17 Fujitsu expert, what would that have done to all
18 of our civil cases that we've dealt with, going
19 back in time?" Did anybody come back to you and
20 ask that question?

21 A. No.

22 Q. Just give me one moment.

23 A. Sure.

24 MR STEIN: Thank you, Mr Morgan.

25 SIR WYN WILLIAMS: Who is next?

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1 A. Yes.

2 Q. Okay. So by the time we get to 20 March 2014,
3 this opinion is being given within, if you like,
4 the Post Office by a legal advisor to the Post
5 Office. Now, were you told, Mr Morgan, that
6 there was a settled and serious opinion given
7 about Mr Jenkins, the Fujitsu expert, who had
8 a lot of knowledge about the Horizon System?

9 A. No.

10 Q. I --

11 A. I can make it completely clear that I received
12 no instructions, I received no papers, I did
13 receive two or three telephone calls, however
14 many were recorded in my evidence, which I only
15 recall because I checked them against my
16 computer system in chambers. And I was only
17 asked questions, I had no information tendered
18 to me.

19 There was not a "Here's some further
20 information, provide some more advice". It's
21 "If we ask you this, what would you say?"

22 Q. Two last questions.

23 A. Of course.

24 Q. Now, you and I had number of questions and you
25 answered a number of questions when I first

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1 MR HENRY: Sir, I am. Henry.

2 SIR WYN WILLIAMS: Over to you, Mr Henry.

3 Questioned by MR HENRY

4 MR HENRY: Mr Morgan, as a contentious Chancery and
5 insolvency practitioner you will be familiar
6 with the case of *Gestmin v Credit Suisse*, won't
7 you?

8 A. No.

9 Q. Surely you must be, the judgment of Mr Justice
10 Leggatt, where he was discussing memory?

11 A. Oh, yes.

12 Q. Yes. Thank you. You will remember that in
13 that --

14 A. Sorry, that wasn't intended as a joke!

15 Q. Sorry?

16 A. That wasn't intended as a joke, although it
17 might have appeared as much.

18 Q. No, quite. You will remember that in the course
19 of that judgment, he said that civil litigation,
20 particularly in the preparation of witness
21 statements, gives rise to powerful biases. You
22 remember that?

23 A. I -- look, I -- let me be -- also be perfectly
24 honest. I do very, very few witness actions, so
25 although I am familiar with the judgment and

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1 I am familiar with the overall thrust of it,
2 I do not have specific passages in mind. But
3 I'm quite content to accept that the preparation
4 of witness statements is something that can give
5 rise to evidence being fluffed, if I can put it
6 like that -- evidence being improved that
7 shouldn't be improved.

8 **Q.** Now, I don't suggest that of you, Mr Morgan, but
9 I do suggest that you have fallen victim to
10 powerful and distorting biases. Let me explain
11 why. Can you help us, please. So far as your
12 witness statement is concerned, your
13 recollection or reconstruction of your
14 involvement in *Post Office Limited v Castleton*
15 is that this was essentially a *Shaw v Picton*
16 case, the case of agency?

17 **A.** It was from about the summer of 2006, yes.

18 **Q.** But you must accept, I mean you have read the
19 judgment of His Honour Judge Havery Queen's
20 Counsel several times, haven't you?

21 **A.** Yes.

22 **Q.** In fact, you read it because you read it before
23 composing your statement in May of this year?

24 **A.** Yes, I needed to remind myself about what had
25 gone on.

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1 nature of the anomalies that were occurring, he
2 was describing them --

3 **A.** Yes.

4 **Q.** -- as it were, in real time?

5 **A.** Yes.

6 **Q.** Right. Also, how he would take balance
7 snapshots, in other words he would take
8 screengrabs of the screen, pictures of the
9 screen, showing how, inexplicably, there were
10 alterations in the figures presented by Horizon.
11 That was also part of his case, wasn't it?

12 **A.** Let me be honest with you here, I don't recall
13 him ever presenting evidence to that effect to
14 the judge. I don't recall that. I'm not saying
15 he didn't do it. I just don't recall that.

