

Wednesday, 15 November 2023

1
2 (10.00 am)
3 **MR BEER:** Good morning, sir, can you see and hear
4 me?
5 **SIR WYN WILLIAMS:** Yes, I can, thank you.
6 Before you begin examining the witness,
7 Mr Beer, I'd just like to let everyone know, if
8 they're not aware of it already, that the
9 programme for this week will go ahead as has
10 been scheduled, ie that is it will go ahead with
11 the witnesses which are named on our website and
12 I'll try to give an update, dealing with the
13 period between the end of this week and
14 Christmas, tomorrow or Friday at the latest.
15 All right?
16 **MR BEER:** Thank you very much, sir.
17 May I call Warwick Tatford.
18 **WARWICK HENRY PATRICK TATFORD (sworn)**
19 **Questioned by MR BEER**
20 **MR BEER:** Good morning, Mr Tatford. My name is
21 Jason Beer and, as you know, I ask questions on
22 behalf of the Inquiry. Can you tell us your
23 full name, please.
24 **A.** Warwick Henry Patrick Tatford.
25 **Q.** Thank you very much for coming to the Inquiry to

1

1 that right?
2 **A.** Yes.
3 **Q.** You became a tenant in chambers in 1994 --
4 **A.** Yes.
5 **Q.** -- at your present chambers, albeit it's changed
6 name twice since then; is that right?
7 **A.** That's right, yes.
8 **Q.** You've practised almost exclusively in the field
9 of criminal law, both prosecuting and defending?
10 **A.** Yes.
11 **Q.** Most of my questions today are going to concern
12 the case of Seema Misra. Can I start at the
13 end, as it were, and go to page 56 of your
14 witness statement.
15 I wonder if that can be displayed on the
16 screen, please -- page 56, and the bottom half
17 of the page, please, if we scroll down. Thank
18 you.
19 This is the concluding paragraph of your
20 statement. Six or so lines from the bottom, you
21 say:
22 "I am proud of my role as a barrister in the
23 criminal justice system and am extremely sorry
24 that I played an unwitting role in Seema Misra
25 and Carl Page having unfair trials. I am

3

1 give evidence today and thank you very much for
2 the provision of a substantial witness statement
3 to the Inquiry. Can we look at that witness
4 statement please. It should be in the bundle in
5 front of you at tab A1.
6 **A.** I have it. Thank you.
7 **Q.** Excluding the index, it's 57 pages in length and
8 dated 25 October 2023. Can you turn to page 57,
9 please?
10 **A.** Yes.
11 **Q.** Is that your signature?
12 **A.** It is, yes.
13 **Q.** Are the contents of that witness statement true
14 to the best of your knowledge and belief?
15 **A.** Yes.
16 **Q.** For the transcript -- it needn't be displayed --
17 the URN is WITN09610100. A copy of that witness
18 statement is going to be uploaded to the
19 Inquiry's website and I'm not going to ask you
20 questions about every aspect of it; do you
21 understand?
22 **A.** Thank you.
23 **Q.** Can I start, please, with a short number of
24 questions about your professional background.
25 I think you were called to the Bar in 1993; is

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1 particularly conscious that in Mrs Misra's case
2 I was Prosecution Counsel at the head of
3 a difficult disclosure exercise that failed."
4 Then over the page:
5 "Over the years, as I have watched and tried
6 to learn from all the Horizon cases, I have
7 thought repeatedly about whether there was
8 something different I could have done, whether
9 I should have asked more or different questions,
10 whether I should have insisted on an independent
11 expert. I cannot see how Professor McLachlan
12 could have worked without considerable
13 assistance from Fujitsu and someone like Gareth
14 Jenkins, but perhaps there should have been the
15 extra precaution of an independent expert on the
16 Prosecution side."
17 Then I won't read the rest. So you tell us
18 in that statement there, unlike a number of
19 other witnesses who have sat in the same witness
20 box as you, that you are extremely sorry that
21 you played a part in Mrs Misra and Mr Page
22 having unfair trials.
23 **A.** Yes. I'd like to offer my unreserved apologies
24 to both of them. I know Mrs Misra, I can see
25 her, and I'm very sorry. I don't know if

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1 Mr Page is here. It's -- I offer my apologies
2 to him.
3 Sorry, I find this rather difficult. It's
4 not actually about me but I am -- I do feel
5 ashamed about what had happened -- what's
6 happened and -- but the best I can do is try and
7 help the Inquiry and try and learn a bit myself,
8 but it's -- well, that's enough about me. It's
9 much more important to answer the questions, but
10 I'm sorry. I feel ashamed that I was part of
11 this, but I want to try to help if I can.

12 **Q.** Thank you very much, that can come down.

13 The Inquiry has heard evidence that the Post
14 Office saw the Seema Misra case as a test case
15 to deter subpostmasters for blaming the Horizon
16 system for alleged shortfalls or advancing
17 Horizon integrity issues as defences when they
18 were prosecuted. Did you get that understanding
19 when you were prosecuting this case? That it
20 was seen as a test case with a deterrent
21 purpose?

22 **A.** No. I knew it was an important case, and
23 important for all parties, but I've seen
24 reference to test cases. It seems to me that
25 a criminal trial can't ever be a test case

5

1 agree with that title but it was clearly very
2 important to the Post Office.

3 **Q.** Why was it important? In what respect was it
4 important to the Post Office?

5 **A.** Well, because the Horizon system was a system
6 used throughout the business and throughout all
7 the post offices up and down the land, and it
8 was important that that worked. Not only in
9 terms of criminal investigation but for the
10 general public. It's essential that it works.

11 **Q.** So if we take out of the question the legal
12 language of test case, would you agree that it
13 was seen by the Post Office as an important and
14 significant case --

15 **A.** Yes.

16 **Q.** -- that was -- and it was important and
17 significant because it was necessary to
18 demonstrate convincingly that there were no
19 problems with Horizon?

20 **A.** Yes, I think I would agree with that, I do think
21 that it was treated as an individual case but
22 there was a significant challenge to Horizon,
23 and the Post Office did think that had to be met
24 and that there was a wider public interest in
25 that being met.

7

1 because the case is decided on the individual
2 case and everything is different. But it was
3 a very important case, and the -- Post Office
4 Limited clearly wanted to do whatever they can
5 to -- they could, to give a full evidential
6 picture of Horizon. It may be that they, and
7 indeed me, that I was -- and that we hadn't
8 realised the problems. But it seemed to me that
9 it was an exercise not in shying away from the
10 challenge; it wasn't a test case.

11 I do appreciate that after the trial, there
12 was an announcement made by my instructing
13 solicitor. For what it's worth, and it's only
14 my opinion, I thought that was unwise because my
15 view wasn't that this was a test case; it was
16 an important case.

17 One of the ironies of the case is that, when
18 it began, many of those involved in the Post
19 Office would have -- I think would have accepted
20 pleas to false accounting. One of the ironies
21 is I think I was the one who put my foot down
22 initially and suggested that we should proceed
23 on the theft trial. So certainly at that stage
24 it wasn't in any kind of test case. It became
25 important but I think test case -- I wouldn't

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1 **Q.** How did that importance or significance manifest
2 itself in the conduct of the case?

3 **A.** In a strange way, it didn't. There was just
4 a feeling of a lot of pressure throughout the
5 case. At an early stage before Gareth Jenkins
6 was instructed, there was a lot of pressure
7 because of what we considered, rightly or
8 wrongly, to be very wide-ranging and
9 potentially, to an extent, irrelevant disclosure
10 requests. There was a lot of pressure trying to
11 deal with that situation.

12 And then, once Mr Jenkins and Professor
13 McLachlan were involved and, as I saw it,
14 cooperating together, it was seen, I think, as
15 important by both sides that they should work
16 together to try to establish whether the
17 problems that were alleged against Horizon,
18 whether they existed or not. That was
19 an important issue.

20 In a way, it was a slightly strange case to
21 choose because there were lots of complexities
22 to it. There were the complexities of the
23 initial defence statement, and so forth. In
24 a way, I suppose, if the Post Office wanted to
25 choose a test case, they might have chosen

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1 a case that was more straightforwardly dependent
 2 and dependent alone on Horizon deficiency.
 3 **Q.** You mentioned that there was pressure and then
 4 when you went on to explain that, you explained
 5 it in terms of pressure to administer disclosure
 6 requests.
 7 **A.** Yes. I didn't feel -- I'm so sorry,
 8 I interrupted.
 9 **Q.** Was there anything other than the normal work
 10 pressure that one has to deal with disclosure
 11 requests and late disclosure?
 12 **A.** No. I didn't -- for instance, I didn't have
 13 any -- apart from an email that's in the bundle
 14 talking about the difficulties of the workload
 15 for Investigators, I essentially had no
 16 communications from anybody higher or in a wider
 17 capacity than my instructing solicitor and the
 18 Investigator, Jon Longman.
 19 **Q.** Can I turn, then, to your earliest involvement
 20 in the case.
 21 **A.** Yes.
 22 **Q.** I think you received written instructions to
 23 settle an indictment, to advise on evidence and
 24 to appear for the prosecution at trial?
 25 **A.** Yes.

9

1 additional evidence is required"; appear at the
 2 Prosecution -- at a Plea and Case Management
 3 Hearing on 20 March at Guildford Crown Court.
 4 So that's the request, yes?
 5 **A.** Yes.
 6 **Q.** Can you tell us what an Advice on evidence is,
 7 to your understanding, ignoring for the moment
 8 here the particular or specific request for
 9 consideration of any additional evidence?
 10 **A.** Yes. An Advice on evidence is required by most
 11 prosecuting authorities in almost every kind of
 12 case, from the most straightforward to the most
 13 complex. Sometimes an Advice doesn't need to be
 14 in writing. A telephone Advice will be ample
 15 and will be sufficient. Sometimes more detail
 16 is needed. But the Advice at this stage would
 17 simply involve counsel looking at the papers,
 18 checking the proposed indictment, which counsel
 19 would then draft, as was then the practice for
 20 the Post Office.
 21 I, as counsel in this case, would have
 22 looked at the witness statements, the exhibits,
 23 the unused material, the schedule that was
 24 prepared at this stage and, also, the internal
 25 Investigator's report, just to check that

11

1 **Q.** I wonder whether we can look at that, please.
 2 POL00044585. We can see the summary of what
 3 you're asked to do in the underlined emboldened
 4 and capitalised section at the top:
 5 "Instructions to Counsel to Settle
 6 Indictment and Advise on Evidence and Brief for
 7 the Prosecution".
 8 I think this marks your first involvement in
 9 the case?
 10 **A.** Yes, that's right.
 11 **Q.** If we go to page 3 and look at the foot of the
 12 page, please, we'll see that these instructions
 13 from Jarnail Singh and Mr Taylor, a senior
 14 lawyer and legal executive respectively, are
 15 dated a day in February 2009?
 16 **A.** Yes.
 17 **Q.** We haven't got the original, we've got one
 18 that's been pulled from a computer and so the
 19 exact date to be inserted, presumably in
 20 handwriting, is not included?
 21 **A.** Yes.
 22 **Q.** So if we look at page 2, please, and the foot of
 23 the page, please, bottom two paragraphs, your
 24 solicitors ask you to: "advise on evidence and,
 25 in particular, whether [you consider] any

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1 everything was in order, and I did that in this
 2 case. I didn't provide --
 3 **Q.** Sorry to interrupt you, Mr Tatford. I was
 4 asking at a general level to start with, rather
 5 than what you in fact did or didn't do in this
 6 case. So an Advice on evidence is what?
 7 **A.** Oh, well, it's advising, first of all, overall,
 8 is there reasonable prospect of a conviction.
 9 **Q.** That's what I wanted to understand.
 10 **A.** Yes, forgive me.
 11 **Q.** This document can come down. Thank you.
 12 So an Advice on evidence, in the context of
 13 criminal proceedings, is an Advice as to
 14 evidential sufficiency to sustain the
 15 allegations?
 16 **A.** Yes.
 17 **Q.** It's not an Advice about, or only about, what
 18 future evidence or other evidence we might
 19 obtain. It's an assessment of whether there's
 20 a realistic prospect?
 21 **A.** Yes. An assessment of that, assessment of the
 22 public interest, assessment as to whether it's
 23 the right charge. And then, after those more
 24 important matters, then perhaps a consideration
 25 of what evidence might be missing, whether

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1 everything is in order.
 2 **Q.** Can we turn to your witness statement, please,
 3 page 20. On page 20, if we can look at
 4 paragraph 41, please, and the fourth line:

5 "I did not provide a written Advice on
 6 evidence at this stage: this was not unusual in
 7 a case where, as here, I had been provided with
 8 all the necessary paperwork and the case
 9 appeared properly prepared."

10 So you were instructed to provide a written
 11 Advice on evidence but you didn't?

12 **A.** Well, I think when counsel is instructed to
 13 advise, I'm not sure it's necessarily in
 14 writing. But sometimes it will be. What I did
 15 in this case was to look at the evidence, to
 16 look at the indictment, to consider the various
 17 matters I've outlined and formed a view about
 18 it.

19 I can't remember now whether I telephoned
 20 Jarnail Singh, but one of the main results of
 21 advising on evidence is drafting the indictment
 22 because -- it's a shame these days counsel isn't
 23 required to draft indictments more regularly,
 24 because, if you'd have to draft the indictment
 25 you really have to read the papers, and so, by

1 a straightforward deficiency case.

2 **Q.** To what extent did you understand, at this time,
 3 and so early 2009, that the Post Office relied
 4 upon independent counsel advising on the
 5 sufficiency of evidence as part of its
 6 governance and oversight of the prosecutorial
 7 process?

8 **A.** Oh, I realise that was important to them. They
 9 relied on barristers much more, for instance,
 10 than the CPS.

11 **Q.** We've heard a number of witnesses say "Ah,
 12 a part of our system was the use of the
 13 independent bar and a member of the independent
 14 bar advising on realistic prospect of
 15 a conviction", and some of them have said, "and
 16 on the public interest too". Did you do that in
 17 this case?

18 **A.** Yes, but I think I did in writing later on --

19 **Q.** I'm sorry to speak over you.

20 **A.** No, forgive me.

21 **Q.** We've got to get through some work.

22 **A.** No, absolutely.

23 **Q.** There is an Advice dated 25 January 2010, which
 24 is an Advice about, principally, disclosure?

25 **A.** Yes.

1 drafting the indictment, you'll have a very full
 2 understanding of the case and be in a position
 3 to advise, in a fairly brief and succinct way,
 4 as to all the issues I've outlined.

5 **Q.** You give us the reasons for not preparing
 6 an Advice here, that you'd been provided with
 7 the necessary paperwork and the case appeared
 8 properly prepared. Evidential sufficiency
 9 requires an examination of that paperwork,
 10 doesn't it, not just whether there are pieces of
 11 paper --

12 **A.** Oh, yes.

13 **Q.** -- in the brief. You say the case appeared
 14 properly prepared. Did you, in fact, look at
 15 the substance of what the evidence disclosed, as
 16 opposed to whether it appeared well arranged?

17 **A.** Oh, yes, no, it's not a question of arrangement.
 18 It's looking at the case summary, looking at the
 19 Investigator's report, which is often more
 20 detailed, and then checking the evidence.

21 What I was able to do, because I was
 22 familiar with this sort of case, was to see that
 23 it was in order. I could do that fairly quickly
 24 because I was familiar with this sort of Horizon
 25 deficiency case where it appeared to be

1 **Q.** Not about whether there's a realistic prospect
 2 of conviction. Was there ever any written
 3 Advice on evidential sufficiency or public
 4 interest?

5 **A.** Not written Advice but I gave telephone Advice
 6 to Jarnail Singh on the day of the PTPH, because
 7 we discussed pleas.

8 **Q.** Right, and so that was on 20 March; is that
 9 right?

10 **A.** Yes.

11 **Q.** So between receiving the instructions and the
 12 PTPH -- in fact I think back in the day it was
 13 a Plea and Case Management Hearing --

14 **A.** Yes.

15 **Q.** -- you hadn't advised on evidential sufficiency
 16 and public interest?

17 **A.** No, I don't think that was -- I don't think that
 18 was particularly surprising. I don't know
 19 exactly when the brief came through but I had
 20 advised on the indictment, and I took -- well,
 21 when I advise on the indictment, I'm essentially
 22 saying, at least by implication, that there is
 23 a reasonable prospect of conviction, otherwise
 24 I wouldn't be drafting the indictment. I'd do
 25 an Advice to say there's no prospect of

1 conviction.

2 **Q.** So the fact that you settle an indictment is
3 an implied statement that there is a reasonable
4 prospect of securing a conviction on the counts
5 that you settle?

6 **A.** I think so, yes.

7 **Q.** Does that mean that you don't separately, where
8 you're settling an indictment, advise in
9 writing?

10 **A.** No, I think I did relatively few written Advices
11 for the Post Office and, indeed, for the CPS at
12 this time on fairly straightforward cases. I'm
13 not seeking to diminish the importance of cases
14 but instructions to counsel is to advise. There
15 isn't a time limit in the instructions, I think,
16 and --

17 **Q.** What --

18 **A.** -- it's an ongoing process.

19 **Q.** What's the important of that point? That there
20 wasn't a time limit?

21 **A.** Well, in this case, for instance, this case
22 changed. But I took the view that my duty was
23 to read the papers, to draft the indictment and
24 I would do -- only do that if I was satisfied
25 there was a reasonable prospect of conviction.

17

1 count of theft and various counts of false
2 accounting in relation to various monthly branch
3 trading forms from the West Byfleet office.

4 **Q.** I think you've confirmed this already: in your
5 view, settling an indictment carries with it
6 an implication that there is a realistic
7 prospect of a conviction?

8 **A.** Yes.

9 **Q.** Would you not accompany your Advice by setting
10 out an analysis of evidential strengths and
11 weaknesses and where the public interest lay?

12 **A.** In an ideal world, yes, but I'm afraid there is
13 simply not enough time to do that in every
14 single case. It's simply impossible. The Post
15 Office, I think at that stage, paid counsel for
16 written Advices, so there's an incentive there.
17 But, for instance, in every single case, it's
18 simply impossible. The workload is too great.

19 We would all love to do that but I'm afraid,
20 even back then and more so now, it's very
21 difficult to do written Advices for every single
22 case.

23 **Q.** Accompanying the indictment was a "Schedule of
24 Charges".

25 **A.** Yes.

