WITN09610100

Witness Name: Warwick Henry Patrick Tatford

Statement No: WITN09610100

Exhibits: WITN09610101 - WITN09610104

Dated: 25 October 2023

POST OFFICE HORIZON IT ENQUIRY

FIRST WITNESS STATEMENT OF

WARWICK HENRY PATRICK TATFORD

I, WARWICK HENRY PATRICK TATFORD, barrister of Foundry Chambers, 5-9 Quality Court, Ground Floor, Chancery Lane, London, WC2A IHP, will say as follows:

1. I was requested to provide a witness statement pursuant to Rule 9 of the Inquiry Rules 2006 on 21 September 2023.

Education

2. I read Classics (Lit. Hum) at University College, Oxford between 1987 and 1991, graduating with a First. I did the Common Professional Examination as my law conversion course at Nottingham Polytechnic in 1991-2. I attended the Inns of Court School of Law in 1992-3 and was called to the Bar in 1993.

Career at Bar

WITN09610100

3. I did a 12 month pupillage at the Chambers of Edmund Lawson QC, 4 Paper Buildings and became a tenant there in October 1994. I have remained at the same set ever since, though it has changed name (and location) twice – first 9-12 Bell Yard and then Foundry Chambers.

4. I have practised at the Bar without interruption. I have worked almost entirely in the field of Criminal Law (prosecuting and defending), but I have done quite a lot of Local Government prosecutions and very occasional Regulatory work at the GMC and Law Society (both defending). For over 10 years I appeared pro bono in Bar Disciplinary Tribunals (mainly presenting but also defending). I am a member of the CPS Advocates General Panel, at level 4, the highest grade. I am a member of the Rape and Serious Sexual Offences (RASSO) and Serious Crime Panels (at level 4) and the Fraud Panel (at level 3). A great deal of my practice now involves prosecuting serious sexual offences, often involving vulnerable complainants and defendants, but I continue to appear across the spectrum of the serious criminal cases in which senior juniors prosecute and defend.

Privilege

5. In the light of correspondence I have received from the Inquiry I am proceeding on the basis that legal professional privilege had been waived by those who originally instructed me, the Criminal Law Division, Legal Services, Royal Mail.

Experience working with the Post Office/Royal Mail.

WITN09610100

6. Throughout a significant part of my career I prosecuted cases on behalf of the Post Office and Royal Mail. Many of my colleagues in Chambers did the same.

7. I remember prosecuting 2 trials of theft by sub-post office employees which predated the Horizon system, where the deficiency was hidden by manually inflating figures for pension and allowance vouchers. I prosecuted a number of Horizon theft cases as guilty pleas. I am unable to determine the exact number because of insufficient case information on my Chambers' Lex Diary. In addition to the Horizon cases about which I have been asked detailed questions, I remember prosecuting 2 Horizon-based theft trials: *Abiodun Omotoso* at Luton Crown Court (trial dates 17-21/9/07) and *Ian Kirk* at Bournemouth Crown Court (3-6/12/07). From my researches I know that Abiodun Omotoso's conviction was overturned in *Ambrose & others [2021] EWCA Crim 1443*. I remember very little about the facts of *Omotoso* and have not been provided with any papers for it. The *Ambrose* judgment indicates that there was some kind of challenge to the integrity of Horizon, but I cannot remember any of the details, other than I do not think there was any reference to any problems at other sub-post offices and I do not think there was any expert evidence in the case. I do not know if Ian Kirk has sought to appeal his conviction. I remember that Mr Kirk's defence involved an acceptance of the deficiency, but the assertion that it had been caused by a theft by an unknown person(s). I believe the case of *Seema Misra* (2010) is the last Horizon trial I prosecuted.

WITN09610100

8. I continued to prosecute occasional Royal Mail cases after that, often instructed by the late Juliet McFarlane (who is the author of document POL00053954). The Royal Mail criminal law department was by this stage entirely separate from Post Office Ltd and its cases did not relate to Horizon or sub-post offices. The last Royal Mail trial I was involved in was *Didier Nyamakolo* (theft by postman, Blackfriars Crown Court) on 21-25/11/16.

9. I will now focus on the cases about which I have been asked detailed questions. The cases are all from a significant time ago and I have long since disposed confidentially of all my papers, notes, documents and almost all emails in relation to all 3 cases. I have found a handful of emails concerning *Misra*. I do remember the *Page* and *Misra* cases reasonably well, though there is plenty of detail that I now cannot remember. I had very limited involvement in the case of *Rudkin* and cannot really assist with that case beyond the documents I have been given.

10. In my statement I have indicated various documents that I know to have been created but which have not been provided to me. I will provide a list of such documents to assist the Inquiry to locate those documents, if they still exist.

11. I have never previously prosecuted a case that has been stayed as an abuse of process, let alone one involving such an appalling abuse of process as described in *Hamilton & others*. I feel ashamed as a barrister when I read the judgment. I am deeply troubled by the possibility that there might have existed computer bugs, relevant to the cases I prosecuted, which ought to have been disclosed. I am very sorry that Seema Misra and Carl Page did not receive fair trials and I am sorry that I played an unwitting role in this. I was completely

WITN09610100

unaware of the existence of any Horizon computer bugs at the time of the *Page* case in 2005-6, or indeed that any problems had ever been raised. At the time of the *Misra* case I ensured that the Callendar Square bug was disclosed and made it very clear to those instructing me that enquiries should be made with Fujitsu about any other problems and any other bugs should be disclosed. I made this clear also to Gareth Jenkins, the expert instructed by the Crown, and I made it very clear to Mr Jenkins that he was under a duty to provide frank disclosure of Horizon problems to the defence expert instructed in that case, Professor McLachlan.

12. In this statement I can only set out how I remember things. No particular disclosure failings on my part have been brought to my attention and it is not clear to me what, if any, criticisms are being made of my conduct in the cases I prosecuted. I note that the reprehensible failings so starkly reported in *Hamilton & others* appear to relate largely to a time after the cases I prosecuted.

The Prosecution of Carl Page

13. I have reviewed the documents sent to me and listed between paragraphs 5 and 19 of the annex to the letter of 21 September 2023 and have considered the questions put to me in that letter.

14. My role in the case of *Carl Page* may not have been fully understood from the available paperwork. I have been asked why I was instructed as new Counsel for the retrial, which is incorrect. I was not new Counsel. My former colleague from Chambers, Stephen John, now a retired Judge, prosecuted the case initially alone but, as the case became more complicated, he requested and

WITN09610100

was granted a junior. I was instructed as junior and performed that role throughout the first trial of *Page & Whitehouse*.

15. The first day of the trial of *Page & Whitehouse* was at Wolverhampton Crown Court on 6/6/05. The trial was immediately transferred to what was then called the West Midlands Fraud Centre, a converted office building near Dudley. The trial took place there between 7/6/05 and 22/7/05 before HHJ Wood QC. On 22/7/05 both Mr Whitehouse and Mr Page were acquitted on count 1, conspiracy to defraud. Carl Page faced count 2 alone, theft of £282,000. The jury was unable to reach a verdict on that count and was discharged. A retrial was ordered which was eventually listed at Stafford Crown Court on 14/11/06. The retrial only justified one Prosecution Counsel. Stephen John was unavailable, so I was instructed, on the basis that I had a very full knowledge of the case from the first trial.

16. There seems to have been a misunderstanding in the Court of Appeal in *Hamilton & others* as to the facts of count 2. Paragraphs 277-285 seem to be incorrect in a number of important respects, unless other information was presented to the Court of Appeal which does not appear in the judgment. Although this is not related to issues surrounding Horizon, I thought it would assist the Inquiry if I went into the detail. Count 2 only ever related to Carl Page. The offence was quite separate from count 1, which involved a conspiracy between the 2 Defendants relating to foreign currency: Mr Page sold euros to Mr Whitehouse at preferential rates; Mr Page went against the rates suggested to him centrally, which he was not permitted to do, and gave Mr Whitehouse such good rates that Mr Whitehouse was able to make a

WITN09610100

substantial profit simply by converting the euros back into sterling at other bureaux de change, something that in normal circumstances should result in a heavy loss. That in very simple terms was the case on count 1 and count 1 essentially had nothing to do with the Horizon system, the equipment used for foreign exchange being a Forde Moneychanger.

17. Count 2, against Mr Page alone, did relate to Horizon. When an audit (essentially a stock-take) took place at Mr Page's sub-post office it revealed a shortfall of £282,000. The Horizon records suggested £282,000 worth of foreign currency was being physically held at the branch in the 'AM' stock (the drawer holding cash, receipts, stamps, vouchers etc for which Carl Page was responsible). No such amount of foreign currency money was present in the drawer (stock). The Crown's case was that Mr Page had put false figures into Horizon over a period of time so that the computer records would fail to reveal that money was regularly going missing. The hole in the accounts would become bigger as the theft continued over time, so, it was alleged, the only way Mr Page could balance his office's accounts was to pretend that there was an increasing sum of cash in his stock that corresponded exactly to the money he was stealing. It was an imaginary sum of foreign cash. The true position could only be discovered when an audit took place and the stock was physically examined and no such money was found.

18. The case on count 2 was made more complicated by the account Mr Page gave in interview. The auditor found a cheque for £278,181.82. This cheque hadn't been put through Horizon. In interview Mr Page claimed that he had loaned euros, to this sterling value, to Mr Whitehouse. This seemed at first a

WITN09610100

good explanation for the £282,000 deficiency because it suggested that the sum wasn't an imaginary sum but was a real amount of foreign currency that had been in the office but was now in the possession of Mr Whitehouse. The trouble with this version of events was that it was going to be disproved in the trial by Mr Whitehouse's evidence. So, when Mr Page gave evidence at the first trial he admitted this part of his interview was untrue. This can be seen in the partial transcript of Carl Page's evidence (POL00067005). I am afraid that I can no longer remember the full details of the new explanation Carl Page gave for the deficiency in his evidence and a complete transcript of his evidence doesn't appear to be available. I do remember his explanation related to what he said was his incompetence and that of his employees. I don't remember him ever saying there might have been a computer glitch.

19. I have tried to set out the facts of counts 1 and 2 in a relatively simple way because I know they are not straightforward. When I was preparing the trial it took a long time for me to understand the evidence on count 2. Stephen John and I prepared an expanded opening note for the trial which was meant in part to explain count 2 more clearly. It appears that expanded opening is no longer available, but the reason I drafted a Revised Opening Note (POL00066717) for the second trial was so that the Crown's case on the sole allegation at the re-trial was as clear as possible. In paragraph 32 of my Revised Opening I set out reasons why the loan story of Mr Page's interview could not be true. I set out the reasons there because Mr Page no longer had the disadvantage of a co-Defendant and it would be important, at an early stage, for the jury to appreciate the interview account appeared untrue.