16 **Q.** You remember when Mr Beer was reading out part
17 of the transcript just a few moments ago -- and
18 I don't necessarily suggest that you ought to
19 have picked it up -- but he was referring to
20 balance snapshots.

21 **A.** Yes.

22 **Q.** Now, at paragraph 4 of the judgment, and the
23 judgment is POL00021678 -- and I don't suggest
24 that it is put up on screen but purely as
25 a reference -- there is the following, the

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1 **Q.** Yes. Exactly. You can see, can you not, from
2 that, that Mr Castleton's case put the
3 reliability of the Horizon System fairly and
4 squarely in issue, didn't it -- didn't he?

5 **A.** Mr Castleton sought to suggest that the losses
6 were illusory and were caused by the Horizon
7 System. At no stage prior to the trial did he
8 articulate or identify how it was that those
9 losses were being occasioned.

10 **Q.** But you must have read the Horizon System
11 Helpdesk logs concerning his case and the
12 complaints that he was making contemporaneously,
13 Mr Morgan, surely?

14 **A.** I would have read them in the trial bundle, yes.

15 **Q.** Yes. You must also have -- it's clear from the
16 judgment itself that, beginning at paragraph 12
17 and proceeding thereafter, 13, 14, 15,
18 et cetera, he gave detailed accounts of what was
19 going wrong with the system. It's clear in the
20 judgment?

21 **A.** He gave accounts of what he said was going wrong
22 and that he phoned the Helpdesk and there was
23 a complaint that the Helpdesk wasn't helpful at
24 all, yes.

25 **Q.** But, also, the nature of the glitches, the

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1 learned judge stated:

2 "Losses apparently shown by the balance
3 lists and Cash Accounts (Final) were illusory,
4 not real. It was entirely the product of
5 problems with the Horizon computer and
6 accounting system. The apparent shortfalls were
7 nothing more than accounting errors arising from
8 the operation of the Horizon System."

9 That's what the learned judge said when he
10 was recounting or encapsulating Mr Castleton's
11 case. You wouldn't disagree with that?

12 **A.** Well, you're reading from the judgment, so no.

13 **Q.** Yes. Now, the bias that I suggest is that that
14 was not taken seriously, I don't suggest by you,
15 because you did ask questions. It is clear that
16 you asked questions, including whether Fujitsu
17 could, as it were, interfere with the system or,
18 as it were, have access to the system without
19 Mr Castleton's knowledge, and you asked those
20 questions.

21 But can you help us, please: to what extent
22 were those serious concerns followed up by your
23 team because, of course, you as counsel were
24 leading your team, weren't you?