19

1 Then my view was that I'd complied by doing all
2 of that with the -- my instructions because
3 those are the instructions that come in every
4 single brief, and counsel tries to do written
5 Advices as often as possible but there is simply
6 not time, I'm afraid, in every single case.

7 **Q.** So was it usual in Post Office cases for you to
8 be requested to advise on evidence but you not
9 formally to do so. You either do so by a phone
10 call or by settling the indictment, which
11 carried the implication that there was
12 sufficient evidence?

13 **A.** Yes, I think so, and the instructions were very
14 much in -- those were instructions, I think, in
15 every brief, so it's part of the pro forma of
16 the brief. That's not to underestimate the
17 important of that. It's vital that prosecution
18 counsel does review those matters.

19 **Q.** Thank you. That document can come down.

20 As we've seen from the instructions, you
21 were also requested to settle an indictment.
22 Can you explain, for those who don't know, what
23 settling an indictment means, please?

24 **A.** Well, it means setting out the charges that fit
25 the evidence. So, in this case, it was one

18

1 **Q.** Can we look at that, please. It's POL00045010.
2 This accompanied your brief and your
3 instructions. Are these the charges in respect
4 of which Mrs Misra had been committed by the
5 Magistrates Court to the Crown Court?

6 **A.** Yes.

7 **Q.** If we pan out a little bit, we see that Charge 1
8 was a theft allegation of stealing £74,000-odd
9 and the remaining four are false accounting
10 charges --

11 **A.** Yes.

12 **Q.** -- as you've said. So one theft, four false
13 accounting. The date range in the theft
14 allegation is 15 November 2006 and 14 January
15 2008?

16 **A.** Yes.

17 **Q.** You say in your witness statement -- I'm so
18 sorry.

19 I wonder whether we can turn to POL00051092.
20 We can see an email from you to Jarnail Singh on
21 10 March, saying:

22 "Please find indictment attached for Misra,
23 which needs to be lodged today."

24 I think we've seen in your instructions that
25 the deadline for you settling the indictment

20

1 was, indeed, 10 March.

2 Then if we can look, please, at POL00051149,
3 we can see an indictment. You say in your
4 witness statement that you do not believe that
5 this is a copy of the indictment that you
6 settled and, instead, it was a copy included in
7 your papers as a draft indictment.

8 **A.** Yes, I think that's right, yes.

9 **Q.** Just dealing with those two things separately,
10 why it might not be a copy of the indictment
11 that you settled: plainly it wasn't the one
12 enclosed with the email because we can see
13 a T-number written in hand on the top right-hand
14 side. That wouldn't have been included in the
15 attachment to your email, would it?

16 **A.** No.

17 **Q.** If we look at page 3, please, at the foot of the
18 page, we can see it's dated 16 March 2009, again
19 in hand, which is after your email of 10 March,
20 yes?

21 **A.** Yes.

22 **Q.** Then if we look at the very foot of the page, we
23 can see that there's a character string
24 suggesting that this document may have come from
25 a drive or may have been saved in a drive

21

1 prepare when you were settling an indictment?

2 **A.** No, I wouldn't do a back sheet. If I sent
3 an indictment by email, I would simply send it
4 as an attachment to the email, I think. A back
5 sheet -- in this -- around this time, we were
6 still not using computers anywhere near as much
7 as the barristers use them now but I would only
8 send -- attach a back sheet to a written piece
9 of work, which was sent in the DX.

10 **Q.** If we scroll up, please, we can see this has got
11 a "Received" stamp on it of 11 March 2009, the
12 day after you settled it. Do you think you sent
13 one out in the post or by DX too?

14 **A.** No, I don't think so. I think I simply sent one
15 out by email. The reason -- the reason I don't
16 think this is the indictment I drafted is simply
17 because of the formatting. I don't think I'd
18 have underlined names in quite the way it is.
19 I may be in error about this because I've
20 noticed my formatting generally is very
21 different from now I format matters now.

22 Looking at the dates, this might well be the
23 indictment I drafted. I thought that it wasn't
24 because of the way it's formatted but I'm not
25 sure, I'm afraid. I don't think there's any

23

1 relating to Jarnail Singh; can you see that?

2 **A.** Yes, I do.

3 **Q.** So that, I think, establishes the first part of
4 the proposition that it's not the one that was
5 attached to your email. But you tell us as
6 well, that you think this was a copy included in
7 your papers as a draft indictment. That's
8 unlikely, isn't it, given these features, the
9 three features?

10 **A.** Yes, that's right, looking at the dates. I said
11 that, I think, because there often would be
12 a draft indictment.

13 **Q.** Well, the instructions that you received set out
14 the enclosures and draft indictment isn't one of
15 them?

16 **A.** Oh, well, I've missed that. That's me
17 thinking -- making a mistake because of other
18 cases, then.

19 **Q.** I just want to look at the substance then,
20 whether this looks to be the indictment that you
21 settled, albeit dates and signatures have been
22 added after you settled it.

23 Can we just look at page 4, please, which is
24 the next page, and scroll down, and scroll down.
25 Is that the kind of back sheet that you would

22

1 significant difference from the indictment
2 I drafted and the original draft.

3 **Q.** When you say the indictment that you settled and
4 the original draft, what are you referring to as
5 the original draft?

6 **A.** Oh, the charges, I think, in this case, as there
7 wasn't a draft indictment, it would be the
8 charges. So I used the charges, I compared them
9 against the evidence and drafted the indictment.
10 Maybe -- I'm so sorry -- sorry.

11 **Q.** In fact, if we look back at page 1 of the
12 indictment, we can see there are some material
13 changes. The theft count, you can see the
14 period of the alleged theft is expanded in terms
15 of its start date -- can you see that --

16 **A.** Yes.

17 **Q.** -- and this remained so, including up to the
18 point of arraignment and at trial, 29 June 2005.
19 Then if we look at the accounts, remembering
20 previously there were four counts of false
21 accounting, if we just scroll through this
22 document -- and keep going.

23 We can see there are seven counts in total,
24 six counts of false accounting. So it's
25 expanded from four to six. You think that was

24

1 your work, the --

2 **A.** Oh, yes, certainly the -- focusing on the date
3 is helpful because I'd have begun it with the
4 beginning of Mrs Misra's time at the West
5 Byfleet office. The more I look at this, it may
6 be I was misled by the way it was formatted.
7 This may well be the indictment I drafted. I'm
8 sorry if I made a mistake about that.

9 **Q.** That's all right. Just going back to Count 1,
10 then, and the theft, I think you just said that
11 you expanded the period of coverage from the
12 date that Mrs Misra started in the Post Office,
13 at West Byfleet, that being 29 June 2005.

14 **A.** Yes.

15 **Q.** At the point of settling the indictment, had you
16 got anything such as ARQ data?

17 **A.** No.

18 **Q.** Did you subsequently receive ARQ data?

19 **A.** Well, it was certainly -- I think I did, I must
20 have done. The defence was served it, I would
21 have had it served at the same time. I know
22 I advised that it be -- that it be served on
23 a disk, I think; they wished to print it out.
24 I'm trying to remember whether I had a full copy
25 myself but I would have thought I did, but

25

1 false accounting charges, rather than the whole
2 of the theft period, which ran from when
3 Mrs Misra took over West Byfleet on 29 June 2005
4 to 14 January 2008. Do you know why that was,
5 why the ARQ data was obtained for a different
6 period of time than the allegations in Count 1?

7 **A.** The -- well, I think this ties in with the --
8 what I set out in my abuse of process argument
9 because the Post Office told me that it was --
10 because of their contractual relations with
11 Fujitsu, they wouldn't be able to have ARQ data
12 to cover the full indictment period and I've set
13 out the reasons what -- as to what I was told
14 about that in my abuse of process argument.

15 I acknowledge straightaway that the Court of
16 Appeal in *Hamilton* have said that the full
17 material must be served but I've set out the
18 explanation as to why a shorter period was
19 chosen. It is to do with the cost and the
20 contractual arrangements but, also, a shorter
21 period was chosen so that there could be a focus
22 on a time when the data may not be affected by
23 the thefts that Mrs Misra said that she'd dealt
24 with.

25 **Q.** So that's the explanation, cutting through

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1 possibly just on a CD-ROM.

2 **Q.** Thank you. If we just look at some other
3 material that may help you --

4 **A.** Of course.

5 **Q.** -- FUJ00122707. This is Penny Thomas,
6 an employee of Fujitsu, her witness statement
7 for the purposes of the Seema Misra prosecution,
8 dated 4 February 2010. You can see what she
9 says in the opening paragraph, if we just scroll
10 down a little bit, to remind you of who she was.
11 If we then turn to page 5, please, in that first
12 substantive paragraph, she produces a copy of
13 some ARQs, and she gives the number as her
14 exhibit PT1, and produces a CD as her exhibit
15 PT2.

16 **A.** Yes, I see.

17 **Q.** Then, if we go to page 7, please. This is
18 a document that she attaches to her witness
19 statement, which appears to give the date range
20 of the ARQ data that she was exhibiting. Can
21 you see the date range in the right-hand column
22 three boxes down --

23 **A.** Yes.

24 **Q.** -- 1 December 2006 until 31 December 2007. That
25 period is a limited period covering only the

26

1 matters, that you put when cross-examining the
2 defence expert, Professor McLachlan?

3 **A.** Yes.

4 **Q.** You said -- I'm not going to turn it up for the
5 moment -- the rationale behind why you were
6 given that 13-month period, ie December '06 to
7 the end of December '07, is because it's not
8 tainted by any suggestion of theft,
9 ie suggestion of theft made by Mrs Misra. It's
10 clean data to look at for computer error.

11 **A.** Yes, not tainted by theft by employees of
12 Mrs Misra, not Mrs Misra herself. It's to --
13 clean data to focus on whether any patterns
14 could be seen that might be suggestive of
15 Horizon problems. It was really to focus on
16 that -- the three possibilities, that
17 possibility that was raised by her defence at
18 the trial.

19 **Q.** Professor McLachlan replied "But I requested the
20 data for the entire period", and you said:

21 "I fully accept that but, if one requested
22 and received every piece of paper for West
23 Byfleet, we would probably fill this room."

24 Is that your understanding of why the data
25 was not requested for the entirety of the period

28

1 of the theft count, ie cost and volume?

2 **A.** Cost, volume, those were the main reasons, I'm
3 afraid. It was also -- there was the additional
4 consideration of an untainted period but I --
5 the dominant factors were cost -- the dominant
6 factor was cost and the contractual relationship
7 with Fujitsu, I think.

8 **Q.** I think you candidly accept in your witness
9 statement that, on reflection, this was the
10 wrong approach?

11 **A.** Yes. Very much so. And -- well, I set out
12 reasons for that. I agree. I accept that.
13 Yes.

14 **Q.** Would I summarise them correctly as follows: the
15 Crown chose to charge an ongoing theft over
16 a long period of time?

17 **A.** Yes.

18 **Q.** Once the defence raised the reliability of
19 Horizon, disclosing the Horizon data for the
20 whole of the indictment period was not a matter
21 of disclosing unused material; it was also the
22 primary evidence upon which the Crown relied in
23 order to prove that the property belonging to
24 another had been appropriated by the defendant?

25 **A.** Yes, that's right, it was served as evidence.

29

1 more serious allegation of theft.

2 **Q.** So these were separate offences, reflective of
3 two different types of alleged criminal
4 conduct --

5 **A.** Yes.

6 **Q.** -- the first being a theft charge relating to
7 the alleged stealing of the money, the second
8 being a false accounting charge or a series of
9 false accounting charges relating to the alleged
10 covering up of the theft?

11 **A.** Yes, the false accounting was the covering up
12 but Mrs Misra, in her interview, suggested she
13 was covering up for thefts of others, so there
14 was a different motive for that offence, which
15 made it a less serious offence. If she was only
16 convicted of that offence alone and found not
17 guilty of the theft, she'd get a very different
18 sentence.

19 That's why I thought it very appropriate to
20 have the two different kinds of offending,
21 albeit they're linked but the motivations were
22 different.

23 **Q.** Can we turn to the Plea and Case Management
24 Hearing. That took place, as we've said, on the
25 20 March 2009 and you address what happened at

31

1 **Q.** In other words, that data was necessary to prove
2 the elements of the offence of theft?

3 **A.** Yes, I would agree with that.

4 **Q.** Therefore, Mrs Misra was entitled to receive the
5 entirety of the data for that period as served
6 evidence, so that her expert could analyse it
7 and see whether the Crown had indeed proved its
8 case?

9 **A.** Yes, I certainly would agree with that now.
10 I've explained the reasoning. I think the
11 reasoning now was wrong, as exposed by the Court
12 of Appeal. But, actually, the way that you've
13 exposed it shows that it's wrong simply in its
14 basic logic.

15 **Q.** Did you consider that the theft and false
16 accounting charges were essentially alleging the
17 same criminal conduct?

18 **A.** No. I was aware of the case of *Eden*, which
19 I referred to in my abuse of process argument,
20 and the Crown has to consider very carefully
21 whether to charge both types of offending. In
22 this case, it was fully justified because it
23 allowed Mrs Misra to plead guilty to what she
24 accepted but also allowed the Crown, if it had
25 the evidence to do so, to pursue the clearly

30

1 page 20 of your witness statement, paragraphs 42
2 and following, if we can turn that up please.
3 So page 20 of your witness statement, 42,
4 please. I'll just read these aloud:

5 "The PTPH [as I have said, I think it was
6 a Plea and Case Management Hearing] took place
7 on 20/3/09. I have a recollection of being
8 asked by Andrew Castle, the solicitor advocate
9 for Mrs Misra, whether pleas to false accounting
10 would be acceptable. I had anticipated being
11 asked this question as it was obvious from the
12 papers that such an offer was going to be made.
13 I had formed a view, before the enquiry from
14 Mr Castle, that such an offer should not be
15 accepted, because the suggestion that Mrs Misra
16 had been entering false figures over
17 a considerable period, only to cover the thefts
18 by members of staff, seemed clearly refuted by
19 the fact that her false figures continued to
20 rise long after the dismissal of the alleged
21 thieves. The figures would simply reach a false
22 plateau if the source of the loss ended.
23 Instead they continued to rise, suggesting that
24 the loss was continuing in spite of the
25 sackings. The obvious inference to me at the

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1 time was that the hole in the accounts was
 2 growing because Mrs Misra was stealing money.
 3 It seemed far more rational that Mrs Misra would
 4 use false accounting to hide a hole created by
 5 herself than by others. My experience from
 6 other cases was that a [subpostmaster] whose
 7 shop was struggling might 'borrow' money from
 8 the funds of their sub post office to put into
 9 their shop, hoping in due course that they would
 10 be able to return money into the sub post office
 11 before an audit occurred. In the absence of
 12 an audit the [subpostmaster] could hide the hole
 13 in the accounts by false accounting. Only the
 14 stocktake involved in an audit could reveal the
 15 true deficiency. That was my opinion, but as
 16 I only act on instructions it was essential for
 17 me to discuss the plea offer with my instructing
 18 solicitor. My recollection is that, whilst at
 19 court before the hearing, I telephoned my
 20 instructing solicitor, Jarnail Singh, to discuss
 21 this. He agreed that the pleas were not
 22 acceptable. I do not remember exactly what was
 23 said ... but the advice I would have given would
 24 have been along these lines: the account the
 25 Defendant had given in interview, that she was

1 but then she entered her pleas. I don't know if
 2 that's the precise order but she certainly
 3 entered her pleas. I didn't mean to say
 4 otherwise.
 5 **Q.** Thank you. Can we look, please, at POL00051441.
 6 This is a letter dated 13 May, so two months
 7 or so after the PCMH to you or, in the
 8 old-fashioned way, to your clerk. You'll see
 9 that are, if we scroll down, right at the foot
 10 of the page, it's from Mr Taylor, a legal
 11 executive within the Criminal Law Division,
 12 co-author of your instructions.
 13 He says he'd received a telephone call from
 14 Jon Longman, the Investigating Officer who took
 15 over this case from Adrian Morris:
 16 "Counsel will recall the Defence letter,
 17 dated 16 March 2009 [so that's four days before
 18 the PCMH] which advised the Defendant would
 19 plead Guilty to all counts relating to false
 20 accounting but Not Guilty to theft.
 21 "Counsel will also recall that subsequent to
 22 that ... letter dated 9 April 2009 the names and
 23 addresses of 3 people who worked at the sub post
 24 office at various times were notified to the
 25 prosecution. Jon Longman has attempted to

1 the victim of thefts by former employees did not
 2 fit the evidence -- the apparent holes in the
 3 accounts increased after the dismissal of the
 4 stealing employees; I thought it did not make
 5 sense that Mrs Misra would cover up, by false
 6 accounting, a loss caused by the dishonesty of
 7 others -- a desire not to lose the sub post
 8 office did not appear to explain false
 9 accounting on such a scale, because there would
 10 be no point keeping hold of a business that was
 11 haemorrhaging so much money; the Defendant said
 12 in interview she had only reported a tiny
 13 fraction of the thefts to the police -- this did
 14 not make sense to me because she was obliged by
 15 common sense and by contract to report the theft
 16 and if she was prepared to report the theft, why
 17 not report all of it?"

18 Now, in fact, it appears -- and you may have
 19 forgotten this when you made your witness
 20 statement -- that Mrs Misra pleaded guilty to
 21 the six counts of false accounting at these Plea
 22 and Case Management Hearing.

23 **A.** Oh, yes, I didn't mean to suggest anything else.
 24 I was asked whether that would be acceptable on
 25 its own. I said no, having taken instructions,

1 contact these people and has attended their
 2 addresses. None of them now live at the
 3 addresses given and one is believed to now be
 4 living in India.
 5 "Bearing in mind the matters which the
 6 Defendant set out on pages 13 and 14 (Exhibit
 7 bundle) John has asked me whether it would be in
 8 the public interest to continue with the
 9 prosecution.
 10 "Myself (or Jarnail who is also aware of
 11 this) would appreciate Counsel's advice as to
 12 whether or not it would be sensible to continue
 13 with the prosecution or to accept the false
 14 accounting charges."
 15 So essentially summarising: the Investigator
 16 was wondering, in the light of the allegation
 17 that other people had been responsible for the
 18 thefts, whether it would be in the public
 19 interest to continue with the prosecution,
 20 ie the prosecution for theft because that was
 21 the only contested allegation that remained.