WITN09610100

20. It follows from all this that the criticisms made by Holroyde LJ in *Hamilton & others* [at 279] about the Crown changing its case between the 2 trials are perhaps, I am afraid, incorrect. I do not know how the Court of Appeal came to this view as I had no involvement in the appeal and was not asked beforehand any questions about the *Page* case. The Crown's allegation remained the same for both trials - the deficiency in the 'AM' stock - £282,000 worth of supposed foreign currency, a fictitious sum of money.

21. I hope it is clear that in seeking to make these corrections I am taking nothing away from the sound reasons for the quashing of the conviction which obviously relate to the reliability of Horizon and disclosure failures over many years.

22. Following the first trial I remember submitting a short report to our instructing solicitor, Rob Wilson, setting out the views of Stephen John and me about the verdicts, any lessons to be learned and whether a retrial for Mr Page was appropriate. I have not been sent this document by the Inquiry and do not now have a copy myself, but I do remember drafting it and sending it by email. Our overall view was that the trial had gone reasonably well for the Crown and that the Defendants might have had the good fortune of an ultra-cautious jury. The evidence on count 1 seemed stronger against Mr Whitehouse. To prove that conspiracy it was necessary to prove the guilt of both Defendants, so if the jury thought that a guilty Mr Whitehouse had used Mr Page as a dupe it would have to acquit both Defendants. There seemed no reason not to seek a retrial for Mr Page. This view was fortified when, in the months that followed the trial, the Post Office received information to suggest that Carl Page may have

WITN09610100

perjured himself in an aspect of his evidence in the trial. He had spent some time in his evidence in the first trial setting out his military record and he claimed he had served in a secret capacity which he could not divulge. Rather naively we had not considered that he might have been telling lies on this point and we did not investigate the matter during the trial. This was a mistake. In fact the CV which Mr Page supplied to the Post Office, when first seeking a role as a SPM, referred to no military background; rather it suggested he had a reasonable amount of accounting experience. Perhaps he had hoped to create sympathy with the jury, from a military record, and had hoped to hide accountancy experience, which wouldn't have sat well with his defence of incompetence. My recollection is that the Crown served, in a notice of additional evidence which has not been provided to me, evidence that could potentially prove these apparent lies at the re-trial.

23. I did not give any advice on evidence or the merits of prosecution in the run-up to the first trial. Any such advice would have been given by Stephen John.

24. I am asked about the involvement of Customs and Excise in the investigation. They had begun the investigation because there was a natural suspicion that Mr Whitehouse's transporting of large amounts of cash was connected with money-laundering. Once it was discovered that, in fact, the cash was euros purchased from Mr Page's bureau de change at preferential rates, then the interest of Customs and Excise ceased and it was investigated as a fraud on the Post Office. Stephen John inspected the papers held by Customs and Excise and advised there was nothing to disclose. There were no audits carried out by Customs and Excise as far as I am aware.

WITN09610100

25. I am also asked about the police's involvement in the investigation. They had some limited role in the investigation but did not investigate the case in any detail. This was a common feature of Post Office prosecutions for many years before the existence of Horizon. The police might become involved in a case, e.g. because Post Office investigators did not have a power of arrest, but the role of the police tended to be very limited. Post Office investigators usually came from a work background within the Post Office and were familiar with complicated Post Office work practices whose detail would be difficult for a police officer to understand without a great deal of preparation. The police were generally very happy for a Post Office investigator to take over all aspects of an investigation, e.g. by asking almost all the questions in a PACE interview, while a police officer sat in relative silence. I have considered the letter at POL00045921 which was sent to John Whitehouse on 7/5/03. I recognise this letter and would have seen it in my review of the unused material as I prepared the case for the first trial, after my instruction as junior. The letter indicates that the Post Office would take the lead in the investigation but the police agreed to carry out some limited parts of the investigation – analysis of phone contact and bank accounts. The letter betrays the limited understanding the police had of the case: the letter wrongly states that John Whitehouse had been alleged to have stolen money from the Post Office, colluding with Carl Page – this is a very garbled way of describing the foreign currency conspiracy. The police's conclusion in the letter that "as the above enquiries have not provided any clear evidence of criminal conduct either by, or between, the two men, Staffordshire Police decided not to press any charges against them" properly had no sensible impact of the Post

WITN09610100

Office's eventual decision to prosecute. It seemed to me at the time that the police had a very limited understanding of the evidence and they only investigated a specific part of the case. The fact that nothing suspicious was found in phone calls and bank accounts was an important piece of disclosure for the trial, but the police knew nothing of the extraordinary foreign currency purchases that were the real reason for the conspiracy charge. The police's opinion is particularly irrelevant to any Horizon issue because there is nothing to suggest that the Staffordshire Police knew anything about Horizon and Horizon had nothing to do with John Whitehouse's alleged criminality – the equipment he, indirectly, made use of was the Forde Moneychanger.

26. I am asked to explain the role of Manish Patel. He was the investigator for the Post Office. He conducted the whole investigation, using his detailed knowledge and experience of the complicated workings of a sub-post office, expertise that a police or Customs officer could never hope to match. He provided highly detailed statements and schedules that essentially set out the whole case. I have not been provided with many exhibits from the case and without these exhibits Manish Patel's statements are difficult to follow. Mr Patel conducted all the significant PACE interviews. I think he took many of the witness statements. His role was very similar to that of a police "officer in the case", where that title applies to a highly competent officer who has been involved in an investigation from the start. By the time of the trial Mr Patel had had a change of career (I seem to remember that he had become a professional pilot). This meant that we did not have his assistance for much of the trial, only those days when he was required as a witness. This was a significant disadvantage for us but another very experienced investigator,

WITN09610100

Trevor Lockey, took over the role of "officer in the case" and he was present throughout the trial. We had detailed discussions with Manish Patel before his evidence, as would be entirely normal with any key investigator. I had not had any dealings with him before the case, but I knew Stephen John thought highly of him. I was impressed by what I saw of Manish Patel in the course of the first trial. He had investigated a complex case which was initially confusing to those who looked at it (not least because of the £278,181.82 cheque and the account Mr Page chose to give of that cheque in interview). Stephen John and I took pains to ensure that both Defence Counsel had every opportunity to gain from Mr Patel's deep knowledge of the case.

27. I have been asked to consider the expert reports of David Liddell, an accountant, at POL00045867 and POL00045868. I would have seen the reports shortly after they were served. I remember Mr Liddell from the first trial. He was a rather unusual expert who provided a new theory to explain the £282,000 deficiency in the witness box without, as I remember it, setting that theory out in a report. I am afraid I cannot now remember the details of that extra opinion, but I do remember thinking at the time that it was rather poorly considered and not difficult to refute. The conclusion at paragraph 2.7 of POL00045867, that a large surplus of euros could not have built up in the 'AM' stock or elsewhere, was agreed by the Crown. But nobody ever suggested that there was a large amount of euros that Carl Page had stolen and there would be no reason for there to be a large amount of euros in the 'AM' stock because they should have been in the bureau de change stock. Mr Liddell seemed to have completely misunderstood the Crown's case on count 2. The 'AM' stock was just the part of the branch accounts where the inflated

WITN09610100

figures were entered by Mr Page. The Crown's case was that he was stealing over a protracted period of time and he would hide the increasing hole in the accounts by pretending he had a corresponding sum of foreign currency at the branch, a sum that didn't exist. By filling the hole in the accounts in this way, the Crown said he was able to achieve the necessary weekly balance. The opinion in 2.7, therefore, did not undermine in any way the theft count.

28. The opinion offered in paragraph 2.8 of Mr Liddell's report, that a delay, between a euros transaction by Mr Whitehouse being entered on Horizon and his physical collection of the euros, might have caused a shortfall, involves a similar misunderstanding of the Crown's case. Mr Liddell was again working on the assumption that the deficiency in euros related to a real missing amount of euros. It did not. The deficiency, on the Crown's case, was the difference between Carl Page's figures and the stock physically present on audit.

29. The criticism in paragraph 2.25 of Mr Liddell's supplementary report that "the work carried out did not constitute an audit in the sense that data was not verified back to source documentation nor critically examined" is essentially correct, but is based on a misunderstanding of the terminology used by the Post Office. A Post Office "audit" isn't a complicated accountancy exercise. It is a stock-take. The stock at the office (stamps, cash, foreign currency etc) is physically counted and the resulting figures compared against the various printouts that Horizon can produce. The figures should, of course, match. The Post Office use of the word "audit" is a little pompous, but the importance of a

WITN09610100

stock-take, as in any shop, is very great. Only a physical count of the stock can determine if the accounting records of the shop are accurate.

30. I am asked about the reason for the change in Defence experts between trials. My understanding, though it is only an inference from conversations (which I may have misinterpreted or have misheard) with Nicholas Leviseur, Defence Counsel instructed for the retrial, is that Mr Page instructed a new expert, and indeed new Counsel, because he was dissatisfied with the performance of Mr Liddell and was generally unhappy at the way his case had been defended at the first trial. I remember there was a different solicitor's representative present for the re-trial as well. Mr Taylor's report (he was an accountant with KPMG) at POL00061214 was certainly a much more serious piece of work than the reports of Mr Liddell. Mr Taylor's report showed a good understanding of how the accounting procedures at a Post Office worked and he fully understood the Crown's case on count 2. He accepted the increasing deficiency identified by the investigator, Manish Patel, but pointed out that if the correct missing figure was £282,000 and the accounts had been falsified to hide this figure, then the deficiency must have been hidden in a more complicated way than the Crown had so far managed to identify. Mr Taylor correctly stated at p.20 of his report that "the Prosecution rely on the assumption that the figures in Horizon are those recorded by Rugeley Post Office staff themselves and that the Horizon system was working correctly throughout the indictment period". This is a statement of the obvious. It is also the only occasion I have found that Horizon's reliability was raised as any kind of issue in the course of either *Page* trial. As far as I remember Mr Page did

WITN09610100

not raise any concerns about computer error. His defence was the incompetence of himself and other staff members, not computer glitch.