25 **A.** I was instructed to appear at trial, yes. I was

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1 instructed to amend the pleadings, yes. I don't
 2 know. I mean, I asked questions. I didn't get
 3 answers.
 4 **Q.** We know -- and again, I don't ask for it to be
 5 put up on screen -- but we know from
 6 Mr Castleton's pleadings, LCAS0000294 -- Mr Beer
 7 has taken you to paragraph 5, paragraph 6, but
 8 also paragraph 7B -- that Mr Castleton was
 9 vehemently disputing that these losses were
 10 real. They were not accurate, they were
 11 artifacts of the Horizon System. You don't
 12 disagree with that, do you? That's what he was
 13 saying?
 14 **A.** Yeah. No, I agree.
 15 **Q.** That demanded, obviously, the most serious
 16 scrutiny, did it not?
 17 **A.** That's what a trial is meant to achieve.
 18 **Q.** But in the run-up to a trial -- because of
 19 course it's too late, sometimes or too often too
 20 late when it arises in a trial -- but in the
 21 run-up to a trial, there ought to be full and
 22 frank disclosure, shouldn't there?
 23 **A.** There is disclosure in accordance with the
 24 requirements of the CPR, yes.
 25 **Q.** Now, I'd like you to help me, please, because of
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1 such a decision was actioned by Mr Dilley?
 2 **A.** Look, at the end of the day, the relationship
 3 between solicitors and counsel is a matter of
 4 instructions and action on instructions. I was
 5 not instructed by solicitors in relation to
 6 disclosure: simple as that.
 7 **Q.** Would you like to have been instructed to give
 8 your view on that somewhat momentous decision by
 9 your instructing solicitor?
 10 **A.** I don't think counsel ever likes to be
 11 instructed on disclosure issues but, if one is
 12 instructed on disclosure issues, then one
 13 examines each individual document against the
 14 specific requirements of the disclosure order
 15 made by the court.
 16 **Q.** Would you agree with the decision that Mr Dilley
 17 made?
 18 **A.** I don't know. I haven't read the call logs.
 19 **Q.** So may I take it, therefore, that -- and this is
 20 your opportunity to give your considered view --
 21 that --
 22 **A.** Well, it's not my opportunity to give
 23 a considered view because I haven't seen the
 24 call logs.
 25 **Q.** Right. Well, let's move on. Do you think you
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1 course you -- I don't know if you were watching
 2 Mr Dilley's evidence yesterday?
 3 **A.** I saw part of it but not all of it.
 4 **Q.** Have you read it subsequently?
 5 **A.** No.
 6 **Q.** No. You may not have been present when this was
 7 going on but the Post Office, he told us, was
 8 receiving 12,000 to 15,000 calls to the Horizon
 9 System Helpdesk per month, telephone calls from
 10 subpostmasters about defects and technical
 11 problems with the Horizon System, and Mr Dilley
 12 decided that he wouldn't disclose these calls,
 13 neither generally as to volume nor specifically
 14 as to content, to Mr Castleton because, at one
 15 point, he thought that it might overwhelm
 16 Mr Castleton in a sort of benevolent and
 17 pastoral way and, on another occasion, because
 18 it was going to cost, in fact, £3,000 to collate
 19 them. Did you hear that evidence?
 20 **A.** No, I didn't.
 21 **Q.** No. Now, having been informed of that evidence,
 22 may I ask you -- and I mean no disrespect,
 23 Mr Morgan -- were you involved in that decision?
 24 **A.** No.
 25 **Q.** No. Should you not have been consulted before
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1 were being kept at a distance from disclosure
 2 decisions by those instructing you?
 3 **A.** I have no idea because I don't know what the
 4 disclosure decisions were or taken in what
 5 context. I -- all I know is that Post Office
 6 Limited had instructed Bond Pearce and
 7 Mr Castleton had instructed his own solicitors,
 8 and, as is usual in litigation, solicitors had
 9 gone through the disclosure exercise.
 10 If there were perceived to be deficiencies
 11 then there would be correspondence between them
 12 and, if necessary or appropriate, orders for
 13 specific disclosure or further disclosure.
 14 I was not involved in any of that at all.
 15 **Q.** Thank you, Mr Morgan, but just returning to the
 16 questions that were put to you by Mr Beer
 17 Counsel to the Inquiry, you asked a lot of
 18 questions but it seems that answers came there
 19 none. Would that be your recollection now about
 20 disclosure?
 21 **A.** About disclosure?
 22 **Q.** Yes. The questions that you asked about the
 23 integrity of the system, about remote access --
 24 **A.** Well, that's not disclosure; that's questions
 25 about what's actually going on. Disclosure
 180

1 I take to be disclosure of documents.
 2 Disclosure is a disclosure process.
 3 Disclosure of information about the case in
 4 relation to specific enquiries about Fujitsu,
 5 yes, I'll accept that I asked a large number of
 6 questions. I sought to ensure that the original
 7 equipment was maintained and steps were taken to
 8 preserve the software but I didn't get anything
 9 after that. Nobody came back to me and said,
 10 "Well, what shall we do now?"
 11 **Q.** So I ask you, therefore, did that set any alarm
 12 bell or did that fly any red flag?
 13 **A.** No, because, in the ordinary course of
 14 litigation, if there are disputes between the
 15 parties about particular procedural steps then
 16 those are raised in correspondence between
 17 solicitors and, if they're not answered, then
 18 they're taken before the court at the CMC or
 19 PTR.
 20 **Q.** Right. Now, just dealing with that, you were
 21 saying that those were questions about the
 22 evidence in the case but, if you had got the
 23 answers, yes, they do have the ability to insert
 24 transactions without anybody knowing the fact
 25 that they can do that, that obviously would have