22 **A.** Yes.
 23 **Q.** Can we turn, please, to POL00047864.
 24 That's an errant reference. POL00047864,
 25 that seems to be it. Can I try the reference

1 that I was originally going to seek to display:
 2 POL00051586.
 3 I'm sorry, sir. There appears to be a ghost
 4 in the machine. I wonder whether you would mind
 5 taking a 10-minute break now, slightly earlier
 6 than usual, whilst we sort that out.

7 **SIR WYN WILLIAMS:** No, that's fine, Mr Beer. So
 8 what time shall we start again?

9 **MR BEER:** Maybe 11.05, please.

10 **SIR WYN WILLIAMS:** Yes, that's fine.

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

12 (10.52 am)

(A short break)

14 (11.05 am)

15 **MR BEER:** Good morning, sir, can you see and hear
 16 me?

17 **SIR WYN WILLIAMS:** Yes, I can, thank you.

18 **MR BEER:** Apologies for that interruption. Can we
 19 display, please, POL00051586. Can we look at
 20 the foot of this page, please. If we scroll
 21 down a bit more, we can see an email from Phil
 22 Taylor, the legal executive, to you, dated
 23 22 May 2009. We can see that the *Misra* case was
 24 in a warned list, according to the title of the
 25 email, of 12 June 2009, yes?

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1 to obtain a confiscation order, doesn't he?
 2 **A.** Well, he draws a link. He seems to be ruling it
 3 out, but yes.
 4 **Q.** Seems to be ruling what out?
 5 **A.** Well, he seems to understand that confiscation,
 6 which is my view, would be very difficult with
 7 false accounting, but -- well, I can explain
 8 further but I'll wait for your question.
 9 **Q.** So you agree that he's drawing a link between
 10 whether we accept the pleas or not by reference
 11 to the availability of a confiscation order?
 12 **A.** Well, he is making that link. He's not
 13 a lawyer, he's very much a case worker. He
 14 would be called a case worker in the CPS, albeit
 15 he's extremely experienced. His main concern
 16 was preparing cases so witness bundles,
 17 organising witness availability, and so forth.
 18 It seems to me he's just approaching everything
 19 in the round and asking what's going on but
 20 simply because he doesn't know what I've
 21 discussed with Jarnail Singh previously.
 22 **Q.** In your witness statement, you tell us -- it's
 23 paragraph 43, no need to turn it up -- that you
 24 had always taken the view that the availability
 25 of a confiscations order was an irrelevant

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1 **A.** Yes.

2 **Q.** He says:

3 "Hi Warwick,

4 "I am just a little bit in the dark about
 5 *Misra*. You will recall that there is one count
 6 of theft and some false accountings. The
 7 Defence will plead Guilty to the false
 8 accountings [in fact, of course, she already had
 9 by then, as we've established] and Jon Longman
 10 is fairly happy for us to accept those pleas."

11 In fact, those pleas, as I say, had already
 12 been entered:

13 "However we are some £70,000-odd light at
 14 the moment as I understand it and if we just
 15 accept the false accountings it is very
 16 difficult for us later to obtain a Confiscation
 17 Order and subsequently compensation out of the
 18 Confiscation.

19 "Could you let me have your views on this.
 20 I would be very grateful to hear from you."

21 You will have seen there that Mr Taylor
 22 appears to be drawing a link between the
 23 decision whether to proceed with the theft
 24 allegation or be content with the false
 25 accounting pleas and whether it will be possible

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1 consideration in making a charging decision --

2 **A.** Yes.

3 **Q.** -- and, do I take it from that, an irrelevant
 4 consideration in deciding whether to accept
 5 pleas or not or continue with counts on
 6 an indictment?

7 **A.** I think so, yes.

8 **Q.** Is it right that that's always been your view?

9 **A.** Yes. Confiscation is a consequence on
 10 conviction, it's not a -- it's really, it's out
 11 of place, it seems to me, in any consideration
 12 of the public interest and what's acceptable as
 13 a plea.

14 **Q.** I was going to ask you why you hold that view.
 15 Is that it: the reasons you've just given?

16 **A.** Yes. No, precisely. And it depends on other
 17 factors, such as whether the defendant has any
 18 means but those are factors to be looked at
 19 after pleas are decided. It seems to me to
 20 muddle the two is very dangerous.

21 **Q.** Why is it very dangerous?

22 **A.** Because cases should be prosecuted if the
 23 offence and the evidence merits it not because
 24 of the consequences. That applies to other
 25 orders as well, I would have thought,

40

1 disqualification orders are different sorts of
2 offences. I think it's important to draw
3 a distinction between what the evidence shows,
4 what is in the public interest. That has to be
5 looked at in terms of charges and acceptable
6 pleas.

7 Consequences then follow automatically
8 according to the law. I think they do need to
9 be separated. That's my view.

10 **Q.** If we just go back to the email, please,
11 POL00051586 and look at the middle passage in
12 the email chain. There's your reply of 22 May,
13 the same day:

14 "Dear Phil,

15 "I have spoken to Jon Longman about this
16 case."

17 Just stopping there, would that be spoken at
18 this time, ie May, or are you referring back to
19 some previous occasion?

20 **A.** I'm not sure but I think it's previously.
21 I wouldn't be -- it may have been back at the
22 time of the PTPH, Jon Longman might have gone
23 along for that but I don't know. I'm not
24 entirely sure. I think I've spoken to him to
25 this communication, it's not at the time of this

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1 situation.

2 **Q.** You continue:

3 "The case for theft is strong and we should
4 not accept the pleas. Confiscation would also
5 be a non-starter if we did. Jon is making some
6 further enquiries about the 'thieves' the
7 Defence have given us details for. It may be we
8 have been given false details which may
9 strengthen our case.

10 "Do call me on [your number] if you would
11 like to discuss further."

12 So you address evidential sufficiency of the
13 theft charge first, yes?

14 **A.** Yes.

15 **Q.** Then you continue:

16 "Confiscation would be a non-starter ..."

17 If the availability of confiscation was
18 an irrelevant consideration in deciding whether
19 or not to commence or to pursue charges, why are
20 you addressing it here?

21 **A.** I'm addressing it because Phil Taylor's
22 addressed it and I want him to know my full
23 position. But what I mean by my sentence
24 structure, the full stop is meant to be there:

25 "The case for theft is strong, we should not

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1 communication. But I'm not absolutely certain
2 about that.

3 **Q.** Was that usual, for you to have direct
4 communications with Post Office Investigators?

5 **A.** Yes, I tried to do that as much as possible
6 because I found, as indeed with police officers,
7 one can achieve a great deal by having that
8 contact with the Investigator. I try and get
9 their mobile number as soon as possible in any
10 case I prosecute. It saves an awful lot of
11 unnecessary -- well, it saves a lot of time and
12 it helps get on with the case.

13 **Q.** What about an audit trail of such
14 communications: how is that kept?

15 **A.** Well, the audit trail, I suppose, these days
16 would automatically follow from email.

17 I wouldn't expect to have to set out an audit
18 trail for every phone call I had with
19 an Investigator in any case.

20 **Q.** So the answer is that there isn't an audit
21 trail?

22 **A.** No, no, it's one reason I do try these days to
23 use email for that reason. But there won't be
24 an audit trail and I don't think there's any
25 requirement for any audit trail for that sort of

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1 accept the pleas", full stop. That's the end of
2 that consideration.

3 Confiscation would also -- that also is
4 important. That does reflect, I hope, exactly
5 what I've said about how I approach confiscation
6 after considerations of pleas. My grammar is
7 quite deliberate there.

8 **Q.** Did you ever gain a sense, when prosecuting for
9 the Post Office, that recovering money through
10 confiscation orders was a very important
11 consideration for it, the Post Office?

12 **A.** It's an important consideration. I never got
13 the impression that it was any kind of decisive
14 reason for any prosecution. The Post Office
15 were very -- they were most keen in ensuring
16 that confiscation orders were turned into
17 compensation orders, so that they would get the
18 money. But they were realistic about
19 defendants' means, and so forth.

20 It was an important matter for them, as it
21 should be for any prosecuting authority.
22 I didn't get the impression that it was of vital
23 importance in every case. It was a consequence
24 which they took seriously.

25 **Q.** Thank you. Can we move on to the first trial,

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1 then, on 2 June 2009. If we can look at your
2 witness statement, please, at page 23. Bottom
3 paragraph, please, from 46 onwards, you say:

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

9 "The attendance note of Jarnail Singh [and
10 you give a reference] seems to set out
11 accurately what happened on ..."

12 You call it 3 June, I think as we'll see it
13 is 2 June.

14 **A.** Forgive me.

15 **Q.** "... when Ms Misra's trial was listed. I don't
16 think I saw the attendance note at the time.
17 I was often attended upon when I prosecuted Post
18 Office cases and it was not unusual for the
19 reviewing lawyer to attend on the first day of
20 a trial", et cetera.

21 Then if we go down to paragraph 48:

22 "Until I saw the attendance note ... I had
23 believed that Defence Counsel was Keith Hadrill.
24 This was a mistake on my part because of
25 Mr Hadrill's later role as trial Counsel. I was

45

1 The trial was indeed adjourned, yes?

2 **A.** Yes.

3 **Q.** In 51, you tell us about a new firm of
4 solicitors. I'm going to skip over that. 52,
5 you tell us:

6 "I realised that we were about to embark on
7 a demanding disclosure exercise. I was
8 conscious that both sides were treading new
9 ground and the only guide I had so far was the
10 Computer Weekly article. As I thought about
11 matters, it seemed to me it would be important
12 to focus on the West Byfleet sub post office and
13 consider whether any Horizon problems had
14 occurred there. Complaints from
15 [subpostmasters] about problems at different
16 offices might raise evidence of a problem that
17 could be examined in relation to West Byfleet,
18 but it seemed to me that a simple complaint by
19 a [subpostmaster] was of very limited
20 assistance. There would need to be evidence of
21 what the problem was, or at least what its
22 symptoms might be, eg the location within the
23 office stock where the loss appeared to arise.
24 I discussed the way I was thinking with Keith
25 Hadrill and it was decided that there should be

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1 involved in a couple of cases with Mr Cousens
2 ... around the late '90s and early 2000s and
3 I do now think he was trial Counsel on 3 June
4 2009 but I am not 100% sure. I do remember
5 clearly that Defence Counsel produced
6 a photocopy of a Computer Weekly article about
7 alleged problems with Horizon and complaints
8 about various [subpostmasters]. This was the
9 first time in the case that I was made aware of
10 the issue of Horizon IT reliability and the
11 first time I was informed about problems at the
12 various sub post offices referred to in the
13 Computer Weekly article."

14 So that can come down. Thank you.

15 Defence counsel produced a copy of an
16 article from Computer Weekly. That was dated
17 11 May 2009, so only a few weeks before the
18 trial was due to begin on 2 June 2009. Then can
19 we go back, please, to your witness statement,
20 please, page 26. Just pick up the end of
21 paragraph 50, last three lines:

22 "All I did know was this was an important
23 new issue that needed to be considered properly
24 by both sides. It was therefore vital for there
25 to be an adjournment."

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1 a joint visit to the West Byfleet sub post
2 office."

3 From your diary, you can say this appears to
4 take place on 6 November 2009.

5 That can come down, thank you.

6 What was the purpose of visiting the branch?

7 **A.** Oh, to see Horizon in use by the staff there and
8 also to get an idea of how the branch was -- the
9 geography of the branch as a whole. It's always
10 helpful to look at the shop premises, but the
11 main purpose was to ensure that both sides had
12 seen Horizon in action at the West Byfleet
13 office.

14 **Q.** Did you think there was a problem with the
15 hardware in the branch?

16 **A.** No, because I had the evidence of Mr Vasani(?),
17 who took over control of the branch. He ran
18 other branches as well, and he reported no
19 problem.

20 **Q.** Do you think that the problems raised in the
21 Computer Weekly article related to the operation
22 of hardware in a branch?

23 **A.** I wasn't sure about that. That seemed likely
24 because they related to individual offices,
25 widely spread apart. But I wasn't sure because

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1 there wasn't enough detail, for instance that
 2 the Callendar Square issue, which I became much
 3 more informed about, which very much was
 4 a hardware issue within a branch, as
 5 I understood it -- I wasn't clear from the
 6 detail of the Computer Weekly article, but I was
 7 trying to keep an open mind.

- 8 **Q.** With hindsight, do you think addressing a series
 9 of concerns raised in the Computer Weekly
 10 article in the operation of the Horizon system
 11 would be addressed by going and looking at
 12 hardware in a branch?
- 13 **A.** I simply thought it was a good place to start,
 14 because our case was concerned with West Byfleet
 15 and I wanted to ensure that the defence saw how
 16 it operated because I was aware from other cases
 17 that sometimes there were misunderstandings
 18 about what the system was like, and how -- what
 19 it looked like to operate.
- 20 **Q.** Can we look, please, at POL00053393. We can see
 21 from the foot of the page it's from Mr Taylor,
 22 and then, at the top of the page, we can see
 23 this letter is dated 15 October 2009, so
 24 a couple of weeks before the site visit. It's
 25 addressed to Post Office Security with a copy to

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1 operate and how errors arise, and that's exactly
 2 what one could have a good idea about if you saw
 3 somebody using the system.

- 4 **Q.** Do you know where this idea that a demonstration
 5 of the operation of Horizon on a particular day,
 6 years after the events in question, was seen as
 7 a replacement for providing Horizon audit data
 8 at times relevant to the events in question?
- 9 **A.** Well, I never saw it -- I never understood that
 10 it was an alternative. The -- forgive me,
 11 I can't see -- this is Phil Taylor's letter,
 12 I think?
- 13 **Q.** It is, yeah.
- 14 **A.** The wording is very in character for Phil
 15 Taylor. "Knocking on the head", for instance,
 16 isn't a phrase I would use but I can imagine him
 17 using.

18 The -- I suppose it certainly was right we
 19 were using -- the visit -- I hoped the visit
 20 would help focus disclosure requests. We'd
 21 given an explanation as to why we thought
 22 a particular span was appropriate and that was
 23 still being considered, as I understood it, by
 24 the defence, and I thought overall they'd be
 25 helped by seeing the equipment.

51

1 the Investigator, Mr Longman. It reads:

2 "[Prosecution] Counsel Warwick Tatford has
 3 been discussing this case with Defence Counsel
 4 Keith Hadrill, both of whom are resident [at
 5 your chambers].

6 "What they have decided is to visit West
 7 Byfleet ... premises and perhaps someone can
 8 show them the Horizon system in operation which
 9 hopefully will knock on the head this business
 10 about the Defence requiring so many years worth
 11 of Horizon data."

12 Was that your purpose: visiting the branch
 13 to knock on the head a request for years of
 14 Horizon data?

- 15 **A.** No. I wanted the defence to see how Horizon
 16 worked and that would inform their disclosure
 17 request, but I wasn't seeking to end proper
 18 enquiries.
- 19 **Q.** How would viewing the hardware in the branch
 20 inform their disclosure requests?
- 21 **A.** Well, it would inform them a great deal because
 22 most of their -- about half of their disclosure
 23 requests weren't about Horizon at all but were
 24 about -- weren't about computer problems at all;
 25 they were about how easy the system is to

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1 I appreciate now, with hindsight, that's
 2 wrong but, at the time, that appeared sensible.

- 3 **Q.** Why, with hindsight, is it now wrong?
- 4 **A.** Well, because with hindsight I now know that
 5 there are lots of problems about Horizon which
 6 are completely out of my knowledge. I had no
 7 idea of anything that has been discovered since.
 8 At this stage, I knew nothing, other than the
 9 Computer Weekly article and I hoped that a visit
 10 might give some focus.
- 11 **Q.** When we come to the trial a year later, we'll
 12 see, in due course, that when you opened and
 13 closed the case to the jury you said "How can
 14 there have been a computer problem" -- I'm
 15 summarising -- "when, if there was a computer
 16 problem, it would have been evident to Mrs Misra
 17 because she was the one operating the computer?"
- 18 **A.** Yes, I can explain what I mean by that because
 19 I've seen that phrase, I'm aware of various --
- 20 **Q.** Online criticism?
- 21 **A.** -- online criticism and what I meant by that,
 22 and I hope this is a valid point, is that, if
 23 there is a problem, Horizon gives you a lot of
 24 opportunities to see where the problem might be
 25 arising. It delivers fruitful enquiries.

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1 Because, as indeed Mr Vasani said in his
2 evidence very clearly, he was able to find the
3 source of a problem by working through Horizon,
4 the various printouts.

5 I'm not suggesting that one can see
6 a computer problem from the screen of Horizon,
7 you can't, that's obviously right. But what you
8 can do is search the office from top to bottom,
9 using all the printouts that Horizon can give,
10 to get a full idea of where the problem might
11 arise, as indeed Mrs Misra had done when she was
12 able to identify thieves, and she did that by
13 using Horizon, as I understand it.

14 **Q.** Did that belief, the belief that you've just
15 expressed, inform your thinking of the
16 desirability or necessity of a site visit,
17 "Let's go down to the branch and see the system
18 in operation"?

19 **A.** Well, it did inform it. I thought it would be
20 helpful to everybody.

21 **Q.** That can come down. Thank you.

22 I'm going to turn to the appointment of
23 Mr Jenkins in the Misra case. Can I start,
24 please, with some general questions concerning
25 the duty of a prosecutor in relation to

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1 it is the expert is being asked to do and what
2 material they are being asked to consider in
3 order to undertake that task?

4 **A.** Yes.

5 **Q.** Fifthly, a prosecutor is obliged to set out the
6 material upon which reliance has been placed in
7 the prosecution and which may be relevant to the
8 questions which the expert is expected to
9 answer?

10 **A.** Yes.

11 **Q.** Lastly, a prosecutor is obliged, would you
12 agree, to inform the expert to as his or her
13 relevant duties?

14 **A.** Yes.

15 **Q.** Would you agree, again building on that, that,
16 even with those experts who are trained,
17 accustomed to or who make their living by giving
18 expert evidence, ie even if you were preaching
19 to the choir, a prosecutor has to make sure that
20 an expert understands what their duties are?

21 **A.** Yes.

22 **Q.** A prosecutor, would you agree, is under
23 an obligation to satisfy themselves that the
24 expert had understood in the first instance, and
25 then complied, with their relevant duties to the

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1 an expert witness.

2 Would you agree -- and these propositions
3 I'm about to put to you, come from the evidence
4 that the Chair of the Inquiry has heard from
5 Mr Atkinson, King's Counsel -- that a prosecutor
6 intending to rely on expert evidence in criminal
7 proceedings was subject to an obligation firstly
8 to satisfy themselves as to the expert's
9 relevant qualifications and expertise?