31. I was going to ask Manish Patel at the retrial to consider Mr Taylor's report, with a view to see to what extent we could challenge it. I was not overly concerned about the report and I did not think it would be very difficult to show that Mr Page might have chosen a variety of locations for inflated figures in his accounts. Before that could happen, I was approached at Court by Defence Counsel, Mr Leviseur, with a formal offer of a basis of plea. I think this was on the first day of the listed re-trial. I don't think the process had begun to select a jury. I was formally asked whether the Crown would accept a plea to theft on the basis of a loss of £94,000. This figure was based on Mr Taylor's report – he cast doubt on the deficiency figure prior to 28/8/02 but agreed with Manish Patel at 5.4.8 that the deficiency then increased from £188,000 to £282,000, an increase of £94,000, the figure suggested in the Defence offer. I took instructions, probably from Rob Wilson, but my memory is not entirely clear on whether I spoke to him or another lawyer. Together we decided that the basis of plea offered was acceptable, because of the long history of the case and because it was felt that this clear admission of significant theft met the justice of the case: to reject the offer and have another trial would not have been in the public interest. This was my view, which I communicated to the lawyer, who agreed, after we discussed the matter, and instructed me to accept a plea on the offered basis. I am asked about my reaction to the guilty plea. I was not surprised that there was an offer of a guilty plea. The case on count 2 seemed to me to be strong and would have been stronger if a jury was permitted to hear of Mr Page's

WITN09610100

seeming perjury at the first trial. I did not think it was in the public interest to hold out for a larger value for the theft, which I did not think would make a significant difference to sentence, given the long history of the case. I thought a Judge would not be inclined to hold a Newton hearing to try and decide the exact amount, but would consider that the Defendant had admitted enough to allow the Judge to pass an appropriate sentence.

32. My recollection is that nothing further happened on that first day of the trial and that Mr Page reflected on matters overnight and entered his guilty plea on the second day. I don't believe any jury was sworn, but this is presumably something that can be checked if necessary.

33. I am asked what my view was of the amended Defence Statement, UKG100012306. The simple answer is that I thought it was a good summary of a potential defence speech, but that it seemed not to understand the Crown's case on count 2. The Defence Statement seems also to have been drafted before receipt of the evidence of Mr Page's possible perjury about his military record. I have a vague recollection of re-drafting the opening note in the hotel room where I was staying in Stafford to help Mr Leviseur understand the case better, but I am not sure of this. It may be that this amended Defence Statement is the origin of the mistaken view held in the Court of Appeal that the Crown had changed the way it put its case on count 2. I am a loss as to why so many people seem to have misunderstood count 2 over such a long period of time. I found that once the penny dropped (which for me took a long time, when I first prepared the case) it was not difficult to understand.

WITN09610100

34. I note that there does not seem to be any reference to the possibility of computer error in the Defence Statement. I make this not as a criticism. It was for the Crown to prove the case and, if in possession of material to undermine the integrity of Horizon, to disclose that material, whether it was requested or not. But the absence of any reference to a computer bug is a good illustration of how far away this issue was from the parties' minds in 2006.

35. Sentence was adjourned for a pre-sentence report (PSR). I would have read the contents of that report but do not remember them now. The PSR would have included the Defendant's account of the offending and I do not remember anything to suggest that the plea was equivocal or was not a clear admission of guilt.

36. Disclosure was largely complete before I was instructed. It had been supervised by Stephen John. It was obvious to me that there had been considerable and very full disclosure. The correspondence I saw was at times a little bad-tempered but it seemed clear to me that the Crown was taking its obligations seriously and the Defence was taking a very active role in ensuring the Crown discharged its obligations. I do not remember the issue of computer reliability being raised by any Barrister or indeed anyone else at any stage in the case. No computer expert was instructed by either side. It is important to remember that this was an early Horizon case. I do not know, because I was not privy to the disclosure in the *Hamilton* Appeal, what it is suggested should have been available to be disclosed in a case of this date. If there was evidence available in 2005/6 of a Horizon bug capable of creating a phantom deficiency, then obviously that should have been disclosed. All I can

WITN09610100

say is that it was a topic not mentioned, as far as I can remember, by anyone in either trial.

37. I am asked for my reflections on the way the investigation and prosecution was conducted. At the time both of the first trial and the second when Mr Page pleaded guilty, it did not occur to me that any abuse of process might be happening. I joined the case late but that allowed me to have a fresh perspective and I saw nothing that caused me concern. I have to accept that the Court of Appeal has taken a very different view of the *Page* trials, from all it knows of the Horizon disclosure history, and that view is much more informed and important than mine. I am simply doing my best to remember what I experienced at the time of the trials.

Prosecution of Seema Misra

38. I have reviewed the documents sent to me and listed between paragraphs 21 and 44 of the annex to the letter of 21 September 2023.

39. I was first instructed in this case after the case had been committed to the Crown Court. As was common with Post Office briefs at the time I was required to settle the indictment, which was to be lodged by 10/3/08, so I must have received the brief before 10/3/08, perhaps at the end of February or beginning of March.

40. My initial brief would have included the Instructions at POL00044585, the various backsheets at POL00044585 (with their enclosures), the Summary of Facts, POL00044613, the Schedule of charges at POL00045010 and POL00045220, the schedule of unused at POL00050750 which shows Jon

WITN09610100

Longman was the disclosure officer, the Sensitive Schedule (nil) at POL00050751 and the investigation report of Adrian Morris, the original investigator, at POL00044541.

41. As instructed I drafted the indictment - see the email sending the indictment at POL00051092, dated 10/3/09. I don't think the indictment at POL00051149 is the one I drafted but a proposed indictment sent to me by my instructing solicitor. I did not provide a written Advice on evidence at this stage: this was not unusual in a case where, as here, I had been provided with all the necessary paperwork and the case appeared properly prepared. At this stage Seema Misra was not making any allegations about the reliability of the Horizon IT system.

42. The PTPH took place on 20/3/09. I have a recollection of being asked by Andrew Castle, the solicitor advocate for Mrs Misra, whether pleas to false accounting would be acceptable. I had anticipated being asked this question as it was obvious from the papers that such an offer was going to be made. I had formed a view, before the enquiry from Mr Castle, that such an offer should not be accepted, because the suggestion that Mrs Misra had been entering false figures over a considerable period, only to cover the thefts by members of staff, seemed clearly refuted by the fact that her false figures continued to rise long after the dismissal of the alleged thieves. The figures would simply reach a false plateau if the source of the loss ended. Instead they continued to rise, suggesting that the loss was continuing in spite of the sackings. The obvious inference to me at the time was that the hole in the accounts was growing because Mrs Misra was stealing money. It seemed far

WITN09610100

more rational that Mrs Misra would use false accounting to hide a hole created by herself than by others. My experience from other cases was that a SPM whose shop was struggling might “borrow” money from the funds of their sub-post office to put into their shop, hoping in due course that they would be able to return money into the sub-post office before an audit occurred. In the absence of an audit the SPM could hide the hole in the accounts by false accounting. Only the stock-take involved in an audit could reveal the true deficiency. That was my opinion, but as I only act on instructions it was essential for me to discuss the plea offer with my instructing solicitor. My recollection is that, whilst at court before the hearing, I telephoned my instructing solicitor, Jarnail Singh, to discuss this. He agreed that that the pleas were not acceptable. I do not remember exactly what was said in this conversation, but the advice I would have given would have been along these lines: the account the Defendant had given in interview, that she was the victim of thefts by former employees did not fit the evidence – the apparent hole in the accounts increased after the dismissal of the stealing employees; I thought it did not make sense that Mrs Misra would cover up, by false accounting, a loss caused by the dishonesty of others – a desire not to lose the sub-post office did not appear to explain false accounting on such a scale, because there would be no point keeping hold of a business that was haemorrhaging so much money; the Defendant said in interview that she had only reported a tiny fraction of the thefts to the police – this did not make sense to me because she was obliged by common sense and by her contract to report the theft and if she was prepared to report the theft, why not report all of it?

WITN09610100

43. I have been asked to explain my email exchange (POL00051539) with Phil Taylor on 22/5/09. Phil Taylor's email seems to be a follow-up to his letter dated 13/5/09 (POL00051441). As I believe is clear from Phil Taylor's email timed at 16:55:03 he had limited knowledge of the case and he seems to have been unaware of the discussions I had previously had with Jarnail Singh on 20/3/09 about why the pleas to false accounting were not acceptable. Phil Taylor's role was essentially that of a case worker. He was immensely experienced, but he was not a lawyer, and his work was focussed on case preparation. On the date of this email exchange it was still completely unknown to me that Mrs Misra would later seek to challenge the integrity of the Horizon system. My opinion that the evidence was "strong" related to what I understood to be the evidence at the time, in particular that the apparent hole in the accounts could not be fully explained by the explanation given by Mrs Misra in interview, because the hole continued to grow after the alleged thieves had been dismissed. I have already set out my opinion of the evidence in the preceding paragraph, so I will not repeat it again in full. My opinion that "confiscation would…be a non-starter" is simply an inelegant reference to how s.6 of the Proceeds of Crime Act 2002 might apply to the case. If pleas to false accounting were accepted it would have been impossible to argue, I thought, that Mrs Misra had benefitted from her particular criminal conduct, pursuant to s.6(4)(c). I was not seeking to express the view that confiscation was a reason in itself to pursue the theft count. I have always taken the view that confiscation is irrelevant to any charging decision. It is simply a consequence that can arise after a conviction. Phil Taylor replied to my email on 27/5/09 at POL00051586.

WITN09610100

44. My attention has been drawn to POL00051441 and I am asked about my view of the public interest in continuing with the trial. When I gave advice on the acceptability of pleas I naturally had regard to the public interest, as well as to whether there was a reasonable prospect of conviction. Stealing a large amount of money as a SPM, in breach of trust, is plainly a serious offence. I would have considered that it was very much in the public interest for such an allegation to be tried, even where significant pleas to false accounting were being offered. The latter would often merit a suspended sentence or even a community order, whereas the former would usually require a sentence of immediate imprisonment.

45. A Defence Statement was served and the case was prepared for trial on the basis of the issues that first Defence Statement raised. That first Defence Statement is mentioned in the trial transcripts but I have not been provided with a copy. I had considered the Non-Sensitive Unused Schedule (POL00050750) when I first received the papers. I was satisfied that disclosure was being dealt with properly at this stage, on the basis of the issues that we understood them to be, namely that somebody else was stealing the money. I did not advise specifically on disclosure until after the issue of Horizon reliability was raised, which did not happen until 3/6/09.

46. The trial was placed in a warned list and the case eventually listed for trial on 3/6/09 before Rec. Bailey. It was on this day that concerns were raised for the first time in the case about the integrity of Horizon.

47. The attendance note of Jarnail Singh at POL00051773 seems to set out accurately what happened on 3/6/09 when Mrs Misra's trial was listed. I don't

WITNO9610100

think I saw the attendance note at the time. I was often attended upon when I prosecuted Post Office cases and it was not unusual for the reviewing lawyer to attend on the first day of a trial. If a representative of the Post Office was present I would usually not send an attendance note myself. Even if I was unattended it was often not necessary to send an attendance note; a telephone call would often suffice and the call might be recorded in a written attendance note by the person taking the call. Such an attendance note would not necessarily be sent to me.