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1 Talbot to get some definitive answers from
 2 Fujitsu. RM saying that we may finish in court
 3 by lunchtime tomorrow."
 4 Falkirk: that was the Callendar Square bug.
 5 If I recall your evidence correctly, you were
 6 not certain that your solicitors disclosed that
 7 to Mr Castleton?
 8 **A.** Yes.
 9 **Q.** It appears, does it not, that it arose in this
 10 way: that Mr Castleton was tentatively putting
 11 his case about a post office and then it was
 12 immediately understood and recognised by
 13 Mrs Chambers that that was the Falkirk branch,
 14 the Callendar Square, correct?
 15 **A.** I think so. I --
 16 **Q.** Yes, it's in the judgment.
 17 **A.** Fine.
 18 **Q.** It's in the judgment. It's paragraph, I think,
 19 23 of the judgment. So it arose, as it were,
 20 *ex improviso*, purely serendipitously and by
 21 chance that Mr Castleton asked that tentative
 22 question and then that was revealed. Correct?
 23 **A.** Apparently so, yes.
 24 **Q.** It's hardly ideal, is it?
 25 **A.** Trials are hardly ideal. No, you're absolutely

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1 been patently disclosable, would it not?
 2 **A.** I certainly wouldn't have been able to run
 3 a case contrary to it. Disclosable?
 4 **Q.** You couldn't run a case if that was in your
 5 knowledge. You would have had to have
 6 considered your position?
 7 **A.** Yes, exactly.
 8 **Q.** Exactly. So let me just ask you, please, now,
 9 it's the time of trial, you're able to give your
 10 opening or you've just given your opening, and
 11 we saw it -- again, no need to put it on the
 12 screen, it's been a long day -- POL00070126.
 13 You saw the attendance note of Mandy Talbot and
 14 the issue about Falkirk, and it's 6 December
 15 2006, you've seen it, by all means, if you would
 16 like to see it again ...
 17 **A.** No, I'm quite happy. I can remember it.
 18 **Q.** You can remember it. You are reported, forgive
 19 me, Mr Morgan:
 20 "RM saying he was concerned about whether we
 21 have to give disclosure of this fact. He
 22 thought probably yes, but wanted to find out if
 23 the judge thought it was relevant.
 24 "RM was prepared to put off the decision on
 25 this until after his opening. RM asked Mandy

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1 right. Things crop up that you have absolutely
 2 no idea about as counsel; somebody just doesn't
 3 bother to tell you.
 4 **Q.** Similarly, the Tivoli logs arose for the first
 5 time in the course of Mrs Chambers' evidence,
 6 and she had to be re-called, didn't she?
 7 **A.** Mr Castleton asked for her to be re-called and
 8 she was re-called. I think somebody else was as
 9 well, weren't they?
 10 **Q.** Yes, Ruth Skinner or Simpson, forgive me.
 11 **A.** I can't remember but I seem to remember there
 12 were two.
 13 **Q.** He tried to cross-examine her and you objected
 14 to the cross-examination.
 15 **A.** Quite possibly, yes.
 16 **Q.** Yes. Now, the position is that disclosure in
 17 this case was a dismal failure. That must be
 18 obvious now.
 19 **A.** I can't help you. I did not take part, nor was
 20 I instructed on the disclosure exercise.
 21 **Q.** But when the trial is ongoing, and you must
 22 forgive my ignorance but, in the criminal courts
 23 when the trial begins, counsel is sole arbiter
 24 of disclosure, is that not the same in the civil
 25 courts?

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1 A. No.

2 Q. No. I see. But the position is you would
3 agree, an *ex improviso* revelation by a witness
4 and also, for the very first time, logs referred
5 to by a witness. Hardly satisfactory?