10 **A.** Yes.

11 **Q.** Secondly, to satisfy themselves that the expert
12 had been appropriately instructed, including by
13 the provision of a written and detailed letter
14 of instruction or an email of instruction, all
15 being provided with written terms of reference?

16 **A.** Yes.

17 **Q.** Thirdly, under an obligation to satisfy
18 themselves that the expert was provided, within
19 the instructions, with identification of what it
20 is that his or her opinion is sought on and set
21 out issues or questions that he or she is expect
22 to answer?

23 **A.** Yes.

24 **Q.** Fourthly, a prosecutor is under an obligation,
25 would you agree, to provide guidance as to what

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1 court?

2 **A.** Yes.

3 **Q.** That was a necessary duty in order that the
4 prosecutor could be sure that the expert
5 evidence was admissible, as a basic condition of
6 admissibility?

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

8 **Q.** Lastly, would you agree that a prosecutor was
9 under a duty to satisfy themselves that any
10 material or, indeed, literature, which might
11 undermine the expert's opinion, was reviewed by
12 the prosecution and, if potentially relevant,
13 disclosed not only to the defence but to the
14 expert?

15 **A.** Yes.

16 **Q.** Before we get into the weeds of emails and
17 letters and draft witness statements, would you
18 agree with the following three points, just as
19 a matter of generality and stepping back:

20 Firstly, Mr Jenkins was never provided with
21 a written document which met any of the
22 requirements that we have just identified?

23 **A.** That appears to be right. I think I may have
24 assumed that he had been because I worked on the
25 assumption that he'd been instructed properly.

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1 But I should have checked that and I didn't. My
 2 assumption was wrong, perhaps.
 3 **Q.** Would you agree that there's no documentary
 4 record which can be pointed to that confirms
 5 that Mr Jenkins understood any relevant expert
 6 duties of which he was subject?
 7 **A.** Well, I think that must be right because
 8 I haven't seen anything and it would have been
 9 shown me, if it existed.
 10 **Q.** Lastly, there's no documentary record which
 11 confirms that any prosecutor themselves, any
 12 part of the prosecution team, was satisfied that
 13 Mr Jenkins understood any of the relevant expert
 14 duties to which he was subject?
 15 **A.** No, there appears to be no document. That's
 16 right.
 17 **Q.** Would you agree that, by at least 2009/2010, the
 18 time that we're considering -- in fact it had
 19 been the position for many years before -- the
 20 following were necessary inclusions in an expert
 21 report:
 22 Firstly, details of the expert's academic
 23 and/or professional qualifications, their
 24 experience, their accreditation, that was
 25 relevant to the opinions expressed in the

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1 whether there was a range of opinion in relation
 2 to the matters dealt with in the report,
 3 a summary of that range of opinion and the
 4 reasons given by the expert for adopting
 5 a position within that range?
 6 **A.** Yes, I think that might depend on the particular
 7 case and what range might be relevant to the
 8 particular case. But, generally, I agree with
 9 that.
 10 **Q.** Yes, if there was a range --
 11 **A.** If there was a range, yes.
 12 **Q.** If there was a range, then it should include it?
 13 **A.** Yes.
 14 **Q.** That carried with it a concomitant duty to set
 15 out any material facts or matters that detracted
 16 from the opinion that the expert was
 17 proffering --
 18 **A.** Yes.
 19 **Q.** -- ie any points that might fairly be made
 20 against the opinion that they were offering?
 21 **A.** Yes.
 22 **Q.** A report was required to include, sixthly,
 23 I think, relevant extracts from literature or
 24 any other material that might assist the defence
 25 or the court?

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1 report?
 2 **A.** Yes.
 3 **Q.** Secondly, the range and extent of their
 4 expertise and any limitations upon that
 5 expertise?
 6 **A.** Yes.
 7 **Q.** Thirdly, an expert report was required to
 8 include a statement setting out the substance of
 9 all instructions received, whether that's oral
 10 instructions or written instructions, questions
 11 upon which their opinion was sought, the
 12 materials provided by their instructing client
 13 and considered by them, the documents,
 14 statements, evidence, information or assumptions
 15 that were material to the opinions that they
 16 were about to express?
 17 **A.** Yes.
 18 **Q.** Fourthly, a report necessarily had to include
 19 information relating to who carried out any
 20 examinations or investigations, the methodology
 21 used and whether or not such investigations were
 22 carried out under the expert's personal
 23 supervision?
 24 **A.** Yes.
 25 **Q.** Fifthly, a report was required to include

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1 **A.** Yes.
 2 **Q.** Seventhly, the report was required to include
 3 a statement that the expert had complied with
 4 their duty to the court to provide independent
 5 assistance by way of objective and unbiased
 6 opinion, in relation to matters within their
 7 expertise, and an acknowledgement that the
 8 expert would inform the parties and the court
 9 that, if their opinion changed, they would tell
 10 the court and the defence so?
 11 **A.** Yes.
 12 **Q.** Did you understand that those duties not only
 13 existed but that the requirements went to the
 14 substance of an expert's report, rather than
 15 just being administrative details that needed to
 16 be complied with?
 17 **A.** Well, I certainly realised that they were
 18 requirements and they might well determine the
 19 admissibility of the report.
 20 **Q.** So they're not just about form?
 21 **A.** No, no, it's not just about form.
 22 **Q.** It's about substance?
 23 **A.** Yes.
 24 **Q.** We know that those requirements were
 25 incorporated into the Criminal Procedure Rules,

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1 Rule 33, which came into effect in November
 2 2006. At the time that you were prosecuting
 3 Mrs Misra in 2009/2010, did you know that those
 4 requirements had been introduced into the
 5 Criminal Procedure Rules?
 6 **A.** I did know they were in the Criminal Procedure
 7 Rules. I quite clearly didn't consider them
 8 properly. I can give an explanation for that
 9 but, clearly, I failed in that and I -- and
 10 that's a clear failing.
 11 **Q.** You tell us in your witness statement -- we
 12 needn't turn it up -- you refer to a case called
 13 *Stubbs*, the decision of the Court of Appeal
 14 Criminal Division --
 15 **A.** Yes.
 16 **Q.** -- that a witness who is not functionally
 17 independent of a party, for example because
 18 they're an employee of a party, may nonetheless
 19 be called as an expert on behalf of the
 20 prosecution. Would you accept that, in such
 21 cases where the witness is not functionally
 22 independent of the relevant actors in the case,
 23 it's all the more important that the expert
 24 witness understands and complies with the duties
 25 that I've just mentioned?

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1 evidence, I do remember thinking that the
 2 statement that we'd eventually been -- received
 3 from Mr Jenkins was the final statement,
 4 essentially was his main statement,
 5 I appreciated that didn't comply but I was aware
 6 of the time constraints.

7 I have a recollection of speaking with Keith
 8 Hadrill about that to check whether there was
 9 any issue as to admissibility. It's only
 10 a recollection. I can't be absolutely sure
 11 about that. I concede, though, that is nowhere
 12 near enough to comply with the rules.

13 What I can see now is that, because of the
 14 difficulties of timing and various other
 15 stressors within the case, I tried to cover the
 16 points myself by explaining things orally when
 17 that simply isn't the safe way to proceed, and
 18 I was in error in that.

19 **Q.** Again, before embarking on the detail, would
 20 that in Mrs Misra's case, no statement relied
 21 upon by the prosecution, by the Post Office,
 22 from Mr Jenkins, included any of the necessary
 23 in conclusions required by the common law and
 24 the Criminal Procedure Rules, in order to
 25 conform to the requirements of proper expert

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1 **A.** No, I absolutely agree with that. Yes.
 2 **Q.** Would you agree that there's a particular duty
 3 to ensure understanding with and compliance with
 4 such duties in such a witness's case, because of
 5 the particular risk that an individual, whose
 6 day job is not being an expert witness and who
 7 is asked to give evidence about issues including
 8 their own work, may not understand the nature of
 9 their expert duties?
 10 **A.** No, absolutely. Absolutely.
 11 **Q.** They may also have skin in the game?
 12 **A.** Yes.
 13 **Q.** Was this a risk that you appreciated?
 14 **A.** Oh, yes, and we were utterly transparent.
 15 I fully accept that we haven't -- that the
 16 statements of Mr Jenkins didn't comply with the
 17 Criminal Procedure Rules but we made -- and
 18 I certainly made considerable efforts to ensure
 19 that the witness did understand his duties.
 20 I accept that the best way to do it is to
 21 follow the rules. That protects all parties,
 22 including Mr Jenkins, and I can see now that
 23 by -- well, what I remember -- just so the
 24 explanation is clearly understood, I do
 25 remember, particularly when I saw Mr Atkinson's

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1 evidence?

2 **A.** Yes, I would. There's a reason for that, though
 3 and it comes from the -- I would accept, the
 4 muddled way in which he was instructed. Our
 5 thinking in the prosecution side wasn't -- was
 6 muddled. He became involved, initially, in the
 7 case simply as a way of responding to the
 8 disclosure requests because the officer in the
 9 case was unable to deal with that.

10 So a person at Fujitsu needed to be
 11 identified who could help with that and then
 12 he -- by a process that is unclear to me, he was
 13 then presented to me as our expert. Now,
 14 I think I assumed that letters of instruction,
 15 and so forth, had been sent and that doesn't
 16 appear to be the case. But there was muddled
 17 thinking to do with the demanding exercise of
 18 complying with the disclosure requests, and that
 19 led to muddled thinking and a failure to follow
 20 the rules.

21 I tried to follow the substance but I accept
 22 that the rules are there not just for form but
 23 also for substance, and the efforts I made were
 24 not adequate and the rules should simply have
 25 been followed. That would have been the proper

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1 way. But it started off in an unusual way, and
2 that was the original cause of the problem.

3 For instance, Mr Jenkins, on my advice, was
4 providing a series of witness statements, which
5 essentially were responses to interim reports by
6 Professor McLachlan to try to assist him,
7 because we had a flurry of these reports and
8 I thought it important that it was set down in
9 writing so that Mr Jenkins could be
10 cross-examined on it in due course, if
11 necessary, what his position was, so that there
12 was in effect an audit trail, and it was clear
13 what he was saying.

14 But that muddled beginning tarnished the
15 thought process throughout Mr Jenkins'
16 instruction and I regret that. It was
17 a mistake.

18 **Q.** Just generally, again, before we get into some
19 of the detail, the muddled beginnings,
20 ie starting the process of engaging Mr Jenkins
21 in any way in the case, in an unusual way, as
22 you've just described it, that was itself the
23 choice of the prosecution, wasn't it?

24 **A.** Yes, and it was a choice made because we were
25 very concerned about complying with our

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1 and that was -- I had overall responsibility,
2 I should have corrected that. I didn't think it
3 through.

4 **Q.** If it came to that, in an argument over
5 admissibility, you would end up calling yourself
6 as a witness?

7 **A.** Yes, I hadn't thought that through. I did think
8 that that was essentially impossible in the
9 case, though, the way it was working through it,
10 because the way that I thought we had found,
11 which was unconventional and certainly not in
12 accordance with the rules, but actually involved
13 mutual cooperation between the experts in a way
14 that seemed to be beneficial to both.

15 And it was actually the only way of making
16 progress in the case, because we were
17 essentially having an unending circle of interim
18 reports with hypotheses which didn't match our
19 understanding of Horizon but we needed somebody
20 with expertise to explain that to the expert.

21 We needed two experts to work together, as they
22 did, eventually providing a joint statement
23 showing agreement and disagreement.

24 So I suspect -- well, looking at it now,
25 I was lulled into a false sense of security that

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1 disclosure obligations by responding to
2 requests. We should have sat down and thought
3 about it much more clearly. Our response was
4 a knee-jerk response to the requests.

5 **Q.** Secondly, you said that you'd assumed that
6 a letter of instruction was sent?

7 **A.** Yes, I did assume that.

8 **Q.** Wouldn't you want to see it and ensure that it
9 should have been disclosed?

10 **A.** No, I agree. I should have asked to see it.

11 **Q.** Thirdly, you said that you complied or sought to
12 comply with substance of what the rules required
13 by engaging in conversations with Mr Jenkins?

14 **A.** Yes.

15 **Q.** Is there any record of those conversations?

16 **A.** No, it's only my recollection.

17 **Q.** So, if it came to an issue at court, either as
18 to admissibility on a *voir dire* of the expert
19 evidence or in the event of challenge at trial
20 as to what the expert had been told as to their
21 duties, the material with which they had been
22 provided, whether they'd been informed of their
23 duties and the like, there would be no record
24 which could be produced?

25 **A.** I agree. It was muddled thinking throughout,

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1 this was an unconventional way of doing the
2 right thing in this case. But it was wrong.

3 **Q.** You say in your statement -- I'm not going to
4 turn it up -- that you took great pains in all
5 your conversations with Mr Jenkins to make sure
6 that he understood the duties of an expert
7 witness?

8 **A.** Yes.

9 **Q.** You explained it was his overriding duty to
10 assist the cost --

11 **A.** Yes.

12 **Q.** -- to give an opinion that was objective and
13 unbiased, and that that duty overrode any
14 obligation that he might feel to the party
15 calling him: the Post Office. You explained
16 that it was his duty to disclose anything that
17 might undermine his position and that he should
18 be entirely open with both the Post Office, as
19 prosecutor, and Professor McLachlan, about any
20 Horizon problems?

21 **A.** Oh, yes, because the -- I had asked previously
22 in my advice for Fujitsu to be contacted and to
23 inform us of any problems and I saw Mr Jenkins
24 as an obvious route to doing that. That's how
25 I saw things. And it seemed to me, particularly

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1 from the feedback I was getting from the
 2 defence, that this approach was working.
 3 **Q.** Sorry, you've referred to "the defence" a number
 4 of times now.
 5 **A.** Yes.
 6 **Q.** Are you saying that conversations with
 7 a colleague in chambers --
 8 **A.** No, I really mean Professor McLachlan.
 9 **Q.** I see.
 10 **A.** It was perfectly clear to me that he found it
 11 helpful to work with Mr Jenkins. It seemed to
 12 fit his way of doing things because his way of
 13 approaching things was to suggest hypotheses
 14 which needed somebody to help him with. They
 15 needed to sit down together and it's absolutely
 16 clear that they did that, from the evidence they
 17 gave at the trial.
 18 **Q.** Before we get into the detail of the
 19 communications between you, the Post Office and
 20 Fujitsu and Mr Jenkins, if you were mindful of
 21 these expert duties and the need to make them
 22 crystal clear in somebody who did not enjoy
 23 functional independence from the party that was
 24 calling them, and you explained them to
 25 Mr Jenkins, how is it that every witness

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1 statement setting out all matters.
 2 That final statement should have complied
 3 properly with the Criminal Procedure Rules. It
 4 didn't, but that statement wasn't available
 5 until about two days before the trial and my
 6 recollection is I spoke with the defence to see
 7 if that was going to raise any problem with
 8 admissibility and I understood it wasn't going
 9 to be because their understanding was that the
 10 two experts were working well together, and that
 11 Professor McLachlan needed the assistance he was
 12 getting from Mr Jenkins.
 13 **Q.** Does the fact that none of the statements
 14 include the required content for an admissible
 15 expert report and there isn't a single document
 16 that records the explanation to Mr Jenkins of
 17 the existence of his duties instead show that
 18 the Post Office and its lawyers failed properly
 19 to consider what duties Mr Jenkins was subject
 20 to?
 21 **A.** I think, as a whole, that may be right. I was
 22 trying and I thought it had been -- I assumed --
 23 it was an assumption. I assumed that these
 24 obligations were being explained by my
 25 instructing solicitor as well.

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1 statement which the Post Office sought to rely
 2 on from Mr Jenkins omitted any of the necessary
 3 in conclusions for an expert report?
 4 **A.** Because most of -- until the last statement, all
 5 of those were responses to Professor McLachlan.
 6 It is important to bear in mind that there had
 7 been an abuse of process argument that had been
 8 dependent entirely on submissions made about
 9 responses and what the defence were saying were
 10 inadequate responses. I had undertaken, at that
 11 hearing, to ensure that the experts would work
 12 together. That's why we did it. I was
 13 essentially trying to ensure that the
 14 undertakings I gave in the abuse of process
 15 argument were fulfilled.
 16 **Q.** How does that explain the absence of any of the
 17 required content in any of the witness
 18 statements?
 19 **A.** Well, it should have -- they should have been in
 20 all of the witnesses and I thought of this point
 21 particularly when the final statement was
 22 forthcoming because, as I've said, the earlier
 23 ones were meant to assist. They were
 24 essentially answers to questions posed. And the
 25 idea, or my idea, was to have the final

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1 **Q.** On that point, I'm focusing on you at the moment
 2 but you suggest that you explained orally to
 3 Mr Jenkins some of the duties to which he was,
 4 in fact, subject. Given it was the Post
 5 Office's solicitors who were responsible for
 6 instructing Mr Jenkins and the Post Office who
 7 bore the statutory duties and common law duties
 8 in respect of disclosure, rather than having
 9 conversations with the expert that aren't
 10 recorded, did you not make it clear to or advise
 11 the Post Office that they should be the ones who
 12 should approach Mr Jenkins on the basis that he
 13 was an independent expert and they should be the
 14 ones that discharged the duties of compliance
 15 that I've mentioned?
 16 **A.** I didn't make that clear because I thought that
 17 had been followed and that's how he came to be
 18 instructed. It goes back to the muddled and
 19 unclear way in which he came forward as
 20 an expert. He went from one day, as
 21 I understood it, to the person who was helping
 22 with the disclosure enquiries, to becoming our
 23 expert. And I may have -- well, I did assume
 24 that instructions had been properly made.
 25 I should have required to see the paperwork, as

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1 I've said earlier.
 2 **Q.** You tell us in your witness statement that your
 3 Advices to the duties that you mentioned
 4 occurred in the course of conversations with
 5 Mr Jenkins. When did those conversations occur?
 6 **A.** I think I had phone conversations with him and
 7 there was also a conference shortly before the
 8 trial. I don't remember the conference but
 9 I can see it is referred to in emails. And what
 10 I imagine I did, because it's the sort of thing
 11 I would have done at that time in my practice,
 12 would have gone -- would have actually had to
 13 have my Archbold with me and go through with him
 14 in the conference what the requirements of
 15 an expert was.
 16 But I don't have a recollection of the
 17 conference, but that's the sort of thing I would
 18 have done as part of my practice. But, again,
 19 I have no specific recollection of that.
 20 **Q.** In relation to the phone conversations first,
 21 dealing with the conference second, was there
 22 a solicitor present, taking a note of the --
 23 **A.** No.
 24 **Q.** -- conversations that you were having with the
 25 prosecution's expert?