48. Until I saw the attendance note at POL00051773 I had believed that Defence Counsel on 3/6/09 was Keith Hadrill. This was a mistake on my part because of Mr Hadrill's later role as trial Counsel. I was involved in a couple of cases with Mr Cousens (I am unsure of the correct spelling) around the late 90s and early 2000s and I do now think he was trial Counsel on 3/6/09, but I am not 100% sure. I do remember clearly that Defence Counsel produced a photocopy of a Computer Weekly article about alleged problems with Horizon and complaints by various SPMs. This was the first time in the case that I was made aware of the issue of Horizon IT reliability and the first time I was informed about problems at the various sub-post offices referred to in the Computer Weekly article. The complaints made by SPMs in the article were a topic that had never been mentioned to me before by the Post Office, an investigator or any barrister colleague. I was not aware then of the *Castleton* case.

49. I am asked what I thought was the significance of these allegations about Horizon reliability at this time, early June 2009. I was first of all very surprised.

WITN09610100

This was an entirely new issue and there had been no previous hint of it in the case. Looking at the transcript of Mrs Misra's evidence at her eventual trial (UKGI00014845 at p.136B-D) it is clear what the explanation was for this issue arising so unexpectedly: Mrs Misra in her evidence said that she first saw the Computer Weekly article "the day before my first trial", so there was presumably no opportunity to bring it to her solicitor's attention prior to the trial listed the next day. I have not been given a copy of the Computer Weekly article, but from memory it set out complaints by a number of SPMs at different sub-post offices. The SPMs referred to included Lee Castleton, Jo Hamilton and others. I don't think the article specifically referred to the Callendar Square computer bug. I hope the Inquiry will be able to show me the exact article. I have researched matters on the internet but there is an obvious danger in relying on something that isn't exactly what I saw. From memory I took a copy for my instructing solicitor and myself.

50. The Defence eventually decided to apply to adjourn the trial so that this new potential issue could be investigated by expert evidence. I decided not to oppose that application, even though this was a new defence that had not been raised in the defence statement or in Mrs Misra's interview. Some prosecutors might have taken a more hardline view and some Judges might have been persuaded not to allow an adjournment. I considered, however, that the matter had to be properly investigated, even though it had been raised very late and without any warning. I thought that fairness to both sides required an adjournment. At that stage it appeared to me quite unclear as to whether the complaints set out in the Computer Weekly article were of relevance to Mrs Misra's case or not. Prior to that day, from the papers I had,

WITN09610100

she had not been alleging unexplained deficiencies. On the contrary, she said that she had been able to find the cause of the losses – her dishonest employees. Her interview had not made mention of her suffering losses right from the beginning, in the presence of her trainers while they were training her, before any possible theft was involved, which was something she later relied on heavily in her evidence at trial. All I did know was this was an important new issue that needed to be considered properly by both sides. It was therefore vital for there to be an adjournment.

51. I became aware fairly shortly afterwards that a new firm of solicitors had been instructed by Mrs Misra, Coomber Rich, and that Keith Hadrill had become Defence Trial Counsel. I used to share a room with Keith Hadrill when he was at 9-12 Bell Yard. I also knew Issy Hogg, the new solicitor from Coomber Rich; she had in fact instructed me in the past.

52. I realised that we were about to embark on a demanding disclosure exercise. I was conscious that both sides were treading new ground and the only guide I had so far was the Computer Weekly article. As I thought about matters, it seemed to me that it would be important to focus on the West Byfleet sub-post office and consider whether any Horizon problem had occurred there. Complaints from SPMs about problems at different offices might raise evidence of a problem that could be examined in relation to West Byfleet, but it seemed to me that a simple complaint by a SPM was of very limited assistance. There would need to be evidence of what the problem was, or at least what its symptoms might be e.g. the location within the office stock where the loss appeared to arise. I discussed the way I was thinking with

WITN09610100

Keith Hadrill and it was decided that there should be a joint visit to the West Byfleet sub-post office. From my Chambers Lex diary it appears that this joint visit took place on 6/11/09, though the diary entry does suggest the possibility that the date of the visit may be moved. Issy Hogg and I certainly attended and I think Keith Hadrill was there as well. I think Jon Longman was there and possibly (though I have no memory of this) a representative from the Royal Mail criminal law department, perhaps Phil Taylor. We were shown the Horizon equipment in action by the staff who had taken over the running of the office after Mrs Misra's arrest. We were additionally able to view the full site of the Costcutter shop and the sub-post office inside.

53. The Defence expert, Professor McLachlan, sensibly visited the West Byfleet office on 19/11/09 and spent 2-3 hours there – see transcript POL00001856 at p.105.

54. My work on disclosure began with viewing files held by the Royal Mail criminal and civil departments that related to the complaints in the Computer Weekly article. I had previously discussed with Defence Counsel what material I was going to view and what disclosure test I should have in mind. I suggested that unsubstantiated complaints by SPMs that they had suffered a computer glitch would on their own be unlikely to require disclosure. What was required was a degree of objective evidence of computer error. I was sent relevant criminal files (relating to Jo Hamilton and Noel Thomas) which I read between 25/11/09 and 29/11/09. I then attended the civil department twice, on 11/12/09 and 23/12/09, where I viewed civil files relevant to the article. The civil department was quite separate from the criminal department and in a

WITN09610100

completely different building. I drafted a short schedule referring to the files I had seen which I sent to Jarnail Singh and the defence. I have not been provided with that schedule in preparation for this statement but I was sent a copy of the schedule by Mrs Misra's solicitors (I think) while the disclosure exercise was being undertaken for the *Hamilton* appeal and asked questions about the document, so the schedule should be readily available to the Inquiry. When I visited the civil department I spoke with Mandy Talbot about the *Castleton* case and about the Computer Weekly article. She provided me with the *Castleton* judgment, which I read. I think I would have explained that I was looking for any objective evidence of Horizon computer problems, rather than unsubstantiated complaints by SPMs. My conclusion from the visits to the civil department was that the Callendar Square problem was the only bug that needed to be disclosed because there was clear objective evidence for it, but that we should keep the subject under continual review. I cannot remember exactly how I became aware of the Callendar Square problem, but I think I realised that it would require disclosure from the body of the *Castleton* judgment. I think the SPM for Callendar Square, Alan Brown, may have been mentioned in the Computer Weekly article but I do not think I would have realised that there was objective evidence for this problem until I conducted my review of the civil files and read the *Castleton* judgment.

55. I explain in the above paragraph that I have not been provided with the schedule I drafted after viewing the civil files. After searching through my old emails I have found a form of the schedule that I sent to Jarnail Singh in relation to *R v Gurdeep Singh Dhale*, a case in which I was not instructed, but which seems to have been listed at Bradford Crown Court for trial on 7/2/11

WITN09610100

[WITN09610101 & WITN09610102]. In order to assist the Inquiry to retrieve the schedule I am referring to, I re-produce the schedule I sent to Jarnail Singh in an email dated 11/1/11 for the *Dhale* case. It is clear from this form of the schedule that I have updated it somewhat to reflect information about Callendar Square that was later provided by Gareth Jenkins, but otherwise I think the schedule is very similar to the one that I believe I sent to Jarnail Singh after viewing the civil files and which was then sent to the Defence. The schedule from this 11/1/11 email is as follows:

Alan Bates	Viewed all papers held by Civil Dept, consisting almost entirely of correspondence. No material to disclose. The debt was written off not because of any problem with Horizon but because not all the paperwork had been retained which would be necessary for a civil action.
Alan Brown/Callender Sq	There was a problem at Callender Square, Falkirk, which was rectified in March 2006. Therefore disclosure of this is only appropriate if the deficiency in the particular case predates March 2006. The best way to provide disclosure in relation to this office is to serve the summary of the Callender Square problem prepared by Gareth Jenkins and attached to his final report for the Misra trial.

WITN09610100

Jo Hamilton	I viewed the complete criminal file. No material to disclose.
Noel Thomas	I viewed the complete criminal file. No material to disclose.
Rajinder Bilkhu	I viewed the only papers held by the Civil Dept, a small amount of correspondence. No material to disclose.
Anar Bajaj	I viewed the only papers held by the Civil Dept, a small amount of correspondence. No material to disclose.
Lee Castleton	I viewed 4 boxes of material in relation to the High Court case. This was not all the material held in storage and I was asked by Mandy Talbot if I required to see the remainder. Having read the Judgment I decided that there was no need to request any further material. The Judgment is a complete refutation of Castleton's allegations. I advised in Misra that the Judgment in the High Court case be served but this was only because of the mention in that Judgment of the Callender Square problem. Now that we have

WITN09610100

	Gareth Jenkins' summary there will be no need to disclose the Judgment in other cases.
Julie Ford	I viewed the only papers held by the Civil Dept, a small amount of correspondence. No material to disclose.

56. I will now set out as fully as I can the history of disclosure requests made following the adjourned trial hearing on 3/6/09. I will try to set out clearly in this disclosure review what my opinion of the various disclosure requests was. In summary, I thought that some requests were onerous but reasonable, others far too wide and irrelevant. These very wide requests contributed to making the disclosure exercise fractious.

57. The Defence served a s.8 disclosure request dated 30/9/09. The request exhibits 3 magazine articles SM/1, 2 and 4 (though I have not been provided with these) and an interim report from the Defence expert Professor Charles McLachlan (POL00093689). In that report the Professor sets out possible hypotheses he would like to examine in relation to the Horizon system:

    a. "The User Interface gives rise to incorrect data entry: poor user experience design and inadequately user experience testing can give rise to poor data entry quality. In cases that users are working under pressure, insufficiently trained or are using a system presented in a different language different from their first language the problems of data entry can be exacerbated." This is a complicated way of saying

WITN09610100

"manual error in using the screen, because of pressure, poor training or language difficulties", i.e. not a computer problem. Professor McLachlan suggested he wanted to sit beside a user who represented the "kind of user engaged by the Defendant". In later reports the Professor would continue suggesting experiments along these lines, without, it seemed to me, considering that a first port of call might be for the instructions of Mrs Misra to be taken so that she might be able to help him in assessing what her problems might have been and what losses she might have caused. I felt, rightly or wrongly, that the sort of experiments Professor McLachlan proposed were potentially irrelevant to Mrs Misra's situation and unrelated to any computer problem.

b. "The Horizon system fails properly to process transactions: accounting systems are usually designed to ensure that accounts balance after each 'double entry' transaction. In particular, a database technology referred to as 'two-phase' is used to ensure that either both entries or neither entry is recorded on the system." This was a potential computer problem. In due course Professor McLachlan was able to satisfy himself, with the assistance of Gareth Jenkins, that Horizon did, as he in fact already assumed, have appropriate technology to guard against this problem (see e.g. transcript POL00001856 at p.22G-23B).