6 A. No, and that's why they were disclosed.

7 Q. Right. The known error logs were not disclosed
8 though.

9 A. I don't know.

10 Q. Well, there's a reference to a KEL in the
11 attachment to Mr Dunks' statement and Mr Dunks
12 was a witness in the case. Perhaps the
13 attachment, I don't suggest that you
14 deliberately fail to disclose it, but you must
15 have read Mr Dunks' statements and the
16 attachments thereto?

17 A. I must have.

18 Q. Maybe "KEL" wasn't explained but it means "Known
19 Error Log"?

20 A. Fine. Presumably Mr Castleton's solicitors
21 would have read the same witness statement --

22 Q. Well, we don't know --

23 A. -- and would have been capable of writing
24 a letter had they thought it appropriate to do
25 so.

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1 Counsel instructed in a case is not there to
2 express a view on the rights and wrongs. I was
3 asked to prove a case that I did on the basis of
4 documents signed by Mr Castleton, whose truth
5 were not challenged by Mr Castleton.

6 Q. Mr Morgan, you know that the learned judge in
7 the course of his ruling, his judgment, which
8 you then wrote an advice note on 22 January
9 2007, for the benefit of those who instructed
10 you, he found, paragraph 23 of the judgment:
11 "There is no evidence whatsoever of any
12 problem with the system."
13 At paragraph 11 he stated that:
14 "It was inescapable that the Horizon System
15 was working properly in all material respects."
16 Knowing what we know now, I ask you again:
17 no disclosure of the Known Error Logs, no
18 disclosure of remote access, no disclosure of
19 the receipts and payments mismatch bug. Do you
20 not now reflect that the decision of His Honour
21 Judge Havery Queen's Counsel was a dreadful
22 miscarriage of justice?

23 A. I think you have to read the judgment in its
24 entirety and see that he based his assessment on
25 documents signed by Mr Castleton, as an agent,

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1 Q. By this time, of course, Mr Castleton is
2 a litigant in person.

3 A. He became a litigant in person on 20 November,
4 didn't he? And witness statements were
5 exchanged substantially before then.

6 Q. Mr Morgan, who has the obligation to make
7 a disclosure of a Known Error Log?

8 A. The Post Office.

9 Q. The Post Office. So, please, without trying to
10 shift the onus onto either Mr Castleton himself
11 or his former solicitors, Messrs Rowe Cohen, it
12 was clearly and obviously the Post Office's and
13 those they instructed, their duty to disclose
14 that information, wasn't it?

15 A. If it fell within the terms of standard
16 disclosure, then yes, it did.

17 Q. Yes. How did this happen, do you think? These
18 are my final questions: how did this happen, do
19 you think? You surely by now, knowing
20 everything you know, Mr Morgan, regard the
21 decision in the *Post Office Limited v Castleton*,
22 as a miserable miscarriage of justice?

23 A. I don't know. I don't know that it's
24 a miscarriage of justice. I'm not here to
25 express a view on the rights and wrongs.

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1 recording a debt due to the Post Office. And
2 there was no difference between the amount that
3 was shown in the documents signed by
4 Mr Castleton and the amounts shown on the
5 Horizon log.

6 Now, of course, if Mr Castleton signed false
7 accounting documents, then I would accept that
8 there was -- that the error -- or, sorry, that
9 the judgment is wrong.

10 Q. That is precisely what Mr Beer was trying and,
11 successfully, if I may say so, explore with you.
12 Mr Morgan, I ask you for a third time. Is this
13 not, again, the astigmatism, the bias that
14 arises in this process, which is not meant to be
15 adversarial, I assure you, but just knowing what
16 we know now, about the Fraser judgments, the
17 *Common Issues* judgment, about the oppressive
18 nature of the contract upon which you relied,
19 the *Horizon IT* judgment, which went through
20 a litany of non-disclosure, other misfeasance,
21 and bugs, errors and defects, I ask you for the
22 third time, and I won't ask you again: do you
23 not reflect now, knowing what we know, that the
24 decision of His Honour Judge Havery Queen's
25 Counsel was a dreadful miscarriage of justice?