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1 **A.** Yes, certainly.
 2 **Q.** -- in the *Misra* case to try to track the initial
 3 instruction of Mr Jenkins to work out how it
 4 came about in October 2010, he was called to
 5 give evidence as an expert witness. Can we
 6 start, please, with FUJ00152843.
 7 We can see, I think, that this is an email
 8 of 26 November 2009, from the Investigator,
 9 Mr Longman, to Jane Owen -- just to remind you,
 10 she was a Security Team Advisor in the Post
 11 Office's Security team -- and to Andy Dunks,
 12 also a member of the Post Office's Security
 13 team. You're not copied in on it but it refers
 14 to some advice that you are said to have given:
 15 "Jane
 16 "I attach a report from the defence expert
 17 where he has highlighted a number of problems
 18 with the Horizon system."
 19 The attachment was the second interim report
 20 of Mr McLachlan:
 21 "Our barrister, Warwick Tatford, has asked
 22 that the problems with Horizon that he has
 23 raised in his report are replied to in a witness
 24 statement form. I presume that an employee of
 25 Fujitsu would have to produce the witness

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1 **A.** No.
 2 **Q.** Is that advisable or suboptimal?
 3 **A.** No, it's certainly suboptimal.
 4 **Q.** How would you rely, if any issue had been raised
 5 at trial, as to whether Mr Jenkins had been
 6 informed of his expert duties or, indeed, on
 7 an appeal, if your solicitors weren't making
 8 a record of what he had been advised?
 9 **A.** Well, I agree, that encapsulates the failing.
 10 **Q.** Turning to the conference, we've seen only
 11 reference to one conference, I think --
 12 **A.** Yes.
 13 **Q.** -- likely mentioned in emails, of October 2010.
 14 Was that an occasion on which advice was given?
 15 **A.** That's what I believe, although I don't have
 16 a specific recollection of it but, as I say,
 17 that's the sort of thing I would do. The whole
 18 point of meeting with Mr Jenkins was to ensure
 19 as -- well, my main point was to ensure that he
 20 understood what his job was because I was well
 21 aware he hadn't been an expert before and
 22 I wanted to help him.
 23 I've obviously failed in that but, actually,
 24 what I wanted to do was to help him.
 25 **Q.** Can I turn, then, to specific communications --

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1 statement."
 2 Does that reflect the advice that you
 3 originally gave as to how Professor McLachlan's
 4 report ought to be responded to?
 5 **A.** Yes, I advised that it be put in a witness so
 6 that, as a witness, he could be cross-examined
 7 on it but I was anxious that he had the
 8 information as quickly as possible so he could
 9 make progress.
 10 **Q.** There's no suggestion here, if this summarises
 11 your advice, that Professor McLachlan's report
 12 would be responded to by expert evidence?
 13 **A.** No, at that stage, I didn't envisage that.
 14 **Q.** Why?
 15 **A.** Because -- well, because what I thought we were
 16 trying to do was simply to give him an informed
 17 position on Horizon and then he could provide
 18 a report, rather than an interim report based on
 19 hypotheses that may not even apply to Horizon.
 20 I think -- it's difficult to remember now, it's
 21 a long time ago, but I think I may have thought
 22 that, if a report came forward, we might have to
 23 consider then an expert.
 24 But I didn't form any final views on this.
 25 I was -- I was doing my best, with my solicitor,

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1 to respond to very strenuous, wide-ranging
2 disclosure requests, which were supported in
3 a rather unhelpful way, I thought at the time,
4 by interim reports of an expert. And it was
5 a case of firefighting, which -- and which
6 produced muddled thinking.

7 **Q.** Can we see what the Post Office Security team
8 did with this when they received it.

9 FUJ00152847. Can we look at page 2, please.

10 I should just look at page 3 first, just so
11 you can see it. There's the email we've just
12 looked at, "Jane, I attach a report from the
13 defence expert"; can you see that?

14 *(No audible answer)*

15 Then if we look at the foot of -- sorry, if
16 we look at page 2. Thank you. Jane Owen, the
17 Security Team Advisor -- if we scroll up --
18 forwards the email to Penny Thomas in Fujitsu,
19 saying:

20 "Penny

21 "This is the email and attachments that we
22 chatted about. Please let me know if you need
23 anything else from me and if this kind of
24 request needs to be raised in a more official
25 way."

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1 say, under the heading "Section 8 disclosure
2 application":

3 "I have [reviewed] paperwork held by the
4 Civil and Criminal departments in relation to
5 all the 'case studies' set out in the Computer
6 Weekly article which is attached to the
7 Section 8 application."

8 Just for those watching, what's a Section 8
9 application?

10 **A.** Oh well, that's an application if the defence
11 are unhappy with the secondary disclosure,
12 following a defence statement.

13 **Q.** They had made an application asking for
14 disclosure of material relating to or relevant
15 to the case studies set out in the Computer
16 Weekly article?

17 **A.** Yes, they had. They hadn't, at this stage,
18 I think, served a defence statement relating to
19 those issues at all, so it was a little cart
20 before the horse, really, because a Section 8
21 application should follow on from a defence
22 statement that actually raises the issue of
23 Horizon. At this stage, we just simply had
24 a defence statement saying it was other thieves
25 in the office.

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1 Then page 1, foot of the page, please.

2 Penny Thomas replies:

3 "Do you know what the return/court
4 requirements are for this case, please?"

5 Then at the top of the page.

6 "[I have] Spoken to the investigator and he
7 has asked is there any chance of us having the
8 information by Christmas?"

9 So there are some administrative details.
10 Would you agree that this collection of emails
11 is an insufficient and improper way of
12 commissioning expert evidence from an employee
13 of Fujitsu?

14 **A.** Yes, I'm not sure it's quite reached the stage
15 of obtaining expert evidence, as an expert
16 witness, but it's wrong, clearly.

17 **Q.** That can come down. Thank you.

18 Can we move forwards a little bit, please --
19 that was December 2009 -- to your disclosure
20 advice of 5 January 2010. POL00044557. If we
21 look, please, at the last page, which is
22 page 9 -- scroll down, please -- we can see that
23 you sign it off, dated 5 January 2010.

24 **A.** Yes.

25 **Q.** Yes? Then if we go back, please, to page 2, you

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1 **Q.** You say:

2 "In deciding whether any material should be
3 disclosed I have kept the following test in
4 mind: is there material that is capable of
5 casting an objective doubt on the reliability of
6 Horizon?"

7 What did you mean by "casting an objective
8 doubt"?

9 **A.** Oh, so that there was evidence of a problem,
10 rather than simply a complaint by
11 a subpostmaster. So somebody -- so that there
12 are records showing a problem.

13 **Q.** What do you mean "records showing a problem"?

14 **A.** Well, that there could be all sorts of records.
15 (1) the -- the difficulty is if you have
16 a subpostmaster who says, "I have a problem but
17 I've dealt with the problem by putting false
18 figures in so the accounts balance" then you
19 don't have the evidence; you've simply got the
20 complaint.

21 If, for instance -- and this didn't happen
22 at all from what I came across -- but if
23 a subpostmaster had a problem, did a printout,
24 for instance -- I take a silly example because
25 I always use stamps as a silly example -- they

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1 take a printout from Horizon for the number of
2 stamps they have in a particular stock and the
3 printout says they have 100 books and they can
4 see they only have one, they could video that,
5 for instance, with the printout, and that would
6 be evidence, that would be objective evidence.

7 Now, nobody, I don't think, ever did
8 something like that but that would be a way of
9 having objective evidence -- or have somebody
10 who has seen that there is a problem.

11 **Q.** Like a trainer?

12 **A.** Like a trainer, that's possible, yes, or
13 an expert who has been asked to look at it.

14 **Q.** Or a more Senior Manager at the Post Office?

15 **A.** Yes, somebody independent, some -- an Area
16 Manager, for instance, who might have --

17 **Q.** Who had been in the branch?

18 **A.** Yes.

19 **Q.** -- watching figures mysteriously increase or
20 decrease on the screen in front of their very
21 eyes?

22 **A.** Yes.

23 **Q.** Were you ever told about such matters?

24 **A.** Well, the matters -- I remember being told about
25 those matters in Mrs Misra's evidence. But, as

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1 civil files. I did that for two days and
2 I found the Callendar Square problem.

3 It may be that I should be given more
4 evidence about other matters on those two
5 visits. But that would -- that's what I was
6 trying to do, to find objective evidence because
7 it did seem to me that simple complaints were
8 going to be inadmissible and wouldn't assist any
9 party.

10 **Q.** What about lines of inquiry that it might allow
11 the defence to pursue?

12 **A.** Oh yes, well, it depends on -- I have to -- what
13 I needed to do -- to see was to see the details
14 of the complaints. That's why -- and the
15 details were not there in the Computer Weekly
16 article. That's why I wanted to look at civil
17 files to see if I could find more details. More
18 details might lead to an enquiry which would
19 give that piece of objective evidence.

20 **Q.** Were you aware at this time when you attended
21 and spent -- I think it was a day; is that
22 right?

23 **A.** Two days, and separated, as well, by a period of
24 time so that gave an opportunity to reflect, on
25 the part of the Civil department if there was

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1 I understand it, there wasn't evidence from any
2 trainers of that sort of problem, but --

3 **Q.** I'm going to come to --

4 **A.** No, no, please, I need to re-refresh by looking
5 at the -- my memory to be refreshed by looking
6 at the documents.

7 **Q.** Other than Mrs Misra's case, did the Post Office
8 reveal to you evidence that met your objective
9 test, ie which proved by means other than the
10 word of the subpostmaster themselves?

11 **A.** Well, what I discovered was the Callendar Square
12 problem, which I discovered from reading the
13 judgment but I knew that needed to be further
14 investigated. So that was a piece of objective
15 evidence, precisely the sort of thing I was
16 looking for.

17 **Q.** Were you aware that subpostmasters made
18 complaints about errors in Horizon that weren't
19 investigated and, therefore, the availability of
20 so-called objective evidence would never arise?

21 **A.** Well, I would have been aware of that as
22 a theoretical possibility. All I had done so
23 far, following the steps I had been asked to do,
24 was to bring the Computer Weekly article to the
25 attention of the Post Office and ask to see the

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1 anything that I hadn't been shown.

2 **Q.** At this time, when you conducted the two-day
3 visit to Post Office offices, were you aware of
4 something called the Horizon Helpdesk?

5 **A.** Oh yes, well, that was part of the evidence in
6 our case and I was aware of it from other cases,
7 as well, I think.

8 **Q.** Were you aware of other levels of support
9 available --

10 **A.** Yes, I think so, yes.

11 **Q.** -- something called the SSC --

12 **A.** Yes.

13 **Q.** -- sorry, the SEC?

14 **A.** Yes, I'm not very good on remembering what these
15 stand for but I think I was aware, yes.

16 **Q.** You were aware of other tiers of support?

17 **A.** Yes, yes.

18 **Q.** Were you shown any records within those computer
19 databases of complaints by other subpostmasters?

20 **A.** No. No. I'm not sure, I didn't think of that
21 enquiry, so it may be partly the fault is mine.
22 But I don't think -- what I was shown were the
23 files that related to the particular complaints
24 and all I could see within those files were the
25 fact that a complaint had been made but there

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1 may not -- there was no evidence to support it
 2 one way or another. Sometimes there wasn't
 3 a requirement for the money to be paid back, but
 4 I was rather frustrated, quite frankly, from my
 5 two visits because I didn't really have very
 6 much information, apart from the Callendar
 7 Square, which I needed to investigate.

8 **Q.** You say that the test that you had in mind: is
 9 there, rewording it a little bit, objective
 10 evidence that is capable of casting a doubt on
 11 the reliability of Horizon?

12 **A.** Yes.

13 **Q.** You discussed that with the defendant's legal
 14 representatives when you met in the Post Office.
 15 Was that with Mr Hadrill from chambers?

16 **A.** Yes. I think he was there and I discussed it --
 17 I had discussed it with him on other occasions,
 18 in any event. I think I first raised it on the
 19 visit to West Byfleet and I think Mr Hadrill and
 20 Issy Hogg were present then, I think. I'm not
 21 absolutely sure of that.

22 **Q.** They agreed with the test, you say?

23 **A.** Oh, yes. I thought it very important to discuss
 24 it together because they might have useful
 25 additions to the test I was considering.

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1 in a very sensible way. But I was just trying
 2 to find something that went just slightly beyond
 3 the fact of a complaint, because a complaint can
 4 be genuine or it can be an excuse for
 5 inappropriate behaviour.

6 **Q.** Can we move on. You say, in paragraph 5:
 7 "The only material that should be disclosed
 8 ... is the Judgment in the *Castleton* case.
 9 I attach a copy of the final Judgment to this
 10 Advice. All the other material simply contains
 11 unsubstantiated claims by subpostmasters. When
 12 those claims have been investigated no
 13 supporting evidence has been found."

14 Yes.

15 **Q.** You say in paragraph 6 you would wish some
 16 further enquiries to be made from Fujitsu:
 17 "Paragraph 23 of *Castleton* ... refers to the
 18 evidence of Anne Chambers, a system specialist
 19 employed by Fujitsu. When she was
 20 cross-examined she appears to have had full
 21 knowledge of an error in Horizon that appeared
 22 to have occurred in Callendar Square in Falkirk.
 23 This [is] 'case study 6' [seemingly in Computer
 24 Weekly]. I have seen some civil paperwork in
 25 relation to Alan Brown, but not concerning

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1 **Q.** So you were looking for evidence where it had
 2 already been established that Horizon, in some
 3 respect or other, was lacking in reliability?

4 **A.** Yes. That was absolutely key.

5 **Q.** Not mere complaints, no matter whether they came
 6 from tens, hundreds or thousands of
 7 subpostmasters?

8 **A.** No, because it seemed to be a complaint was
 9 simply a complaint. It wasn't actually --
 10 I would see it would be difficult actually to be
 11 admissible in a trial.

12 **Q.** What about the point that I've made about it
 13 might put the defence on a train of inquiry?

14 **A.** Well --

15 **Q.** Rather than applying a test for disclosure of
 16 whether the product of disclosure would
 17 ultimately be admissible?

18 **A.** I agree with that. That's part of the
 19 disclosure exercise, to put the defence on
 20 a route to inquiry. But they had a series of
 21 complaints. They were well aware of the
 22 complaints in Computer Weekly and I think were
 23 brought up to speed about other complaints as
 24 and when they arose.

25 I knew that they were being proactive there

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1 a Horizon error. I don't know if Anne Chambers
 2 still works for Fujitsu but it should be
 3 relatively straightforward for Fujitsu to
 4 provide full information about what appears to
 5 have been a well-known problem at Callendar
 6 Square."

7 At this time, did anyone in the Post Office
 8 tell you about something known as a Known Error
 9 Log.

10 **A.** I don't remember, I don't remember.

11 **Q.** By the time of the trial, next year, the
 12 following year, by October 2010, had you been
 13 told by either Fujitsu, through Mr Jenkins or
 14 otherwise, or by the Post Office, of a species
 15 of document called a Known Error Log?

16 **A.** I don't think so. I don't think the title means
 17 anything to me that I can think of at the
 18 moment.

19 **Q.** A document that records Fujitsu's own assessment
 20 of there being --

21 **A.** Oh --

22 **Q.** -- an error in Horizon, either in hardware, in
 23 coding, in communication?

24 **A.** No. That's the sort of thing I set out in my
 25 Advice I'd like -- the sort of thing I might

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1 hope to get but I wasn't aware of anything like
 2 that.

3 **Q.** That's precisely the thing you'd be looking for,
 4 a self -- a recognition by Fujitsu itself --

5 **A.** Oh, that would be the best evidence of all.

6 **Q.** So far as you can recall, now did anyone mention
 7 the word KEL or Known Error Log at any time in
 8 your instructions --

9 **A.** I don't think so, no.

10 **Q.** We've heard evidence from Mr Atkinson that every
 11 part of the Post Office was subject to a duty to
 12 record and retain evidence potentially relevant
 13 to the conduct of prosecutions. Did you ever
 14 advise the Post Office to conduct a disclosure
 15 exercise itself as to what records it held in
 16 relation to any problems or issues with Horizon?

17 **A.** No, I didn't ask the Post Office. I thought the
 18 enquiry should be made to Fujitsu. But you're
 19 right, it's a sensible enquiry. I didn't think
 20 of that.

21 **Q.** Why did you limit the exercise to looking at the
 22 case papers that happened to be identified in
 23 a Computer Weekly article?

24 **A.** Well, I didn't limit them to that. That was my
 25 starting point. I've made it absolutely clear,

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1 it holds or to conduct a disclosure exercise to
 2 identify any documents that it holds in relation
 3 to problems or issues with Horizon?

4 **A.** Well, I thought -- I rather thought that was
 5 implicit in my general advice. I'd been rather
 6 vague about matters, I suppose, but deliberately
 7 so, to ensure that we could capture -- the net
 8 could be spread wide.

9 **Q.** Can we go back to your advice, then, to look at
 10 the focus on Fujitsu, POL00044557. Page 3,
 11 please, paragraph 7. You say:

12 "I also think that our disclosure duty
 13 requires us to ask Fujitsu whether they are
 14 aware of any other Horizon error that has been
 15 found at any sub post office. I anticipate that
 16 there will be none, but it's important that the
 17 check is made."

18 I think you've acknowledged in answer to
 19 a question I asked a couple of questions ago
 20 that you think, on reflection, that you were in
 21 error in focusing on only Fujitsu and that you
 22 ought to have asked the Post Office to look in
 23 its own depositories for any records of problems
 24 or issues with Horizon.

25 **A.** Yes, I should have said -- it requires us to ask

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1 and my Advice is very clear on this, that
 2 I needed to have disclosure of any problems
 3 relating to the reliability of the Horizon
 4 system. That is what I make very clear I need
 5 in that Advice, and I made it clear in all my
 6 dealings with those instructing me. They were
 7 well aware of that.