58. The next disclosure request I have in the documents provided to me is POL00058503. From the emails it is clear that it follows another similar request and is dated around 28/11/09. I have provided a written Advice (POL00044557) in response to this Defence request and it may be helpful to

WITN09610100

place that Advice alongside the 2 disclosure requests. As can be seen from paragraph 4 of my Advice I summarise the work I have done in relation to the civil and criminal files. I set out the test for disclosure that I agreed with the Defence "when we attended the West Byfleet office on 6/11/09". In paragraph 6 of the Advice I ask for enquiries to be made about what I have discovered about Callendar Square, from a careful reading of the *Castleton* judgment. My words in the Advice seem to confirm that the decision to make enquiries about Callendar Square, leading to disclosure of that issue, was indeed down to me. Paragraph 7 of my Advice also appears to be highly significant both generally and in terms of determining my role in disclosure: "I also think that our disclosure duty requires us to ask Fujitsu whether they are aware of any other Horizon error that has been found at any sub-post office. I anticipate that there will be none, but it is important that the check is made." My suggestion is clear and deliberately wide-ranging. I assumed, and my assumption seemed confirmed from everything else I read and heard in the case, that my very clear request had been complied with and would continue to be considered by my instructing lawyer and those who provided information to me and him about Horizon (Fujitsu and Gareth Jenkins). My Advice was naïve enough to suggest these Fujitsu enquiries could be completed quickly and it is obvious from my remarks that I accepted that what I was being told about Horizon was right. I always thought that the labelling of Horizon by POL as "robust" was not an answer in itself, but it always seemed to me that it was justified. The remarks I made in my closing speech at POL00065708 p. 23G-24A were meant to show that there was a legitimate basis to the suggestion that Horizon was "robust" and that this was not an empty mantra. Another

WITN09610100

factor in my acceptance that Horizon was robust was that I was told by my instructing solicitor that there was an absence of complaints about Horizon from Crown Offices, the larger free-standing Post Offices that were not part of a shop.

59. Returning to my Advice and particularly the disclosure requests of POL00058503. In paragraph 10 of the Advice I explain that the requests in the Contract 2) a) and b) sections are far too wide and seem to have no relevance to Mrs Misra's case. It is an enquiry like this that is going to cause frustration – it is irrelevant and if complied with will waste time that should be spent on obtaining and considering relevant disclosure. The disclosure request at Paragraph 11) and my remarks at Advice paragraph 15 make for bitter reading in the light of *Hamilton & Others*, from which it is clear that these logs, the ARQ data, must be assessed first by the Prosecution fully for bugs and then must be disclosed in full, and the Court of Appeal poured proper scorn on the objection of the cost of this exercise. I can only say by way of mitigation that in 2009/10 much less was known about Horizon problems than by the time of the Clarke Advice in 2013 and I personally only knew about Callendar Square. The lawyers on both sides in the *Misra* case were dealing with a novel situation and, unlike the Court of Appeal, had no benefit of hindsight. The Defence at paragraph 11) of the disclosure request POL00058503 only pressed for an explanation of the cost and subsequently made no s.8 application for a wider span. The Crown on the other hand felt that more focussed enquiries about specific transactions might be more helpful. I am still of the view that the efforts to encourage greater specificity were justified. I thought, rightly or wrongly, that it was reasonable to suggest

WITN09610100

that Mrs Misra, who had had the opportunity to check her office's stock against the various available Horizon printouts at any time she chose, might have been in a good position to suggests fruitful areas of enquiry. Her knowledge of Horizon had been sufficient, according to her, to identify thieves. The Crown considered that the Defence should at least try to focus their requests on the basis of what their client had experienced at the coalface. There are many defence requests that I consider reasonable in my Advice and it can be seen (my Advice, paras 22 and 23) that I made the effort to contact other barristers instructed to prosecute other cases. The request at paragraph 19) of POL00058503 is astonishingly wide. I recommended some diplomatic language to be used to respond to this.

60. POL00053723 is the email from Jarnail Singh which asked for my Advice (POL00044557). Within the email chain seems to be part of the disclosure requests POL00058503 or a very similar document. Also present in the email chain is an email from Mark Dinsdale dated 11/12/09 explaining the practical difficulties these disclosure requests were going to cause the Post Office investigation team. Jon Longman was the investigator (having taken over from Adrian Morris) and disclosure officer. He, therefore, had the responsibility to reply to the disclosure requests. The point being made in Mark Dinsdale's email is that the requests are so demanding that they will not only occupy all of Jon Longman's time but they will also paralyse the work of the whole investigation team. The Post Office employed a relatively small amount of investigators to cover all of its nationwide criminal cases.

WITN09610100

61. I do not seem to have been provided with the Further Request for Disclosure dated 30 November 2009 (POL00053646), but infer that it is essentially the same document as POL00058503.

62. The first action taken on my Advice (POL00044557) was unfortunately the rather brusque letter dated 11/1/10 (POL00053746). The wording used in the letter is taken directly from paragraph 2 of my Advice, but I had meant these words (as my Advice tried to make clear) to be part of our response to the requests, not a stand-alone letter. There was nothing wrong with requiring a proper particularised Defence Statement, but I do think this letter set an unfortunate tone which contributed to the Defence losing patience and deciding to argue abuse of process.

63. There was a much fuller response to the disclosure requests on 27/1/10 (POL00044553), which largely follows my written Advice together with information provided by Jon Longman. The attendance note drafted by Jarnail Singh dated 27/1/10 (POL00053849) appears to have been written before the 27/1/10 letter and it seems that the discussion referred to in the attendance note may have prompted that letter: "Counsel said that we should disclose everything we can disclose at this stage so the Defence will know where we are coming from. We should be seen to be willing." I was anxious that the tone of the 11/1/10 letter should not give a false impression that we were being obstructive. The 27/1 letter does exactly what I advised in the attendance note – it discloses what we could at the time. I was still awaiting the matters I raised for Fujitsu's attention in my Advice at paragraphs 6-8 before responding to the s.8 application. I am asked, with reference to

WITN09610100

POL00053849, what I understood to be the problem, in January 2010, with the disclosure of data from the Horizon IT system. I don't think POL00053849 is suggesting that there was a particular problem. I read the document as meaning that Jon Longman will chase up Fujitsu/Gareth Jenkins for the answers I requested in my Advice at paragraphs 6-8.

64. I have found an old email which appears to show that I drafted and served a short response to the s.8 application on 29/1/10 [WITN09610103 & WITN09610104]. The concluding paragraph of the document I drafted reads as follows: "Further enquiries are being made about the "problem" at Callender Square, Falkirk, which is discussed at paragraph 23 of the Castleton Judgment. Further, more general enquiries are being made with Fujitsu." I exhibit the email and s.8 response I drafted.

65. The 27/1 letter was designed to assist the Defence in time for a mention on 1/2/10. My colleague Elizabeth Smaller (now HHJ Smaller) covered the hearing which is recorded in an attendance note by Jarnail Singh (UKGI00014903). The attendance note shows that a second Defence Statement had been served on 21/1/10, as had been requested in the letter of 11/1 (POL00053746). The Attendance Note suggests that Gareth Jenkins will provide a statement dealing with the Horizon aspect of the case, by which I understand both the Horizon enquiries in the Defence disclosure requests and also those matter raised in my Advice at paragraphs 6-8. I referred to Gareth Jenkins, in my Advice paragraph 26, as being the person with whom Jon Longman was dealing to answer questions raised by Professor McLachlan. My recollection is that this is how Gareth Jenkins came into the case, as the

WITN09610100

person with the right expertise to deal with Horizon enquiries and questions raised by Professor McLachlan. It was simply impossible to answer defence Horizon enquiries without his expert help.

66. I have seen a draft reply in email form (POL00054162), dated 22/2/10, to a third defence disclosure request. I have not been provided with the third disclosure request, so it is not easy for me to deal with this document in detail. The document shows that Gareth Jenkins was now being treated as an expert witness by the Crown, as it refers to 2 experts. There is an important concession to note in paragraph 11, that the Crown will review its position on the acceptability of pleas if analysis by the experts of the logs, i.e. the ARQ data, suggests the deficiency may have been caused by mistakes rather than theft. Reading through the document my impression is that I would have advised, probably by telephone, both before this document was written and after it. I note that the wording of the email when it was eventually sent out seems to be the same as the draft, though the layout is slightly different (it appears in the email chain in POL00054248, dated 24/2/10). I was regularly giving advice to Jarnail Singh over the phone about disclosure matters after my written Advice. I cannot remember the precise details of this non-written advice because of the lapse of time, but one of the main purposes of my written Advice of 5/1/10 was to set out some clear parameters to assist Jarnail Singh with what I considered reasonable and what were unreasonable requests.

67. I have been asked about Juliet McFarlane's concern, in the letter dated 2/2/10 (POL00053954), about paragraph 23 of my written Advice. I had advised

WITN09610100

there that the expert report and case papers in *Hosi* be disclosed. I made clear in the Advice that the *Hosi* report appeared unimpressive (and so perhaps of borderline assistance to the Defence in *Misra*). Juliet McFarlane was perfectly entitled to raise the concerns she did in the POL00053954 letter, particularly that the report was preliminary. I cannot now remember any of the contents of the expert report but it is clear from the email POL00054162 at paragraph 18 that I reconsidered the matter and changed my mind. I hope I am sufficiently robust to make that kind of decision myself. I was not brow-beaten by Juliet McFarlane who was a gentle person. An open-minded prosecutor will from time to time change their mind.

68. I am asked about the Post Office's reaction to my advice on disclosure, not just in relation to the small episode with Juliet McFarlane, but generally. I was feeling some pressure from the Post Office side about what it saw as excessive requests but I never detected any wish on its part to be obstructive or to do anything other than comply in good time with the Prosecution's disclosure responsibilities. I largely agreed about many of the disclosure requests being far too wide. The main impression I had throughout, although I confess to finding the disclosure exercise a stressful experience, was that what the Post Office most wanted was to be helped by me. Jarnail Singh regularly contacted me to discuss disclosure, in addition to relying heavily on my written Advice. I did not feel the Post Office was fighting tooth and nail on every disclosure point. There may have been an unwise frustration from time to time, on my part as well as theirs, but that was really because the task was novel and difficult. It was a novel task for the Defence as well. They were guided by Professor McLachlan, who set out a series of hypotheses and

WITN09610100

suggested various experiments and said, in his evidence at trial, that he had never spoken to Seema Misra (POL00001856 p. 72C); he thus had no idea about how well she could speak English, even though language difficulties was a topic he wanted to suggest as a cause of Horizon mistakes. He had never looked at her CV (POL00001856 p. 81B). The Professor didn't think trying to obtain a list of problems Mrs Misra had actually experienced at West Byfleet would have been a helpful starting-point (POL00001856 p. 74E-F). He had made no attempt to discover whether Mrs Misra had experienced any of the symptoms of the Callendar Square bug (POL00001856 p. 84H-86F). I do not forget that, whatever the nature of the requests, the duty of disclosure is on the Prosecution and I remain very troubled that paragraph 7 of my written Advice should have been answered in a different way - "I also think that our disclosure duty requires us to ask Fujitsu whether they are aware of any other Horizon error that has been found at any sub-post office. I anticipate that there will be none, but it is important that the check is made." However, my experience of the Post Office attitude at the time of this huge disclosure exercise was that they knew what their duty was and they wanted to fulfil it. In the years since I have had many animated discussions with CPS lawyers about disclosure; they too demand, correctly, detailed Defence Statements; they too query relevance of disclosure requests. The fact that these discussions are held does not mean that those lawyers are being obstructive.