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1 **A.** I think that the decision of Mr Justice -- His
 2 Honour Judge Havery was the correct judgment
 3 given when Mr Castleton did not say, "My figures
 4 were untrue". Had he said, "My figures were
 5 untrue", then we would not be in this position.
 6 **SIR WYN WILLIAMS:** Is that it, Mr Henry?
 7 **MR HENRY:** Yes, sir. Thank you, sir.
 8 **SIR WYN WILLIAMS:** Thank you. Any other questions?
 9 **Further questioned by MR BEER**
 10 **MR BEER:** No, there aren't, sir, except that we've
 11 now tracked down that document that I said
 12 I would come back to.
 13 **SIR WYN WILLIAMS:** Yes, let's have that up, please.
 14 **MR BEER:** It's POL00081826_018. Thank you. If we
 15 go to page 17, please -- that's the wrong
 16 document.
 17 **SIR WYN WILLIAMS:** I'm beginning to wish I hadn't
 18 asked that question.
 19 **MR BEER:** Just give us a couple of moments, sir. It
 20 was thought that the correct document had been
 21 uploaded whilst the last 45 minutes had occurred
 22 and it seems that that's not the case.
 23 **SIR WYN WILLIAMS:** All right. Well, the reality is
 24 that the document will, in due course, surface
 25 and be put on the screen at some suitable moment
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1 submit to an injunction restraining him from
 2 talking further about the Horizon System; and
 3 (ii) pay to the Claimant liquidated damages in
 4 the amount of £25,000 being a genuine
 5 pre-estimate of (a) the Claimant's costs of
 6 having to rebut such statements and (b) its loss
 7 of goodwill generally."
 8 So I think the question is, the Chairman
 9 asked you -- you were asked, I think, for your
 10 view on that and it's plain that, although the
 11 wording that Mr Dilley was proposing isn't
 12 exactly the same as in the draft Tomlin Order,
 13 in particular because there are some
 14 consequential subparagraphs concerning
 15 injunctive relief and liquidated damages, you
 16 thought that, according to this record, that by
 17 making a song and dance, the Post Office
 18 highlighted a sensitivity: the less we talk
 19 about it, the better.
 20 **A.** Yes. I would also have thought that the
 21 undertaking itself was unworkable and a complete
 22 waste of space, but I don't know whether I'd
 23 have expressed it that clearly.
 24 **Q.** And unenforceable?
 25 **A.** And unenforceable. And an undertaking to
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1 and we will all be able to see what -- was it
 2 clause 5 or Schedule 5 says.
 3 **MR BEER:** Maybe sir, if I can just read, as what
 4 some people will call a workaround. The email
 5 was the 10 November 2006, and at 1600 hours it
 6 enclosed the draft Tomlin Order. It included
 7 the proposed text amended by Mr Dilley, and
 8 said:
 9 "I attach a draft consent order for your
 10 approval. The real question is whether we need
 11 the undertaking in clause 5 of the schedule.
 12 Richard thinks that by making a song and dance
 13 we highlight a sensitivity and, the less we talk
 14 about it, the less likely it is that Castleton
 15 will seek to raise it."
 16 Then clause -- it's a five-paragraph consent
 17 order, Tomlin Order, to which there is
 18 a schedule, and paragraph 5 of the schedule
 19 says:
 20 "The defendant undertakes to the Claimant
 21 that he will neither repeat his allegations
 22 about the Horizon System nor make any further
 23 allegations about the Horizon System or its
 24 functioning and, in the event that the Defendant
 25 breaches this undertaking, he shall both: (i)
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1 a party, rather than to the court. So there we
 2 are.
 3 **Q.** For a range of reasons?
 4 **A.** For a range of reasons, I would have been
 5 extremely adverse to it.
 6 **Q.** I think the question is: isn't this other
 7 evidence, however, of what the Post Office's
 8 real motivation was, ie to gag somebody from
 9 speaking or, alternatively, to require them to
 10 say something good about the Horizon System?