8 From all I can tell, the Criminal Law
 9 Department were trying to achieve that end, as
 10 well. But everybody knew and you asked me
 11 earlier about whether this was a test case and
 12 I said it was an important case. I assumed, and
 13 it was a very obvious assumption, that people
 14 much higher than I would ever come across in the
 15 Post Office and Fujitsu knew about the case and
 16 knew about the pieces of disclosure, I wanted to
 17 see if they existed.

18 I assumed I had set in process something
 19 that should have readily brought forth important
 20 pieces of disclosure and, because nothing came
 21 forward, I assumed that the Callendar Square was
 22 the problem.

23 **Q.** Why not ask the actual party that is
 24 prosecuting, which itself is subject to the
 25 disclosure obligations, for any documents that

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1 Fujitsu and consider within the Post Office
 2 whether anybody is aware of any Horizon error.
 3 That would be a better way to formulate it.
 4 I did assume that this -- I did draft this very
 5 widely. I assumed, perhaps wrongly, that
 6 Fujitsu would be well aware of something that
 7 was the Post Office was well aware of. It's
 8 a joint system, as it were.

9 **Q.** On what evidential platform did you say you
 10 anticipate that there will be none but it is
 11 important that a check is made?

12 **A.** Because nobody had ever told me about anything.
 13 I'd found the one piece of objective evidence on
 14 my own and nobody told me about anything else,
 15 and I was -- and I -- I mean I've said elsewhere
 16 that I was aware of the danger of the robust
 17 term being a mantra. It needed to be justified.
 18 But I was given quite clear confidence from all
 19 I spoke to that there wasn't a problem with
 20 Horizon.

21 I thought I'd found a one-off problem at
 22 Callendar Square. That's why I thought I'd
 23 found nothing at the Civil department. And that
 24 was the impression I had from having
 25 conversations with Mandy Talbot at the Civil

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1 department, I think. I can't remember those
2 exact conversations. My understanding was that
3 this was the only thing and I think I was the
4 one who found it. I'm not sure she brought it to
5 my attention. I found it within the judgment
6 and it was striking to me that Gareth Jenkins
7 wasn't familiar with this problem. He needed to
8 research it himself.

9 All this met together to suggest that this
10 was a good system, I'd found something that
11 needed to be investigated, I acknowledged that
12 any computer system can have lots of glitches.
13 That's perfectly possible, and they can arise at
14 future dates as well, but this was how I thought
15 the process was working well.

16 **Q.** Can we go forward to page 9, please. After
17 paragraphs 25 and 26 under the heading "Other
18 Matters", you say:

19 "[Mr Longman] has sensibly suggested that
20 the Defence expert might want to meet with one
21 or more representatives from Fujitsu to discuss
22 technical issues and to reach as much agreement
23 as possible. This is an obvious way of avoiding
24 much wasted time and such an invitation should
25 be given to the Defence.

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1 writing so he could be cross-examined on any
2 answers. I didn't see him as an expert witness
3 at that time, although albeit I appreciated he
4 had considerable expertise.

5 **Q.** Can you explain why you did not appear to
6 consider that any statement from Mr Jenkins
7 replying to an expert report would itself be
8 expert evidence?

9 **A.** Oh, well, if there was a statement from Jon
10 Longman in reply, that wouldn't be expert
11 evidence either. I saw him as a witness of fact
12 at this stage from his -- but as an employee of
13 Fujitsu. He could give factual answers to
14 inform Professor McLachlan who was -- who needed
15 information about Horizon. That's what the
16 professor needed. He had hypotheses but he had
17 no idea whether they were relevant to Horizon.
18 That's why I thought Mr Jenkins could help. Not
19 as an expert witness necessarily at that stage
20 but a witness of providing facts from his
21 knowledge as an employee of Fujitsu.

22 **Q.** Is that what happened: that Mr Jenkins only
23 provided facts?

24 **A.** Well, then it becomes muddled. I would have to
25 see what's being provided. I can't think --

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1 "Gareth Jenkins at Fujitsu has provided
2 Mr Longman with a number of comments about the
3 Defence 2nd interim report which confirmed my
4 suspicion that the theory that Horizon cannot
5 deal with refused credit card transactions is
6 simply wrong. He suggested in his comments that
7 there are also a number of areas where [the Post
8 Office] could provide assistance. It seems it
9 would be relatively easy to disprove the
10 theories of the 2nd report by witness statements
11 from Mr Jenkins and a suitable witness at [the
12 Post Office]. Those statements should be sought
13 now. Although the Defence are likely to come up
14 with other theories, it will hopefully save time
15 and expense on both sides if we try to rebut
16 false theories as and when they arise."

17 Would you agree that still at this stage,
18 this was not advice that treated Gareth Jenkins
19 as an expert witness?

20 **A.** Oh, yes, I was using him as a way of responding,
21 to the disclosure requests.

22 **Q.** Despite the fact you were advising that
23 Mr Jenkins reply to a defence expert report?

24 **A.** Well, because I saw him as a witness and
25 I thought it important that it was set out in

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1 I can't remember every single statement and
2 every line of it. But it becomes muddled and
3 I can see that. I'm sure.

4 **Q.** Can we turn back to the chronology, please,
5 FUJ00152887, and look at page 2, please. At the
6 foot, and keep going, thank you -- a little bit
7 more, thank you.

8 This is a continuation of the email trail
9 that we were looking at before the excursion
10 into your Advice. So before we examine what
11 happened as a result of your advice, let's just
12 track back to see what happened following the
13 administrative arrangements being discussed
14 between Jane Owen and Penny Thomas. At the foot
15 of the page is an email from Penny Thomas to
16 Jane Owen:

17 "I hope all is well with you.

18 "Our expert, Gareth Jenkins, has made
19 comments on the 2nd Interim Technical expert's
20 report which I attach for review by Prosecution
21 counsel. Please note that where [the Post
22 Office] is required to respond he has state so
23 in the text. We agreed that in the New Year we
24 would discuss how this would be presented."

25 Mr Jenkins is here being referred to as

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1 an expert, which of course may mean either
 2 a person with expertise or a person who
 3 qualifies as an expert witness in legal
 4 proceedings. At this point, what was your
 5 understanding of Mr Jenkins' status?
 6 **A.** Well, I didn't understand him to be an expert
 7 witness yet. I thought he was answering
 8 disclosure requests through his expertise. But
 9 I can see how it's becoming blurred, that's the
 10 trouble, and I acknowledge that.
 11 **Q.** Then page 1, please. An email from Mr Longman
 12 to Penny Thomas, of 27 January:
 13 "Our defence barrister has asked for all of
 14 Gareth's replies in relation to the Defence's
 15 2nd Interim Report ... to be produced as
 16 a witness statement. I would suggest that the
 17 question from the defence is reproduced and then
 18 Gareth's replies are recorded immediately after
 19 for clarity purposes."
 20 Then the second paragraph is not relevant.
 21 That is reflecting what you had advised, isn't
 22 it?
 23 **A.** Yes.
 24 **Q.** Again, at this stage, it wasn't suggested,
 25 I think, in this email train that Mr Jenkins was
 97

1 following four points.
 2 "1. Our defence barrister ..."
 3 I think that's you.
 4 **A.** Yes, it's a typo.
 5 **Q.** "... has asked for all of Gareth's replies in
 6 relation to the Defence's 2nd Interim Report ...
 7 to be produced as a witness statement."
 8 Then the repetition of what we've seen
 9 already:
 10 "2. My barrister [I think that's you,
 11 again] telephoned me yesterday evening and
 12 requested that I find out any information that
 13 Fujitsu may hold in relation to an office called
 14 Callendar Square in Falkirk. Apparently, Anne
 15 Chambers a Systems Specialist employed by
 16 Fujitsu was cross-examined and it is said that
 17 she had full knowledge of an error in the
 18 Horizon system at this Post Office.
 19 "3. When Gareth completes his statement
 20 could he also mention whether there are any
 21 known problems with the Horizon system that
 22 Fujitsu are aware of. If none, could this be
 23 clarified in the statement."
 24 That's a reflection, I think, of paragraph 7
 25 of your advice, isn't it?
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1 being treated as an expert witness?
 2 **A.** Yes, that's right.
 3 **Q.** Would you agree that, so far, the requests made
 4 to Fujitsu did not constitute the proper
 5 instruction of Gareth Jenkins as an expert
 6 witness?
 7 **A.** Yes.
 8 **Q.** Can we move on, please. FUJ00152902. We're
 9 moving on to the second page, please.
 10 1 February 2010 and over the next five or six
 11 days there's quite a bunch of emails that we're
 12 going to have to go through before lunch.
 13 1 February 2010, Mr Longman, the
 14 Investigator to Penny Thomas at Fujitsu:
 15 "Penny
 16 "At a pre-court hearing today the judge
 17 ordered that all the defence requests for
 18 further information be answered by ... Monday
 19 8 February."
 20 So that's a seven-day order:
 21 "Our solicitor in the case has asked that
 22 Gareth's statement is completed by Wednesday so
 23 that he and our barrister can examine the
 24 statement.
 25 "Gareth's statement needs to cover the
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1 **A.** Yes.
 2 **Q.** Then:
 3 "Could Gareth read the statement from
 4 Eleanor Nixon attached below ...
 5 "In addition, our barrister would like to
 6 speak to Gareth directly and would be grateful
 7 if in the first instance whether Gareth could
 8 either send him his contact details or give him
 9 a call on his mobile."
 10 Then details are given.
 11 So paragraph 2, a request to find out
 12 information in relation to Callendar Square in
 13 Falkirk and the issues with Horizon that arose
 14 there. That arose as a result of reading the
 15 judgment of His Honour Judge Havery?
 16 **A.** Yes.
 17 **Q.** "Disclosure about any known errors in Horizon".
 18 It is translated into:
 19 "... Gareth completes his statement, can he
 20 please mention whether there are any known
 21 problems ..."
 22 The request that you'd made was slightly
 23 different to that, wasn't it?
 24 **A.** Yes, and it's --
 25 **Q.** It's been watered down?
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1 A. It's watered -- well, yes, and it's unfortunate,
2 that because, if it had remained at Fujitsu, we
3 may have perhaps got some more answers, I don't
4 know.

5 Q. Unfortunate why?

6 A. Well, it shouldn't just be for Gareth Jenkins
7 and it's -- I think I should have pressed on
8 that requirement in paragraph 7 of the advice.
9 I think I -- it's now become -- it's Gareth
10 Jenkins is going to deal with it. It has been
11 watered down. That's an appropriate phrase and
12 it's not -- it's watering down what I wanted,
13 and that was wrong.

14 Q. So it's gone, would this be the fair
15 characterisation of it, from asking for
16 a disclosure exercise to be undertaken by
17 a third-party provider of the computer system,
18 of any known problems or issues with Horizon,
19 which would be a proper request to a third
20 party, to one man mentioning in a witness
21 statement if there are any known problems?

22 A. Yes, but I still expected to be told, because
23 Fujitsu and the Post Office were aware of this
24 case, were aware of what I wanted, and
25 I expected to be told if there was a problem.

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1 need to be authorised ...

2 "She is ... aware of the [deadlines]."

3 So it seem that there was then to be
4 a meeting between the Post Office, including
5 Mr Longman, and Penny Thomas on behalf of
6 Fujitsu, concerning the nature of the statement
7 that was required from Fujitsu.

8 A. Yes.

9 Q. Can we turn, please, to UKGI00014895. Thank
10 you.

11 We can see that this is an email from the
12 defence solicitor Issy Hogg to Jarnail Singh,
13 copied to her counsel, Keith Hadrill, and copied
14 to you, dated 3 February still. In the fifth
15 paragraph, if we scroll down a little bit, the
16 one beginning "You have", it states:

17 "You have indicated you do not propose to
18 rely on an expert but on the employees of
19 Fujitsu. For the first time, at the hearing on
20 1 February 2010, you identified that witness as
21 an employee named Jenkins. However, not only
22 have you not served his evidence prior to
23 suggesting a meeting, you accept that you
24 haven't even taken a statement."

25 At this point, does that characterisation by

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1 As I understand it, although I don't pretend to
2 fully understand all the problems that have been
3 identified, there was plenty that should have
4 been disclosed and it wasn't forthcoming. So
5 I assumed that it wasn't there to be given.

6 So in a way, I would have been -- if I'd
7 thought about this being watered down,
8 I wouldn't have seen the danger because
9 I assumed that those who had information, who
10 knew about the case, would do what had been
11 requested of them.

12 Q. Can we turn to POL00054085 and look at the
13 second page, please. This looks like it was
14 meant to be an email to you, because of the
15 salutation, "Jarnail/Warwick", but I can't see
16 that it's sent to you?

17 A. Yes, I don't think it was, no.

18 Q. In any event, Mr Longman says to Mr Singh:

19 "I have spoken to Penny Thomas and she has
20 arranged for a meeting to be held today to
21 discuss the statement that we require from them.
22 After that meeting she will then be in
23 a position to confirm the timescales involved
24 and the cost to [the Post Office] for the
25 statement. An authority to proceed will then

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1 the defence accurately reflect the position that
2 Mr Jenkins was neither instructed nor regarded
3 as an expert by the prosecution?

4 A. Yes, and it ties in later with what they said at
5 the abuse of process argument, that the expert
6 hadn't been properly instructed, which is a very
7 valid criticism. Perhaps I didn't take it on
8 board and think it through as much as I should
9 have done.

10 Q. Can we move on to a couple of days later,
11 a series of emails exchanged between Post Office
12 and Fujitsu on 5 February 2010 in relation to
13 a provision of a witness statement from
14 Mr Jenkins. Can we start, please, at
15 FUJ00122713. If we start at the very bottom of
16 the page and go over to the next page, we'll see
17 an email of 5 February at 12.34 from Jarnail
18 Singh to David Jones -- he's a lawyer in
19 Fujitsu, David Jones -- asking if Mr Jenkins
20 could give a witness statement in the *Misra* case
21 once he returned from leave:

22 "I refer to our conversations of 4 and 5
23 February ... with regards to obtaining a witness
24 statement of the Defence challenging the
25 reliability of Horizon. I understand that

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1 Mr Jenkins has been identified as an experienced
2 person to give this statement. I would be
3 grateful if you could confirm to me", when he'll
4 be available, essentially.

5 So Mr Singh, into a lawyer in Fujitsu.

6 Then scroll up to the first page, please.

7 Mr Jones' reply to Mr Singh, copying in
8 Mr Jenkins and Penny Thomas:

9 "Thank you for your ... email -- which
10 I have now received!

11 "I met this morning with [Mr Jenkins] who
12 came into the office briefly to meet with me.
13 Gareth will help with this matter ... he should
14 be back to normal working next week. His input
15 will be coordinated by Penny who is responsible
16 to delivery to [the Post Office] of support in
17 this Security area.

18 "Attached is a first draft to a statement
19 from Gareth. I would like you to review it and
20 indicate if it answers the questions in the
21 detail you require.

22 "... there are some areas where Fujitsu
23 cannot deal with the Defendant's expert's
24 criticisms as they are about Post Office
25 procedures or requirements and it seems evident

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1 a misunderstanding.
2 **Q.** Can we go, please, to POL00029369. Can we look,
3 please, at page 2, and scroll down. This is the
4 first time the statement emerges at 2.53,
5 an email to you and Mr Longman:

6 "Dear Jon and Warwick

7 "Herewith statement from Gareth Jenkins.
8 Just all of the press. Please let me have your
9 comments and whether this adequate for our
10 purpose or does it require additions before
11 being served on the defence."

12 So Jarnail is asking the Investigator and
13 you, as prosecution counsel, whether the
14 statement is adequate and for your comments.
15 Then if we go to page 1, please. At the foot of
16 the page, we see Mr Longman's reply.

17 "Jarnail

18 "Points 2-4 have not been answered", and he
19 reproduces them below:

20 "My barrister telephoned me yesterday
21 evening and requested that I find out any
22 information that Fujitsu may hold in relation to
23 Callendar Square", et cetera.

24 Do you remember that?

25 "3) When Gareth completes his statement

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1 that there will need to be a [Post Office]
2 internal 'expert' who can work with Gareth to
3 deal with these areas."

4 So they continue, sorry:

5 "One concern is that [the Post Office] have
6 not apparently requested transaction data for
7 West Byfleet for the period and transactions in
8 question. This would normally be provided in
9 previous cases and would include Fujitsu
10 extracting log files from the system to enable
11 us to provide details of transactions.
12 Surprisingly, this has not been requested in
13 this case. Perhaps you will consider the need
14 for this."

15 At this point in time, you're not a copy-ee
16 of this chain at the moment, did you understand
17 the problem with asking a person with expertise,
18 Mr Jenkins, to comment on what the defence
19 expert was saying, without having requested
20 transaction data for this branch?

21 **A.** No, I didn't realise that was -- or fully
22 realise that that was a problem. I thought he'd
23 be able to deal, at least in part, with
24 answering the questions, particularly to deal
25 with the questions that were based on

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1 could he also mention whether there are any
2 known problems with the Horizon system that
3 Fujitsu are aware of."

4 So that's the watered down, if I can call it
5 that, requirement emanating from paragraph 7 of
6 your advice?

7 **A.** Yes.

8 **Q.** Then over the page, please.

9 "If none could this be clarified ...

10 "4) Could Gareth read the statement from
11 Eleanor Nixon", et cetera.

12 So Mr Longman is saying points 2 to 4 have
13 just not been addressed by Mr Jenkins, yes?

14 **A.** Yes.

15 **Q.** Go back to page 1, please. You reply the
16 following morning at 7.07, can you see that?

17 **A.** Yes.

18 **Q.** You only reply to Mr Singh, taking Mr Longman
19 out of the copy list, and you say:

20 "[Mr Longman] sets out in his email ... the
21 extra matters that I asked Mr Jenkins to look
22 at. In relation to the Eleanor Nixon statement
23 Mr Jenkins should also be made aware of the
24 information we recently received [et cetera].

25 "The areas where Mr Jenkins says 'for [Post

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1 Office] to respond' should be deleted from the
2 statement. These areas will only lead to
3 a flood of further disclosure requests and I am
4 afraid that [the Post Office] will never
5 respond."

6 Why were you suggesting that where
7 Mr Jenkins was saying, "This is not something
8 where I can respond to, it's a matter for Post
9 Office to respond to" should be deleted?

10 **A.** Well, it didn't seem to me to be part of his
11 witness statement but I think I was simply
12 frustrated at the various delays there had been
13 that were causing so much problems with the
14 chronology of the case trying to get it towards
15 a trial.