69. The Defence dissatisfaction with disclosure culminated in an abuse of process argument before Rec. Bruce on 10/3/10 (date from POL00054275).

WITN09610100

70. I was disappointed that the Defence had resorted to an abuse argument at this stage. The Prosecution had, in fact, disclosed a wide-ranging amount of material and answered arduous questions. Our efforts to encourage focussed disclosure requests, based on West Byfleet, had largely fallen on deaf ears. There was a temptation on the Prosecution side to think that the requests were so wide in order that they would be refused in part, and were thus designed to lead to an abuse argument. On the other hand, I do acknowledge that both sides were in a very challenging situation and more diplomacy in the Prosecution's correspondence would have been helpful.

71. I don't seem to have been provided with the Defence abuse skeleton. I remember it helpfully set out the full history of disclosure requests and Prosecution responses. There are likely to have been disclosure requests that I haven't set out in this statement, because I haven't been provided with the documents, and the defence skeleton may help complete the picture.

72. There was a strong focus in the Defence abuse argument on the undoubted abruptness of the Prosecution responses to disclosure. I considered their arguments less strong on the true merits.

73. In my skeleton (POL00054346) I refer, with justification, to the "avalanche" of disclosure requests. I have been involved in many complicated and serious cases since – e.g. last year an Encrochat cocaine conspiracy (*R v Lockyer & others*) with huge quantities of unused and sensitive material – but I have never known a more difficult case for disclosure than *Misra*.

74. In paragraph 2 of my skeleton I set out relevant facts about West Byfleet – Mrs Misra was a longstanding SPM; her successor, Mr Varsani, had had no

WITN09610100

Horizon problem with the equipment he inherited – in order to show that the Defence may have been able to provide more focussed disclosure requests. I see a reference to a disclosure request dated 3/2/10 in paragraph 4; this may be the request that was responded to by POL00054162, dated 22/2/10, but I obviously cannot be sure as I have not been provided with that disclosure request.

75. I explain, at paragraph 6 of my skeleton, why Gareth Jenkins has been instructed as an expert: "his instruction was a belated recognition that the only way fully to comply with our disclosure obligations was to instruct an expert at Fujitsu". At paragraph 7-8 I explain that the Crown had decided, at some expense, to provide a year's worth of ARQ data. I set out the £20,000 cost and the amount of transactions involved (431,490). I explain that the Defence had provided no proposal as to an appropriate span of data, other than their original suggestion, but I also set out the reasons why that 12 month span has been chosen: the Defendant admitted consistent false accounting throughout nearly 2 ½ years, so, if this was down to a Horizon problem, it would appear to be a long-standing, consistent problem that should be apparent in a narrower span of data as much as in the full data; the period post-dated when Mrs Misra claimed she had put a stop to thefts by employees, so that span of data shouldn't be confused by the alleged theft problem. I have to concede that with hindsight this approach to the disclosure of ARQ data was wrong. This is clear from *Hamilton & others* (at paras 91 (i), 131 and 207). Although I have been critical of the Defence in terms of some of their disclosure requests, on this issue they were entirely correct. I hope it is clear, however, that the approach to the service of ARQ data was carefully considered and

WITN09610100

issues such as the Clarke Advice, that informed the Court of Appeal's approach and the concessions made by the Respondent in *Hamilton & others*, had simply not happened yet. Nevertheless, POL should still have understood its own equipment and quite why it came to be that a large amount of data was served without any further information as to Horizon problems other than Callendar Square, I cannot say. I was clear in what I said in my written Advice at paragraph 7.

76. At paragraph 10 of my skeleton I query the relevance of Professor McLachlan's plan to film another SPM in action but the point I seek generally to make is that the two experts already seemed to be working well together. With their cooperation I genuinely believed that we had all found a way of working towards an entirely fair trial.

77. The Recorder gave a judgment on 12/3/10 when he declined to stay the case for abuse, largely because to do so is an exceptional course and it seemed to him that the alleged unfairness could be cured by the recent developments which would allow the experts to work together on the transaction logs. The trial date was adjourned to 21/6/10. The Recorder made it clear that he had made no finding of fact and he should not be thought of having approved the Post Office's responses to disclosure requests. I think the question of costs was reserved, which was a sign that he was unhappy, at least in part, with the Post Office responses and had had some sympathy with some of the Defence complaints.

78. The next hearing was on 7/5/10 before the resident Judge, HHJ Critchlow (see my attendance note POL00045565). There was a new disclosure

WITN09610100

request on this day in relation to the “central Horizon computer system”. I remember very little about this request, apart from what is set out in my attendance note, and have not been provided with a copy. The request had been drafted by Professor McLachlan who indicated that his new planned work on this material was likely to take 42 hours. I did not see the relevance of this disclosure. I told the Defence that I was not prepared to make any further disclosure and they would have to make a s.8 application. When HHJ Critchlow was shown the document he stated that the suggested 42 hours work would be a complete waste of public money. The Defence did not pursue the matter further. The 21/6 fixture was broken for Keith Hadrill’s convenience and the new date for trial was fixed of 11/10/10. The Judge ordered that the experts should compile a schedule of their points of agreement and disagreement.

79. I am asked to give an account of the abuse or process application made by the Defence at trial. On the first day of the trial, 11/10/10, HHJ Stewart gave a ruling against a stay for abuse of process (at p.24H – p.27A of transcript UKGI00014994). The application to stay was renewed again, on 18/10/10, at the end of the Prosecution case, by which stage the jury had heard evidence from both Professor McLachlan (see paragraph 84 below for the reasons for the timing of his evidence) and Gareth Jenkins and so the abuse point was understood by all parties with greater clarity. The second ruling is at transcript UKGI00014845, p.25B – p.27F. I had little memory of this abuse argument until I read the trial transcripts that have been provided to me but I can now piece matters together.

WITN09610100

80. The abuse application was very different from the argument that was heard in March. It did not relate to any previous disclosure request and it was not in connection with the 12 months of West Byfleet transaction logs. Gareth Jenkins in his statement dated 8/10/10 (POL00110275) had given a summary of the Callendar Square problem, at 2.4.1, and explained why he thought the symptoms of the Callendar Square problem were not evident at West Byfleet – there were no calls to the Help Line that matched the obvious symptoms of the Callendar Square problem and there were no System Events for West Byfleet from 30/6/05-31/12/09 in which a Callendar Square problem was visible – see Jenkins's report (POL00110275) at p.19. Gareth Jenkins had described the Callendar Square problem in an earlier statement, dated 9/3/10 [POL00001643, at p.12]. Professor McLachlan seemed initially to have accepted what Mr Jenkins had said in his March statement and seemed to renew his interest in Callendar Square only shortly before the trial. On the first day of the trial, as the 2 experts discussed Callendar Square as they worked together outside court, Mr Jenkins showed Professor McLachlan on his laptop a peak incident report containing a summary of the Callendar Square problem. Gareth Jenkins had relied on this peak incident report to describe the Callendar Square problem in his statements; he was not himself the author of the peak incident report. Professor McLachlan suggested he wished to see the underlying material for the peak incident report. That underlying data was archived but retrievable within a few days.

81. The first abuse argument was set out in a handwritten document which was read out at transcript UKGI00014994, p.11D and then expanded upon at p.12. Time was given for the experts to work together to see if they could reach

WITN09610100

agreement but at p.16F-H it can be seen that Professor McLachlan still wanted the underlying material which was described by Mr Hadrill as “unavailable”. I pointed out at p.19Gff that the Crown had alerted the Defence to the Callendar Square issue in the first place and Gareth Jenkins gave an explanation of the problem in a report dated 8/3/10 which I then summarised. I explained that the Crown was seeking the material Professor McLachlan had requested “today”. I pointed out that it was important to remember that the Callendar Square problem was solved in March 2006, so it could only have, at the very most, a limited relevance to an indictment period that ended in January 2008. HHJ Stewart in his ruling stated that he was quite satisfied that the issue of Callendar Square could be fairly explored in the course of the trial. If Professor McLachlan remained “of the opinion that his ability to express a concluded view is hampered by some lack of information which the prosecution should have supplied, he may express that view in the course of his evidence…if I conclude that the consequence is that the trial is not and cannot be fair then I retain the power to order a stay of the proceedings” (p.26B-D).

82. In his evidence at POL00001856 p.47-48, Professor McLachlan explained that he had the evidence of the symptoms of the Callendar Square problem from the peak incident report but that he would wish to go back and verify the symptoms for himself.

83. The application to stay was renewed again, after the close of the Crown’s case (transcript UKGI00014845 p.20-22). I argued (UKGI00014845 at p.23Cff) that the Callendar Square issue was essentially irrelevant to the trial.

WITN09610100

Professor McLachlan himself agreed that he had seen no evidence that the Callendar Square problem existed at West Byfleet at all. I pointed out the unlikely scenario of the symptoms being misreported in the peak incident report. The data Professor McLachlan wanted was archived (transcript UKGI00014845 p.23F) but could be made available in a couple of days. Instead of pressing for the material, which they could potentially have asked for long before the trial, the Defence made an abuse application. The Judge ruled that Callendar Square "issues can most emphatically be dealt with as part of the trial process and if there is any disadvantage to either party…that is something which the jury can consider and take into account in deciding whether or not the prosecution have made them sure that Mrs Misra is guilty of the offence of theft" (p.25G).

84. I cannot now remember whether the raw material was finally retrieved. Professor McLachlan had asked to give evidence early in the trial because he was making a business trip to South America (POL00029406 p.2A), so he probably wouldn't have been in a position to consider the material if it arrived. In due course it is worth noting that when Mrs Misra gave evidence she did not suggest for a moment that she had experienced the Callendar Square symptoms at West Byfleet.

85. I am asked to provide an account of Fujitsu's involvement in these proceedings and explain the involvement of Gareth Jenkins and Penny Thomas. I cannot help on Penny Thomas. I had no dealings with her. Jon Longman appears to have liaised with her, and through her with Gareth

WITN09610100

Jenkins, as he attempted to answer the disclosure requests I have previously outlined above that could only be answered by somebody at Fujitsu.