 11 **A.** Regrettably, my experience of people trying to
 12 negotiate settlements is they ask for the moon
 13 when they've got no need for it. As I said,
 14 I was rather focused on trying to prepare for
 15 the trial, and this was just unnecessary noise
 16 in the background. I wasn't focusing on what
 17 the parties' terms necessarily were. With the
 18 benefit of hindsight, then I might have put more
 19 thought into what people's motivations were, but
 20 as I keep on saying, I was focused on a debt
 21 recover claim.
 22 **SIR WYN WILLIAMS:** Well, Mr Morgan, you'll be glad
 23 to know that ultimately the motivation of the
 24 Post Office in respect of various of its actions
 25 is not for you or Mr Beer, but it's for me.
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1 **MR BEER:** Sir, I haven't any further questions. Did
 2 you have any follow-up questions in relation to
 3 clause 5 of the Tomlin Order?
 4 **SIR WYN WILLIAMS:** No, that's fine. Thank you very
 5 much.
 6 **MR HENRY:** Sir, I do apologise. I'm a terrible one
 7 for having one thought or two on the stairs.
 8 There was one thing I forgot to put. Could
 9 I put it quickly? It won't take more than
 10 a minute.
 11 **SIR WYN WILLIAMS:** I will hold you to 90 seconds,
 12 Mr Henry.
 13 **MR HENRY:** I'm very grateful, sir.
 14 **Further questioned by MR HENRY**
 15 **MR HENRY:** Mr Morgan, I'm so sorry. It just refers
 16 back to Mr Dilley and what he said yesterday.
 17 He said at page 124 of the transcript that he
 18 asked you, and counsel advised us not to
 19 disclose the BDO Stoy Hayward report because "he
 20 didn't think the Post Office needed to -- needed
 21 it to prove its case".
 22 Then he said again at 136:
 23 "I believe that I discussed this report with
 24 counsel. I cannot now recollect, after the
 25 passage of time, all the details of this
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1 **SIR WYN WILLIAMS:** Well, that's a comprehensive
 2 answer. So I think that provides an answer to
 3 your question, Mr Henry.
 4 **MR HENRY:** It does, sir. Thank you so much.
 5 **THE WITNESS:** Can I also just say one thing? I have
 6 tremendous sympathy with what Mr Castleton has
 7 gone through, and his family. I can't say
 8 anything more than that, but I quite understand
 9 why he's upset by what's gone on. I hope that
 10 goes some way towards it.
 11 **SIR WYN WILLIAMS:** Right. Thank you very much for
 12 coming to give evidence, Mr Morgan.
 13 We'll now adjourn until Tuesday. I think
 14 it's Tuesday. Yes. It's Mrs Chambers, is it?
 15 **MR BEER:** 10.00 am Tuesday. Anne Chambers.
 16 **SIR WYN WILLIAMS:** Fine. All right. Thank you all
 17 very much.
 18 **MR BEER:** Thank you.
 19 (3.32 pm)
 20 (The hearing adjourned until 10.00 am
 21 the following Tuesday)
 22
 23
 24
 25
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1 discussion. But counsel was made aware of it
 2 and he advised not to disclose it. I'm sure
 3 that if he had considered that there -- that it
 4 should have been disclosed, he would have given
 5 me that steer."
 6 That's what Mr Dilley says about that draft
 7 report. What do you have to say about that?
 8 **A.** First of all, I don't remember ever seeing the
 9 draft BDO report. Secondly, I remember asking
 10 for accountants to prepare a report to summarise
 11 the ins and outs of all the cash movements and
 12 stock movements, because that would have enabled
 13 me not to have to do it myself, and I was never
 14 provided with that.
 15 Thirdly, in civil litigation, you don't have
 16 to disclose any draft experts' reports or indeed
 17 signed experts' reports, even if they're
 18 finalised. Until such time as they are
 19 exchanged, they are covered by privilege.
 20 So had he asked me -- and I don't remember
 21 him asking me -- I would have said, "You don't
 22 need to disclose it."
 23 But in any event, I don't think I even
 24 saw -- I don't remember even seeing a draft BDO
 25 report. Again --
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