16 **Q.** Wasn't that important information, or relevant
17 information, that the expert felt -- or the
18 person with expertise felt unable to answer
19 a question and said, "This is for the Post
20 Office to reply"?

21 **A.** Well, yes, but the enquiry that already been
22 made, and the -- I'd have to look at the
23 document because I can't remember exactly what
24 the enquiries were but I'm afraid it all comes
25 out of a generally very frustrating situation,

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1 didn't give any advice to the Post Office that
2 it should meet its disclosure obligations in
3 relation to them?

4 **A.** No, I should have done that and it's -- I was
5 finding this all very stressful and that's
6 a symptom of it and it's my fault, but this was
7 difficult.

8 **MR BEER:** Sir, that's a convenient moment to break,
9 bearing in mind that we took an early break and
10 it was short and we haven't taken a second
11 break, and I've done that deliberately in order
12 that we can get through all of the business that
13 we need to today. I wonder whether you might
14 break until maybe 1.35?

15 **SIR WYN WILLIAMS:** Yes. By all means.

16 So I'll see you all at 1.35?

17 **MR BEER:** Thank you very much, sir.

18 (12.42 pm)

(The Short Adjournment)

20 (1.35 pm)

21 **MR BEER:** Good afternoon, sir, can you see and hear
22 me?

23 **SIR WYN WILLIAMS:** Yes, I can, thank you.

24 **MR BEER:** Good afternoon, Mr Tatford. Can we pick
25 up where we left off in the late afternoon of

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1 where there are an enormous amount of disclosure
2 requests that it's proving very difficult to
3 respond to. And I was just trying to limit
4 them, because it was out of control and efforts
5 that I had made to try to put it under control
6 had failed.

7 **Q.** Why did you think the Post Office would never
8 respond?

9 **A.** Well, I think that's -- those are heated words
10 that perhaps aren't fully thought through but
11 I was frustrated that it was taking so long and
12 frustrated that I was being told that,
13 essentially, the Investigation Team was going to
14 be clogged up completely for an indefinite
15 period while requests -- efforts were made to
16 respond to requests.

17 At the same time, I have a court -- judges
18 at Guildford Crown Court making very strict
19 requirements for progress to be made and it's
20 a very frustrating situation generally and I'm
21 expressing the frustration, I suppose.

22 **Q.** Does it follow from that that, although you
23 advised that the sections of the witness
24 statement, where Mr Jenkins had said, "Post
25 Office should respond", should be deleted, you

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1 5 February 2010, by looking at FUJ00122735.

2 If we scroll to the bottom half of the page.

3 We'll see that on 5 February 2010 at 4.47

4 Mr Jenkins emailed David Jones -- remember,
5 a lawyer in Fujitsu -- and Penny Thomas, also at
6 Fujitsu, saying:

7 "David,

8 "I've provided in line comments to the
9 document as revisions."

10 This was the third supplemental report of
11 Professor McLachlan and -- I don't want to turn
12 the document up at the moment but, essentially,
13 he had gone through Professor McLachlan's report
14 and had added this comments to it:

15 "I'm happy for this to be passed to [the
16 Post Office] if you feel it is appropriate."

17 Then Mr Jenkins said:

18 "The simple answer is that without
19 retrieving the logs everybody is speculating and
20 as discussed this morning nobody has bothered to
21 ask us for any logs. At this stage it is not at
22 all clear what transactions are thought to be
23 missing at what time or even in what time
24 period. Analysing logs over a long period (and
25 I think this is over two or three months) is

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1 very, very time consuming. This is NOT going to
2 happen by Monday.

3 "Does anybody have a copy of Andy's witness
4 statement?"

5 Then if we scroll up, please. We can see
6 that Mr Jones forwards that to Jarnail Singh,
7 copying in Gareth Jenkins and Penny Thomas. So
8 this is Mr Jenkins saying, is this right, that
9 in order to respond to Professor McLachlan's
10 report, the Post Office needed to obtain
11 underlying data the transaction data?

12 **A.** Yes, sorry, yes.

13 **Q.** By this time, that's February 2010, had you been
14 aware, for a very considerable time, that the
15 defence wanted exactly the same data? The
16 transaction logs, as they're called, and that
17 such logs had not been obtained?

18 **A.** Yes. Well, there was an ongoing dispute about
19 what period of logs was necessary. I appreciate
20 with hindsight the Post Office was in the wrong
21 but that was a number of many disclosure
22 requests and I do think that the full context
23 needs to be looked at. If anybody thinks this
24 was easy to deal with, they are deluding
25 themselves. This was very difficult and we were

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1 can only 60 ARQs per month ... this Defence
2 request could be detrimental to other
3 Prosecution requests.

4 "We have a contract with Fujitsu to
5 [require] ARQs for our prosecution cases, and we
6 pay for these ...

7 "For 'lumpy' Defence requests, we can obtain
8 a quote from Fujitsu ...

9 "Aside from the costs and our quota, another
10 reason for this approach is because many cases
11 plead guilty at the eleventh hour and/or nothing
12 is found by 'experts' to challenge the Fujitsu
13 data -- the usual attempts at muddying the
14 waters.

15 "Can you consider and seek views/input from
16 our Criminal Lawyer in the case. Happy to
17 discuss ..."

18 Then page 1, please. Email, Mr Longman to
19 Jarnail Singh:

20 "At the hearing ... the Defence indicated
21 they would be seeking the services of a forensic
22 accountant to analyse the Horizon data ...
23 I have tried to order the data from the time
24 Ms Misra was subpostmaster (3 years) but as you
25 can see ... there are a number of issues.

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1 all trying our best, I thought. Obviously it
2 didn't work but we were trying our best.

3 **Q.** Let's just look at the defence requests for
4 exactly the same things as Gareth Jenkins was
5 saying are important and that, without
6 retrieving the logs, everyone is speculating.

7 Can we look, please, at POL00052202. Can we
8 look at page 3, please, starting with an email,
9 the year before, 14 July 2009, between Jon
10 Longman and the fraud team:

11 "Can you please assist with the following
12 three points ...

13 "2. The defence will be calling their own
14 expert to analyse the Horizon data as the
15 defendant is now claiming that some of the loss
16 in the case is caused by errors within Horizon.
17 Therefore, I will need transaction log data
18 covering the period 30 June 2005 to 14 January
19 2008 together with a covering witness
20 statement."

21 Then page 2, please, scroll down. A reply
22 from Mr Posnett:

23 "Due to the size of the ARQ request I cannot
24 authorise Fujitsu to proceed at this stage ...
25 We have an annual allowance of 670 ARQs ... we

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1 "Please could you advise counsel of these
2 issues and inform me as to what action to take
3 ..."

4 Do you recall being involve in this?

5 **A.** Yes, I do. But I don't think via email but,
6 obviously, I was speaking with Jarnail Singh on
7 the phone, so I may have been speaking on the
8 phone around this time. I don't have a specific
9 recollection but I was aware of the ongoing
10 issue, and I was trying to see if it might be
11 possible to have a less wide span.

12 I appreciate now that's obviously wrong but
13 that's what we were trying to do -- the way of
14 dealing with the competing demands that are
15 obvious in these emails.

16 **Q.** Do you now have a recollection of being asked to
17 being asked to advise on this issue?

18 **A.** I don't think -- I can't remember a specific
19 request. There was an ongoing conversation and,
20 in my earlier Advice, I tried to set -- forgive
21 me, I'm getting the time period wrong now.

22 **Q.** So we've gone back to 2009.

23 **A.** We've gone right backwards. Oh, sorry, I think
24 there was an ongoing discussion but we've gone
25 backwards so -- this will lead up eventually to

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1 what we come up with or what the Post Office
2 decided to produce.

3 **Q.** What I'm looking at is Mr Jenkins in February
4 2010 saying, "I can't assist you unless you get
5 the underlying data".

6 **A.** Yes.

7 **Q.** I'm going back to the summer before saying the
8 defence are asking for the underlying data and
9 trying to work out what happened with that
10 request. At the moment, the Investigator,
11 Mr Longman, has asked Mr Posnett. Mr Posnett
12 said, "We've got a contract; it would exceed our
13 requirements, essentially, under the contract;
14 it will be expensive". That's forwarded to
15 Jarnail Singh by Mr Longman and he says, "Could
16 you advise counsel of these issues and inform me
17 as to what action to take".

18 I'm asking: at there is time, in summer
19 2009, did you provide advice on the approach to
20 take to disclosure of the underlying data?

21 **A.** I don't know. I may have provided advice over
22 the phone but I simply I can't remember, it is
23 quite a long time ago.

24 **Q.** Yes.

25 **A.** Obviously didn't provide anything in writing, so
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1 goods or services for its business. Other than
2 that Fujitsu is not in any way an associated
3 company of the Post Office.

4 "The request has been put to Fujitsu and
5 a reply has been received by the person who
6 liaises with this company.

7 "The data will take 6-8 weeks to produce ...
8 your Client made 107 calls to the Horizon
9 Helpdesk during her period of tenure which
10 equates to roughly 2-3 calls per month. In
11 order to provide the data Fujitsu will wish to
12 know exactly what is required and for exactly
13 what period. Please could you also advise as to
14 why you consider the data relevant. You ...
15 already [know] from the NAE from Andrew Dunks
16 ... dealing with the calls to the Helpdesk.

17 "The retrieval of data by Fujitsu is not
18 a free service. It is very expensive and
19 depends upon the amount of data which has to be
20 retrieved which is why you requested to be very
21 precise. At that stage a firm quotation can be
22 obtained and Counsel will be asked to give
23 further advice as to disclosure and payment for
24 this service. The Post Office will not
25 underwrite the cost if Counsel considers the
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1 there may be nothing, I don't know.

2 **Q.** Can we a look, please, at FUJ00154851, and look
3 at page 4, please. This is a letter dated
4 14 August 2009. If we scroll down to the next
5 page we can see who wrote it: Phil Taylor. Back
6 up, please. We can see it's to the then defence
7 solicitors -- if we scroll up a little bit,
8 thank you -- the Castle Partnership:

9 "I understand from Prosecuting Counsel that
10 on the last occasion Defence Counsel asked for
11 Horizon data for the period during which your
12 Client was subpostmistress at West Byfleet sub
13 post office."

14 Is that right: that defence counsel asked
15 you for disclosure of Horizon data for the
16 entire period when Mrs Misra was
17 subpostmistress?

18 **A.** Well, that was certainly an ongoing request.
19 I can't remember when -- a request at court, I'm
20 not going to remember at this time (*unclear*).

21 **Q.** No, understood:

22 "As you may be aware the Horizon system is
23 a product of Fujitsu Limited and the Post Office
24 has purchased this system from Fujitsu in the
25 same way that any other company would purchase
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1 data irrelevant. You will of course be aware
2 that the same system operates throughout the
3 country and was not particular to your Client's
4 sub post office.

5 "I have set out the matter above quite
6 clearly because in the past many thousands of
7 pounds have been spent on obtaining this type of
8 data subsequent to which a late plea of Guilty
9 is tendered which means that the exercise has
10 been a complete waste of time and money."

11 So that, essentially, reflects the Posnett
12 answer, doesn't it?

13 **A.** Yes. No, it does.

14 **Q.** If we go to page 3, we can see that Mr Taylor,
15 on the same day, 14 August, sends a copy of the
16 letter to Post Office Security, cc'd Jon Longman
17 and says:

18 "Here is a letter which I have written to
19 the Defence and copied to Counsel for your
20 information."

21 I can't see any evidence, on the face of it,
22 that it was copied to you. But can we deal with
23 it this way --

24 **A.** Oh, certainly, if I see the letter, I'm happy to
25 deal with it. It may well have been sent to me.
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1 There's no reason for saying, "copied to
2 counsel" unless it's been done.

3 **Q.** Did what is set out in the letter reflect any
4 advice that you had given to the Post Office as
5 to the correct approach to obtaining what we now
6 know to be ARQ data?

7 **A.** I can't remember now. I was simply aware of the
8 ongoing dispute and trying -- on the prosecution
9 side, trying to see if a shorter period would be
10 possible, and not -- and essentially having the
11 answer no or not having a response. That's the
12 impasse, as it were.

13 **Q.** Can we deal with it in this way: had the impasse
14 lasted until at least February 2010, when
15 Mr Jenkins himself was asking for this data in
16 order to be able to advise?

17 **A.** Yes, but then it -- with the abuse argument,
18 just before then, the Post Office, off its own
19 bat, decided to disclose a significant span of
20 data after having no alternative suggestions
21 from the defence. I appreciate, with hindsight,
22 that's the wrong approach. But one can see the
23 pressures, cost and time, and so forth.

24 **Q.** Can we go forwards, please, to FUJ00152966.
25 Thank you.

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1 with Horizon?

2 **A.** No. I say no simply because, if I'd seen this,
3 I would have realised that there was a problem
4 with dealing with paragraph 7 of my advice. I'd
5 have gone back to that and tried to sort it out
6 and I would have started asking more questions.
7 Perhaps I should have been pressing it anyway
8 but I'm troubled, reading this. Well, this is
9 bound to make me ask questions and I don't
10 remember seeing this.

11 **Q.** There's two problems with this paragraph that
12 arise, aren't there? First is the refusal of
13 the person with expertise being reluctant to
14 make a clear statement about whether there are
15 problems with Horizon; and, secondly, in any
16 event, saying that he's aware of a problem where
17 transactions have been lost, and we can't tell
18 at the moment whether this afflicted West
19 Byfleet because we haven't got the data and,
20 therefore, we haven't made the checks.

21 **A.** Yes, and it's unclear to me what this problem
22 is. It seems to be a different problem of which
23 I've not been made aware.

24 **Q.** Can we go to POL00167159. Thank you. Just
25 dealing with it from the top, we can see that

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1 If we go to page 2, please, and scroll down.
2 Thank you.

3 A little later in the afternoon, Gareth
4 Jenkins emailing David Jones and Penny Thomas:
5 "Brief responses as follows, but not sure
6 that I should put them in a Witness Statement
7 ..."

8 3 -- as you remember 3 was originated in
9 paragraph 7 of your Advice: Fujitsu tell us
10 about any issues or problems acknowledged with
11 Horizon -- I'm summarising.

12 Mr Jenkins says:
13 "This is where I'm reluctant to make a clear
14 statement. I am aware of one problem where
15 transactions have been lost in particular
16 circumstances due to locking issues. When this
17 happens we have events in the eventing logs to
18 indicate that there was an issue and whenever we
19 provide transaction logs to [the Post Office] we
20 check for any such events. In the case of West
21 Byfleet we have not provided any transaction
22 logs and so have not made these checks."

23 Did you ever get to see this, that
24 Mr Jenkins was reluctant to make a clear
25 statement over whether there were any problems

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1 it's sent by Mr Singh, I think that's his PA or
2 assistant, Marilyn Benjamin, to you on
3 8 February -- we were looking at an email chain
4 of 5 February:

5 "Warwick and John,
6 "For your information and comments."
7 Then if we scroll down:
8 "Jarnail
9 "This is an email I received earlier from
10 Gareth. You will see that he is clear that in
11 order to answer Counsel's question about any
12 issues he needs to be able to check the
13 underlying transaction logs to be able to say
14 whether there were any issues. On the specific
15 issues you raise Gareth's view is:
16 "2. He needs information and time to
17 research the background to this before providing
18 any response ..."

19 Then 3, cutting in what has been said:
20 "He is not currently in a position to make
21 a clear statement. It is possible for there to
22 be problems where transactions have been 'lost'
23 ... due to locking issues", et cetera.

24 So it does look, Mr Tatford, does it not --
25 **A.** No, I agree.

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1 Q. -- as if this has been forwarded to you?
 2 A. Well, I have to accept that. I don't remember
 3 seeing this but it's obviously something I've
 4 missed. If I'd -- it's my fault. I'm sorry,
 5 I didn't remember seeing this. It would have
 6 made me ask questions.
 7 Q. So do you agree that you were on notice from
 8 your solicitors that Mr Jenkins had explained
 9 that there could be locking errors in Horizon
 10 which would cause transactions to be lost?
 11 A. Well, yes, clearly. I've obviously missed this
 12 and haven't taken it on board.
 13 Q. Would you agree that this chain was forwarded to
 14 you in direct response to Mr Longman's
 15 translation of paragraph 7 of your Advice?
 16 A. Yes, I think it was.
 17 Q. I think it follows, from you not remembering
 18 having received this, you can't help us as to
 19 what your response was to learning that the man
 20 with expertise, Mr Jenkins, felt unable
 21 currently to make a clear statement as to
 22 whether or not there were problems or issues
 23 with Horizon?
 24 A. Yes.
 25 Q. You can't help us with what your response was to

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1 A. Well, yes. I suspect -- I mean, if I was
 2 reading this document, if I hadn't quite
 3 cross-referred it with other documents, that may
 4 have been the error but it's obviously something
 5 I've missed and this is important, and I've
 6 missed it. I'm sorry about that.
 7 Q. Can we turn, please, to FUJ00122808. We're
 8 moving forwards, if we look at the time at the
 9 top of that email, to 2.33 on 8 February.
 10 Mr Jenkins sends through to Jarnail Singh,
 11 copying Penny Thomas and David Jones:
 12 "... a new Witness Statement saying what
 13 I don't know about Falkirk and also comments on
 14 the 3rd report.
 15 "I doubt they are of much use without
 16 getting the various detailed logs."
 17 Can we look at the attached statement,
 18 please, at POL00001569. This is the attachment
 19 to that email, Mr Jenkins' witness statement,
 20 then dated 8 February 2000. In the second
 21 paragraph, he says:
 22 "I have been asked if issues found at
 23 Callendar Square Post Office in Falkirk could
 24 have caused the discrepancies in the case of
 25 SEEMA MISRA. At this stage, I am not aware of

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1 knowledge that there was a problem with Horizon,
 2 according to the man with expertise, of lost
 3 transactions?
 4 A. Well, no, I can't remember this, so I don't know
 5 if it appears later on. It's obviously
 6 something I've missed. I haven't remembered
 7 this at all or don't remember seeing this at
 8 all, and if I had seen it and thought it
 9 through, I would have taken action.
 10 Q. I think it follows that, if you had realised the
 11 significance of what was being said to you in
 12 this paragraph here, you would realise the need
 13 to advise the Post Office to take steps to meet
 14 its disclosure obligations in relation to this
 15 issue?
 16 A. Yes.
 17 Q. For example, what was the nature of the issue,
 18 what was the scope of the issue, what was its
 19 severity and how that information ought to be
 20 provided to the defence?
 21 A. No, absolutely.
 22 Q. Overall, would you agree that this chain shows
 23 that Mr Jenkins did say, at this point in time,
 24 he was unable to make a clear statement about
 25 Horizon not having problems?