86. I am asked to give my view of the appropriateness of Fujitsu employees giving evidence in a prosecution in which the Defence was attributing deficiencies to problems with the Horizon IT system. I don't see anything inappropriate about Fujitsu employees giving evidence in a trial about Horizon. Some of the questions raised by Professor McLachlan could only be answered by someone at Fujitsu and the Professor was actively seeking help from Fujitsu to see if any of his theories about Horizon, a system of which he had no prior knowledge, were relevant or simply misunderstandings on his part. If Fujitsu hadn't been involved we would have had a non-ending cycle of interim reports containing unevidenced hypotheses.

87. I am asked whether I considered Gareth Jenkins to be acting as an expert in the case and, if so, what discussions I had with Mr Jenkins about the role of an expert and the existence and nature of the duty owed by an expert to the court.

88. I did not specifically advise that the Crown should instruct an expert at all, but it became obvious that having only Jon Longman liaising with Fujitsu in order to answer complex disclosure requests was untenable. Greater technical expertise was needed to answer the enquiries raised by Professor McLachlan's interim reports. I therefore saw the initial contact with Gareth Jenkins as a way to fulfil our disclosure obligations, simply because he had the necessary expertise to answer Professor McLachlan's questions. It was soon obvious both that Gareth Jenkins had the necessary expertise to be an

WITN09610100

expert witness and that he and Professor McLachlan should be able to work together in a cooperative way. It therefore seemed to me that it was entirely appropriate that we should use Gareth Jenkins as an expert witness: his evidence would be of assistance to the court; he had relevant expertise; he seemed to me, from all my dealings with him, to be impartial and able to provide unbiased, objective evidence on matters within his field of expertise. I bore in mind that he was an employee of Fujitsu and considered very carefully whether that presented a conflict of interest that should disbar him from being an expert witness in the case. It is well established that a potential conflict of interest does not operate so as to disqualify automatically an expert witness from giving evidence. The key question is whether the evidence that the witness gives is impartial. In *R v Stubbs [2006] EWCA Crim. 2312* an employee of HSBC, the loser bank, was permitted to give expert evidence about the Hexagon system at HSBC, even though it was submitted (see para 41) that "he lacked the necessary independence to be an expert witness, in particular because of the commercially catastrophic effect of one of HSBC's employees conceding on oath that the system suffered weaknesses or was open to attack in various ways. It was argued that the court should not allow the opinion evidence of such a person in respect of the operation and reliability of a computer system that he was in effect paid to defend."

89. The key point where there is a potential conflict of interest is complete transparency so that the weight of the expert's evidence can be properly assessed, and that is what I sought to achieve.

WITN09610100

90. I was aware that Mr Jenkins had not been an expert witness before. I took great pains in all my conversations with him to make sure he understood the duties of an expert witness. I explained that it was his overriding duty to assist the court by giving an opinion that was objective and unbiased. I explained that his duty to the court overrode any obligation he might feel to the party calling him. I explained that it was his duty to disclose anything that might undermine his opinion. I made it clear that he should be entirely open with both the Crown and Professor McLachlan about any Horizon problems and their symptoms which might be relevant to the case.

91. It is noteworthy that throughout the trial Professor McLachlan was at pains to express his gratitude for the expertise and help of Mr Jenkins: see for example in transcript POL00001856 p.20E, p.47D, p.48B, p.51D, F-G, p.85A (on Callendar Square), p.111A. All their interactions and the evidence they gave suggested very strongly to me that they were cooperating in an entirely fair and open way. I never had any indication that Mr Jenkins might in any way be failing in his duty as an expert witness. He struck me, throughout all my dealings with him and from what I saw of him in court, as straightforward, modest, open-minded and impartial. I appreciate that some very severe criticisms have been made of Gareth Jenkins since. I can only describe what I saw of the man and I, at least, have the benefit of having had considerable face to face dealings with him.

92. It is perhaps important to consider what the Judge said about both experts in the trial. The Summing-Up deals with the experts at POL00065708 p.61G-66A. HHJ Stewart described both experts as “experienced and highly

WITN09610100

qualified" (61G). At p.63A the Judge refers to an exchange he had with Mr Jenkins (which can be seen at POL00029406 p.138G-139A) about whether his employment status might have affected his evidence: "he (Jenkins) insisted that that is not the position, and you saw him". Throughout the trial my impression was that Gareth Jenkins was genuinely engaged with Professor McLachlan in a sincere and open examination of Professor McLachlan's hypotheses. That was clearly also the Professor's view, as he said repeatedly in his evidence.

93. In the trial I thought Gareth Jenkins gave fair and thoughtful evidence. A good example of his appreciation of the role of an expert witness is at POL00029406 p.124D-F. His answer "I've no way of knowing whether the money loss was due to theft. I don't even know that the money was lost" is scrupulously fair and indicative of the engaging and modest way he gave his evidence. I obviously cannot comment about Gareth Jenkins outside of the context of the *Misra* trial, but it never occurred to me that he was anything other than impartial. I was fully prepared and considered it my duty, if he and Professor McLachlan discovered something of significance to help the Defendant, to review the prosecution.

94. I am asked whether Mr Jenkins's email POL00054250 had any effect on my assessment of Mrs Misra's defence. Mr Jenkins does raise the same sort of query as I had been raising long before: "What I still don't understand is exactly what it is that the defence is claiming in terms of where exactly Horizon might have "lost" this money". I suppose I might have been slightly reassured that Mr Jenkins was thinking in similar terms to me, that the

WITN09610100

Defendant might be able to give some kind of clue as to where losses were occurring, but I don't remember this email having any real effect on my assessment of Mrs Misra's defence.

95. I am asked about UKGI00014898, POL00055100, POL00055150 and POL00055146 which I think concern two different requests by the Defence, only one of which related to Horizon.

96. The first request concerned an unidentified sub-post office in the Midlands where according to Professor McLachlan, who had interviewed the person concerned, the SPM, who wanted to remain anonymous, was suffering Horizon problems. The full details of Professor McLachlan's investigation into that sub-post office are set out in his second interim report, dated 19/11/09, (POL00094101) at p.11-17. It can be seen that the Professor obtained a great deal of information from the anonymous SPM. My reaction when I read this report was surprise that the Professor should go to such trouble to interview this SPM but not Mrs Misra. The disclosure request POL00058503, at paragraph 16, appeared to request immunity from criminal investigation for this Midlands SPM.

97. The second request sought access to the main office at Chesterfield so that, as I understand it, Professor McLachlan could examine procedures there, in particular in relation to transaction corrections. This second line of enquiry didn't seem to relate to Horizon but rather to human error possibilities at Chesterfield. Andrew Bayfield gave evidence, amongst other things, about procedures at Chesterfield in relation to transaction corrections on day 3 of the trial, 13/10/10 (I have read the transcript of his evidence on the internet;

WITN09610100

transcripts of the whole *Misra* trial have been readily available on the internet for some years and my memory of the case would be much poorer without their assistance). I can see from the documents, which I list at the beginning of paragraph 95, that access was requested and refused in fairly robust terms on both sides. I seem to have provided telephone advice to Jarnail Singh on this topic on 28/7/10 (POL00055118).The Defence was told (in POL00055146) that they could pursue this request by a s.8 application, a course they did not follow.

98. I am asked about my view of the outcome of the case at the time. At the time of the trial I believed that Mrs Misra had had a fair trial. I wasn't surprised by the verdict, but I also would not have been surprised by an acquittal. I thought the jury had been given a very full understanding of the issues in the case. They had been assisted by nearly 2 full days of expert evidence from experts who seemed to be working well together. Professor McLachlan graciously conceded theoretical hypotheses, where he accepted they could be shown by evidence to be without foundation; but he was also firm and clear where he thought there were areas of doubt and the real risk of a computer problem. Mrs Misra gave a full account in evidence. I hope I cross-examined fairly and I hope that my speeches were fair – they are all set out in the transcripts, so others can judge. I did not seek to hide behind the mantra that Horizon was "robust". I argued that point on the evidence. I did not suggest that the system was infallible and I conceded that all computer systems can have glitches, which is a matter of common sense and human experience – one only has to look at the recent problem with air traffic control. The Summing-Up was detailed and fair. I hope it is not unfair to point out that there were several

difficulties for the Defence to confront from the evidence: Mrs Misra's successor, Mr Varsani, had suffered no significant problem with the same Horizon equipment; Andrew Dunks gave evidence about Help Line calls – there were none suggestive of a Horizon problem consistent with the degree of false accounting employed by Mrs Misra; there were significant omissions from her PACE interview – no mention of her problems using Horizon about which she gave evidence, no mention of the problems her trainers had apparently witnessed, no mention that her losses began right at the start with her trainers present, no mention that she had told her area manager, Timiko Springer, about thefts by her staff; Mrs Misra claimed to have been incompetent in her handling of Horizon, yet was able to falsify her accounts by sophisticated means. On the other hand there were plenty of good defence points that can be seen in the transcript of Mr Hadrill's closing speech. I thought the trial was fair and matters fairly left to the jury.

99. I am asked to reflect about the trial now, particularly in the light of the *Hamilton* judgment. I have thought about this case for many years; that is why I remember it much better than other more recent cases. I don't pretend that I have come to any clear conclusions. I am very troubled by the case and to an extent confused.

100. I am particularly concerned when I read paragraph 206 of *Hamilton & others.* This refers, I think, to a communication about a specific bug very shortly before the *Misra* trial. I was asked in the disclosure exercise for the *Hamilton* appeal about an email (I think, or possibly a memo) relating to the RPM bug and whether I had seen the email/memo. I said I had not seen the

WITN09610100

document before, which is true. I have not been provided with that document by the Inquiry and I have not seen it since I was asked the question. I have had to rely simply on the summary of the position in the *Hamilton* judgment at paragraph 206. If I had seen that email/memo at the time of the *Misra* trial I would have insisted on its disclosure and I would also have required a rigorous enquiry into the question of any other bugs, because I would have feared that the clear instruction I had given in my written Advice (POL00044557), at paragraph 7, had not in fact been followed. I don't pretend to understand the reason why I did not see this email/memo. It ought to have been very clear from my Advice, and, I think, everything I said in the case, that I needed to know about computer problems and bugs and that they would need to be disclosed. This RPM bug didn't affect Legacy Horizon, so strictly speaking it could not have affected Mrs Misra's case, but, quite frankly, that is beside the point.

101. I have dealt elsewhere in this statement with the reasons for the chosen span of ARQ data. I accept the criticisms made at *Hamilton* & others paragraphs 91 (i), 131 and 207. The Court of Appeal, looking at the full history of Horizon disclosure failings, has rightly concluded that Mrs Misra did not have a fair trial. That is exactly the opposite of what I wished to achieve.

<u>Prosecution of Susan Rudkin</u>

102. I had little involvement with this case and only covered the confiscation hearing on 19/8/09. The guilty plea in the Magistrates and the sentence in the Crown Court had been dealt with by a solicitor advocate, John Dove (POL00051231 and POL00051380) who was unavailable for confiscation, so

WITN09610100

Counsel was instructed for that. Counsel instructed was Henrietta Paget (now KC). On the backsheet (POL00052094) her handwriting appears above my handwritten endorsement for 19/8/09. It can be seen that she read the papers and sent advisory emails. There is reference to the advice about confiscation given by Miss Paget (dated 17/9/09 on POL00057602). It appears that she gave sensible advice that the amount to be sought in confiscation could be no more than the loss; no order could be attached to the turnover of the business (see POL00057602, entry for 17/8/09).

103. When I appeared on the case the confiscation order was agreed in the sum of £35,894.15, the Defendant having already repaid some of the loss. Apart from this information that I have gleaned from the documents I cannot assist further about this case. I have no recollection of the case independent of the documents and I do not seem to have provided any advice.

General

104. Finally, I am asked whether there are any further matters that I wish to bring to the attention of the Chair of the Inquiry. I have dealt, fully I hope, with the cases of Mrs Misra and Mr Page, and apologise for having little or no recollection of Mrs Rudkin's case. Otherwise, in these cases, indeed in all cases where I am instructed, I strived to do the best job possible while following the conduct rules set out in all the relevant guidelines. I am proud of my role as a barrister in the criminal justice system and am extremely sorry that I played an unwitting role in Seema Misra and Carl Page having unfair trials. I am particularly conscious that in Mrs Misra’s case I was Prosecution Counsel at the head of a difficult disclosure exercise that failed. Over the

WITN09610100

years, as I have watched and tried to learn from all the Horizon cases, I have thought repeatedly about whether there was something different I could have done, whether I should have asked more or different questions, whether I should have insisted on an independent expert. I cannot see how Professor McLachlan could have worked without considerable assistance from Fujitsu and someone like Gareth Jenkins, but perhaps there should have been the extra precaution of an independent expert on the Prosecution side. I have tried to set out in this statement a full account of both the *Page* and *Misra* cases, the decisions I made and the reasons for those decisions, so that the Inquiry can see what happened at the time and judge for itself what went wrong and what lessons can be learned. I will obviously assist in any way I can.

Statement of Truth

I believe the content of this statement to be true.

Signed:

GRO

Dated: 25/10/23

WITN09610100

Index to First Witness Statement of Warwick Henry Patrick Tatford

No.	URN	Document Description	Control Number
1	POL00067005	Carl Page case study: Evidence of Karl Adrien Page (R v Page and another) before Judge W Wood	POL-0063484
2	POL00066717	Carl Page case study: Counsel for the Prosecution's revised opening note to jury in the re-trial of Carl Page	POL-0063196
3	POL00045921	Letter from DC Deans to Staffordshire police regarding John Whitehouse dated 7/5/2003.	POL-0042400
4	POL00045867	Expert Accountant's Report of David Liddell In the Crown Court at Dudley - R v Carl Adrian Page	POL-0042346
5	POL00045868	R v Carl Adrian Page, Expert Accountant's Report of David Liddell	POL-0042347
6	POL00061214	Between Regina and Carl Adrian Page Report to the Court prepared by T Taylor, a Director in KPMG LLP.	POL-0057693
7	UKGI00012306	Carl Page case study: Regina and Carl Adrian Page Defence Statement	UKGI023102-001
8	POL00044585	Seema Misra case study - Instructions to counsel to settle indictment and advise on evidence and brief for the prosecution in The Queen v Seema Misra	POL-0041064
9	POL00044613	Summary of facts (POL v Seema Misra)	POL-0041092
10	POL00045010	POL v Seema Misra - Schedule of Charges	POL-0041489
11	POL00045220	Schedule of charges - Post Office Limited v Susan Jane Rudkin	POL-0041699
12	POL00050750	Schedule of Non-sensitive unused material, R v Seema Misra	POL-0047229
13	POL00050751	Schedule of sensitive material, R v Seema Misra	POL-0047230
14	POL00044541	POL Investigation Report for Seema Misra (POLTD/0708/ 0249)	POL-0041020
15	POL00051092	Email from Warwick Tatford to Jarnail A Singh Re Indictment for Misra	POL-0047571
16	POL00051149	Indictment - R v Seema Misra	POL-0047628
17	POL00051539	Seema Misra Case Study - Email from Warwick Tatford to Phil Taylor re Seema Misra Guildford Crown Court Trail - W/L 1st -12th June 2009.	POL-0048018

WITN09610100

18	POL00051441	Letter from Phil Taylor to Mr Warwick Tatford. Re: Counsel's advice on criminal prosecution of Seema Misra for theft	POL-0047920
19	POL00051586	Email from Phil Taylor to Marilyn Benjamin to Warwick Tatford RE: REGINA v SEEMA MISRA GUILDFORD CROWN COURT TRIAL - W/L 1ST - 12TH JUNE 2009 CASE NO: POLTD/0708/0249	POL-0048065
20	POL00051773	Seema Misra Case Study: Attendance Note by Jarnail Singh re: Seema Misra at Guildford Crown Court(CRM/258932/JSX)	POL-0048252
21	UKGI00014845	Regina v Seema Misra, before his Honour Judge N.A.Stewart proceedings on Monday 18th October 2010 day 6	UKGI025638-001
22	POL00001856	Transcript of Proceedings Day 5 In the Crown Court at Guilford Before His Honour Judge N. A. Stewart for Regina v Seema Misra.	VIS00002870
23	WITN09610101	Email from Warwick Tatford to Marylin Benjamin re R v Gurdeep Singh Dale, attaching Misra Disclosure Schedule	WITN09610101
24	WITN09610102	Schedule of documents reviewed by Warwick Tatford to advise on disclosure in Misra	WITN09610102
25	POL00093689	Exhibit SM3 for R v Seema Misra Case at Guildford Crown Court. Expert report on Horizon.	POL-0093811
26	POL00044557	Advice on requests for disclosure in Seema Misra case	POL-0041036
27	POL00065708	Judgment re: HIS HONOUR JUDGE N.A STEWARD REGINA -v- SEEMA MISRA 19/10/2010.	POL-0062187
28	POL00058503	Email from Warwick Tatford to John Longman, Re: Misra further disclosure request from the defence.	POL-0054982
29	POL00053723	Email from Jarnail Singh to Warwick Tatford incl em chain from Mark Dinsdale to Rob Wilson re: advice requested on disclosure request in MISRA case	POL-0050202
30	POL00053646	Seema Misra Case study: Further Request for Disclosure - R v Seema Misra	POL-0050125

WITN09610100

31	POL00053746	Seema Misra case study - Letter from Jarnail Singh to Coomber Rich Solicitors, RE: R v Seema Misra, Guildford Crown Court, Trial 15 March 2010	POL-0050225
32	POL00044553	Letter Jarnail to Singh to Seema Misra's lawyers regarding Regina v Seema Misra Guilford crown court	POL-0041032
33	POL00053849	Attendance note from Jarnail Singh for Seema Misra dated 27/01/10.	POL-0050328
34	WITN09610103	Email from Warwick Tatford to Fiona Butler, Coomber Rich, attaching response to s.8 request in Misra	WITN0961010 3
35	WITN09610104	R v Seema Misra - Response to s.8 Disclosure Application	WITN0961010 4
36	UKGI00014903	Seema Misra case study: Court Attendance Note from Jarnail Singh re Seema Misra for Mention dated 01/02/10, updated 03/02/2010	UKGI025696-001
37	POL00054162	Email from Jarnail Singh to Warwick Tatford re Seema Misra Guildford Crown Court - response to Defence's third disclosure request dated 22/02/10.	POL-0050641
38	POL00054248	Memo from Issy Hogg to Jarnail A Singh re. Regina v Seema Misra Guildford Crown Court Trial - 15th March 2010 regarding disclosure and application to stay count 1	POL-0050727
39	POL00053954	Letter from J McFarlane to the Clerk of Warwick Tatford Re Regina v Seema Misra	POL-0050433
40	POL00054275	Notification of Fixture of Hearing re abuse of process application at Guildford Crown Court on 10th March 2010 - Seema Misra	POL-0050754
41	POL00054346	Seema Misra Case Study: Response to Defence Abuse Skeleton by Warwick Tatford - (R v Seema Misra)	POL-0050825
42	POL00045565	Regina Misra attendance note for the case listed on 7/5/2010	POL-0042044
43	UKGI00014994	Seema Misra case study: Record of proceedings in the matter between Regina and Seema Misra in the Guilford Crown Court (T20090070) on 11/10/2020 (Day 1)	UKGI025787-001
44	POL00110275	Witness Statement of Gareth Idris Jenkins Version 3.0 11/02	POL-0108082

WITN09610100

45	POL00029406	Tape transcript of R v Seema Misra Trial in Guildford Crown Court, 14 October 2010 - Evidence of Gareth Jenkins	POL-0025888
46	POL00054250	Email from Jarnail A Singh to Post Office Security, copied to John Longman and Warwick Tatford re. Regina v Seema Misra enclosing expert reports	POL-0050729
47	UKGI00014898	Seema Misra case study: Email from Jarnail A Singh, Andrew Winn, Marilyn Benjamin and others re:	UKGI025691-001
48	POL00055100	Emails between John Longman, Jarnail A Singh and others, re. Regina V Seema Misra - Guilford Crown Court - Trial	POL-0051579
49	POL00055150	Email from John Longman to Jarnail A Singh, Re: West Byfleet-Misra	POL-0051629
50	POL00055146	Letter from Jamail Singh to Jon Longman, Re: Regina v Seema Misra Guildford Crown Court Trial Case No: POLTD/07/08/0249	POL-0051625
51	POL00094101	Final version of the 2nd Interim Technical Expert's Report	POL-0094223
52	POL00055118	Attendance Note re Seema Misra - Case No CRM/258932/JSX dated 28/07/10.	POL-0051597
53	POL00051231	Susan Rudkin case study: Letter from John Dove to Jarnail Singh re mags hearing - guilty plea	POL-0047710
54	POL00051380	Susan Rudkin case study: Memo from Rob Wilson to Fraud Team cc Mike Wilcox, Ged Harbinson and Press Office re: R v Susan Jane RUDKIN - report on final result	POL-0047859
55	POL00052094	STAFFORD CROWN COURT - CONFISCATION HEARING - 21st AUGUST 2009, THE QUEEN v SUSAN JANE RUDKIN, BRIEF TO COUNSEL FOR THE PROSECUTION	POL-0048573
56	POL00057602	Financial Investigation Events Log, POLTD/0809/0101 Susan Rudkin	POL-0054081