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1 the details of the problems in Callendar Square
 2 Post Office in Falkirk. However I expect to be
 3 able to find out the details of that case and
 4 also to compare the failing scenarios with the
 5 detailed logs that are to be extracted for the
 6 SEEMA MISRA case and should then be able to make
 7 it clear if the scenario is relevant."
 8 Then the rest of the statement consists of
 9 a number of other references to the fact that
 10 the Post Office hadn't made any requests to
 11 Fujitsu for any data relating to West Byfleet
 12 that would enable Mr Jenkins to respond to
 13 Professor McLachlan's report. Okay?
 14 A. Yes.
 15 Q. Can we go to POL00054056. This is an email to
 16 you from Jarnail Singh:
 17 "For your information I attach two
 18 statements by Gareth Jenkins which [were] served
 19 on the Defence Solicitors today by email."
 20 The second of those is the 8 February
 21 statement that we've just looked at. So, at
 22 this stage, Mr Jenkins was still saying, and
 23 indeed saying in witness statements being served
 24 on the defence, "I can't respond to the expert
 25 because I haven't got the data"?

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1 A. Yes.

2 Q. By this stage, a month or so before the
3 anticipated March 2010 trial, do you agree that
4 you had not advised the Post Office that
5 Mr Jenkins ought to be treated as an expert
6 witness?

7 A. Yes, I agree. I don't think I ever advised that
8 he be an expert witness. I was -- I don't
9 remember how -- it was essentially presented to
10 me but I don't remember how that came about. It
11 wasn't as a product of my advice but, as
12 I concede, that was down to muddled thinking,
13 for which I have to take overall responsibility.

14 Q. Would you agree that by this stage, February
15 2010, the Post Office had not sought to instruct
16 Mr Jenkins as an expert witness --

17 A. That seems to be right, yes.

18 Q. -- and that none of the statements that
19 Mr Jenkins had provided incorporated in any way
20 the necessary inclusions for a statement to
21 amount to expert evidence?

22 A. Yes, I agree, yes.

23 Q. Can we move forwards, please, to POL00093946.
24 This is a skeleton argument settled by Keith
25 Hadrill on 24 February 2010, in support of his

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1 A. Yes.

2 Q. Can you recall how you reacted to an order which
3 directed the service of expert reports by
4 a timetable and yet the prosecution was not
5 relying on an expert?

6 A. Well, the trouble -- well, I reacted with
7 dismay, I suppose, but the trouble was that we
8 were given very strict directions by the courts
9 and yet it didn't seem to fit with what we were
10 going to be able to do in time. It's a product
11 of muddled thinking but the disclosure requests
12 are very wide.

13 We -- you've been very properly focusing on
14 the logs, which is the key, I accept. But they
15 were much wider than that and I suppose, to
16 an extent, I've -- well, directions are made for
17 a timetable because the court wants to try to
18 make progress in the case. I probably should
19 have said on that day, "We're not going to be
20 able to deal with this", but I was doing my best
21 to try to keep things going.

22 Q. In paragraph 6:
23 "The Prosecution, by a letter dated
24 14 August 2009 ... said it would instruct
25 Fujitsu, the supplier and operator of the

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1 client's application for a stay of the
2 proceedings as an abuse of process. Can we just
3 look at paragraph 2, please, about five lines
4 in, four lines in, it says:
5 "Trial on Count 1 was fixed to take place on
6 30 May 2009 [as we know] but was stood out on
7 the day on the defence application for enquiries
8 to be made as to the integrity of the Post
9 Office Horizon computing system, which is
10 central to the Prosecution case."
11 I just want to see what was being argued by
12 the defence, by looking at page 3, please. The
13 bottom half of the page, under "Trial history",
14 paragraph 4 repeats what we've just read.
15 Paragraph 5: listed for PTR and directions on
16 14 July, directions are given which included the
17 service of experts' reports.
18 Do you recall that, that at a PTR there was
19 a direction made for the service of expert
20 reports, plural?

21 A. Yes, no, I think there's an attendance note to
22 for that but I can't recall the date of the
23 hearing. I think it was before His Honour Judge
24 Critchlow, I think.

25 Q. The resident judge?

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1 Horizon system, to assist as experts. In that
2 letter the prosecution stated that the request
3 for data had been submitted to Fujitsu and
4 acknowledged."
5 Then over to page 5, please:
6 "This is in total contradiction to the
7 statement received by Gareth Jenkins of Fujitsu
8 who states that no requests have been made for
9 any data relating to the West Byfleet branch."
10 I think that was accurate. We can skip over
11 paragraphs 7, 8, 9 and 10 on this page and go on
12 to page 7, please, paragraph 12:
13 "The Prosecution had failed, until 01/02/10
14 to instruct an expert. At the Court hearing on
15 01/02/10 the Prosecution stated it had
16 identified their expert, Gareth Jenkins from
17 Fujitsu, but not yet instructed him. The Court
18 confirmed that the Prosecution expert should
19 report by 08/02/10."
20 A. That's seven days. One can see the pressure
21 that's being looked on us by the court.
22 Actually, looking at it now, it's completely
23 unrealistic but I was trying my best and the
24 prosecution as a whole was trying its best to
25 keep the trial going and trying to keep to the

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1 trial date. But that's -- looking at that, one
 2 only has to read it to see how unrealistic it
 3 is.

4 **Q.** Would you maintain that position, even if there
 5 had been a direction of July the previous year
 6 requiring the service of experts' reports. This
 7 wasn't the first time the court --

8 **A.** No, I appreciate that. I appreciate these are
 9 legitimate criticisms and there has been a lot
 10 of muddled thinking and that's why we ended up
 11 having an abuse of process argument and we
 12 missed the trial date it. I accept all that.

13 **Q.** In paragraph 13, Mr Hadrill says:
 14 "A short statement, dated 8 February [that's
 15 the one we've just looked at], was served from
 16 Mr Jenkins ... In that report Mr Jenkins could
 17 generally not assist because:
 18 "(a) he had not been given sufficient
 19 material and documentation by the prosecution
 20 ...
 21 "(b) he had only just been instructed to
 22 assist and would need time ...
 23 "(c) some of the questions raised by
 24 Professor McLachlan he did not understand ...
 25 "(d) some of the information requested from
 133

1 that the jury, I thought at the time, were given
 2 a very full understanding.

3 The correspondence in this case was very
 4 demanding indeed and, essentially, in some of
 5 the disclosure requests we were being asked to
 6 look at every single post office for all
 7 manner -- some of the disclosure requests were
 8 so wide we had to give disclosure of every time
 9 there's been an investigation at a Post Office.

10 There was no focus, and that's what I was
 11 doing my best to try to get a focus. I was
 12 trying to get the focus back to West Byfleet,
 13 which, in fact, Gareth Jenkins is trying to do
 14 by saying "We need the logs".

15 It was a difficult mess and I found it
 16 a mess and I found it very difficult and, if
 17 that's my weakness and my inability to cut
 18 through all these things, I take full
 19 responsibility for it.

20 **Q.** Can we move on, please, to FUJ00152996. So
 21 we're now in late February. An email from
 22 Mr Jenkins within Fujitsu and he's referring to
 23 a conversation with you. You're not copied into
 24 this email but I want to ask you about what he
 25 says that you said.
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1 Fujitsu should, in fact, come from the Post
 2 Office."

3 Then he says this:
 4 "It is apparent that the Prosecution has
 5 given no clear instructions to its own expert,
 6 or provided him with adequate material to assist
 7 the Court."
 8 On reflection, would you agree that that's
 9 a fair criticism?

10 **A.** Yes, and I think I agreed that they were fair
 11 criticisms in the abuse argument. My essential
 12 argument was to say we have to move on and we've
 13 found a way to solve these problems.

14 **Q.** Was -- cutting through it -- the essential
 15 approach taken, that one sees quite often, that
 16 these are all issues that can come out in the
 17 wash to ensure that a fair trial is achieved?

18 **A.** No, I think that's unfair. It's not coming out
 19 in the wash. A fair trial can be achieved
 20 within a reasonable amount of time because what
 21 happened after the abuse of process argument was
 22 the experts did cooperate. They cooperated very
 23 fully, provided in due course a statement of
 24 their agreements and disagreements, and then
 25 gave evidence back to back, lasting two days, so
 134

1 "Following the email exchange below I've now
 2 had another call from [the Post Office's]
 3 Prosecution Barrister (Warwick Tafford) asking
 4 me to do some analysis of the various logs
 5 associated with this case.

6 "He is going to arrange for me to be sent
 7 details of what has been alleged and also what
 8 has been admitted so that I can identify some
 9 part of the logs to look through and discuss
 10 with the expert.

11 "Even if we limit the scope this sounds like
 12 a very time consuming task. I'm not sure
 13 I really want to be doing that and need some
 14 guidance as to the priority of this compared
 15 with everything else.

16 "Apparently the defence are saying it is too
 17 hard to get detailed in for and therefore there
 18 can't possibly be a fair trial and [Post Office]
 19 are clearly keen to counter that argument.
 20 Trial date is in two weeks time so this is
 21 likely to be urgent!

22 "What do I do and who can sort out with the
 23 Post Office exactly what we should and shouldn't
 24 be doing to support this?"
 25 So, by this time, you had got Mr Jenkins'
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1 phone number, either mobile or his desk. Again,
2 this form of instruction, an oral instruction
3 from prosecution counsel to prosecution,
4 putative expert witness, was it normal for you
5 in Post Office cases to work in this way?

6 **A.** No, because I'd never been involved in anything
7 like this before. I'd never been involved,
8 although I'd been involved in the case of *Page*,
9 there was no expert in that case on the
10 prosecution side. This was an entirely new
11 situation for me and I was finding it very
12 difficult, and just trying to find a way through
13 to make -- to have a practical way forward.

14 **Q.** So does it amount to this: that the defence had
15 identified that the Post Office had failed to
16 provide Mr Jenkins with any material, and then
17 Mr Jenkins is now speaking with you about what
18 should happen?

19 **A.** Well, as a way to try to make progress, because
20 at the moment, Mr Jenkins had no idea what to
21 look for. So we were discussing ways of looking
22 at the logs to see if problems could be
23 identified. It was a way of thinking it
24 through.

25 **Q.** Would you agree that this doesn't amount to any
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1 words of thanks.

2 Is this the closest we get to a formal
3 instruction by the Post Office of Mr Jenkins.

4 **A.** Yes, I think it probably is. It's certainly the
5 only -- yes, I suppose it must be. It's the
6 only printed form of instruction that I've seen.

7 **Q.** But, in reality, it doesn't amount to a proper
8 instruction of Mr Jenkins as an expert witness?

9 **A.** Yes.

10 **Q.** In particular, on the question of a joint
11 meeting with Professor McLachlan, it doesn't
12 provide any sort of instruction as to how
13 Mr Jenkins was supposed to undertake such
14 a joint expert meeting?

15 **A.** No. I don't know what other -- I don't --
16 there's no evidence, from what I can see, of any
17 other communications between Jarnail Singh and
18 Mr Jenkins, so it appears from this that he's
19 not been given all the information he needs;
20 he's not been given the assistance he needs.

21 **Q.** Can we go forwards, please, a couple of days
22 later, POL00054267. 1 March, Jarnail Singh to
23 Gareth Jenkins:

24 "I now enclose Defence Expert's 4th and 5th
25 reports after his conversation with you of
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1 sort of proper expert instruction?

2 **A.** No, I do agree with that but I also suggest that
3 this isn't a case where the -- the disclosure
4 requests were very wide and going beyond the
5 ordinary case where one would have one expert on
6 each side. There'd been a lack of focus, and it
7 caused confusion and I was obviously a victim of
8 the confusion as well, and I -- well, I've
9 obviously made a lot of mistakes. I acknowledge
10 that.

11 **Q.** Can we move forward, please, to POL00054213. So
12 within a couple of hours of the email that we
13 were just looking at, at just after 4.00 on the
14 same day, Mr Jenkins is emailed by Mr Singh,
15 saying:

16 "As per discussions I now enclose:

17 "Copy Case Summary

18 "Copy Indictment

19 "Copy Defence Statement

20 "Copy of the interview

21 "Copy Defence Expert's name is Charles

22 McLachlan ...

23 "... important that we are proactive on this
24 and that you contact him as soon as possible
25 with a view to concluding this", and then some
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1 12 February. As you are our Horizon Expert you
2 need to telephone Charles McLachlan, his mobile
3 telephone number is ... to arrange a meeting
4 where you can discuss all his reports and his
5 concerns about the Horizon so you can deal with
6 it and rebut it which you have done in your long
7 telephone conversation about his various
8 hypothesis and then write a detailed report
9 which would go some way of progressing and
10 concluding this matter and importantly
11 preserving the Horizon system."

12 "Importantly preserving the Horizon system",
13 was that a feature of the instructions that you
14 received, that the evidence in the case should
15 have as its aim the preservation of the
16 integrity of the Horizon system?

17 **A.** No, not that I received no. I can see what it
18 says here and, clearly, this is not
19 an open-minded enough set of instructions.
20 There's much more to it than preserving -- it's
21 about ensuring that Mrs Misra has a fair trial.
22 I wasn't under any pressure from what I feel --
23 from what I remember, that I was essentially
24 being told to arrange things so that we
25 preserved the Horizon system. I didn't feel
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1 that that was pressure being put on me.
 2 Obviously, these words show thinking that's not
 3 conducive to a fair analysis.
 4 **Q.** Anyway, this may be the second of the two emails
 5 that we're looking at, that comes closest to
 6 an instruction of Mr Jenkins. Mr Singh
 7 continues:

8 "Maybe the simplest and practical way of
 9 dealing with this whole question is to find the
 10 shortest span of logs, analyse it, disprove or
 11 rebut what the Defence Expert is saying in his
 12 reports."

13 Do you agree that's an inappropriate
 14 instruction to --

15 **A.** Yes, that's completely wrong.

16 **Q.** Then I think the closest that we ever come to
 17 a reminder of an expert's duties:

18 "Just a reminder you are an Expert for
 19 Fujitsu. You'll be giving evidence in Court.
 20 The judge and jury will be listening to you very
 21 carefully and a lot will hang on the evidence."

22 **A.** No, it's --

23 **Q.** Risible?

24 **A.** Well, disastrous, I was going to say. I'm
 25 sorry, this shouldn't have happened, and -- this

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1 **Q.** I appreciate in these emails that I'm showing
 2 you more recently, you're not a copy-ee and so
 3 far, as I can see, you weren't sent these. This
 4 is all going on beneath the surface. So if we
 5 just scroll down to see what Jarnail Singh said
 6 to Penny Thomas, which got forwarded to Gareth
 7 Jenkins:

8 "What has been requested ... is transaction
 9 logs for best Byfleet (this is the whole of the
 10 false accounting period to which Ms Misra has
 11 pleaded to) from 1 December 2006 to 31 December
 12 2007. This should then be given to Gareth
 13 Jenkins at Fujitsu to confirm by his witness
 14 statement whether there are any errors within
 15 the Horizon system for the transaction log
 16 period.

17 "Gareth Jenkins will need to study the
 18 Defence expert's reports which he has in hand
 19 and he had lengthy discussions with the Defence
 20 expert Charles McLachlan ... There is a need for
 21 an urgent meeting ..."

22 Next paragraph:

23 "It may be the practical approach for Gareth
 24 Jenkins to find the shortest period span of
 25 transaction log data", et cetera.

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1 isn't what I intended to happen, but I -- that's
 2 not an excuse because, as far as I'm concerned,
 3 I was prosecution counsel in the case, I have
 4 responsibility for the case as a whole, and this
 5 is -- I have obviously failed to ensure that
 6 there's an atmosphere where an expert can be
 7 properly instructed, and wrong decisions are
 8 being taken, and I understand the evidence about
 9 Post Office not being aware of its duties in
 10 relation to expert evidence, and this is the
 11 natural result.

12 I wasn't -- I don't think I was aware of
 13 this sort of instruction. I like to think if
 14 I'd seen it, I would have done my very best to
 15 resolve this and put an end to this but it's
 16 very troubling reading.

17 **Q.** Can we move forwards to two days later, 3 March,
 18 FUJ00153027. If we scroll down, we can see, to
 19 start with, an email from Jarnail Singh or on
 20 behalf of Jarnail Singh to Penny Thomas. Yes?

21 **A.** Yes.

22 **Q.** If we just look at the top of the email chain we
 23 can see Penny Thomas sending it on to Gareth
 24 Jenkins, yes?

25 **A.** Yes.

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1 So the cutting and pasting into this email
 2 that which we've seen before. So this amounts
 3 perhaps to the third instruction to Mr Jenkins,
 4 would you agree?

5 **A.** Yes.

6 **Q.** In that antepenultimate paragraph, three lines
 7 in, it says:

8 "Mr Gareth Jenkins is an expert for Fujitsu.
 9 He will give evidence in Court."

10 Then a passage about the jury and the judge
 11 will be listening very carefully.

12 Do you agree that, insofar as it can be said
 13 that this document constituted some form of
 14 instruction, it was limited to the examination
 15 of logs for a specific period to determine
 16 whether there was evidence of a problem within
 17 that period relating to West Byfleet?

18 **A.** Yes.

19 **Q.** That was, I think, consistent with what you
 20 appear to have told Mr Jenkins to do in your
 21 telephone conversation of the 26th; is that
 22 right?

23 **A.** Yes.

24 **Q.** But the bigger task, paragraph 7 of your Advice
 25 task, appears to have been lost by now, doesn't

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1 it?

2 **A.** Yes. No, it's -- it does seem to have been
3 completely lost, and we go from an expert
4 I understood to be -- that I wanted to look at
5 the logs with an open mind, to be being given
6 the instructions we can see here that are so one
7 sided and unfair. I'm afraid it betrays
8 a complete lack of understanding of what
9 an expert is for and that's obviously very wrong
10 and, actually, very unhelpful to Mr Jenkins as
11 well.

12 **Q.** Can I ask to what extent were you involved in
13 the selection of the date parameters for the ARQ
14 data?

15 **A.** I don't think I was involved in -- well,
16 I approved the dates on the basis that it was
17 free of the thefts. I can't remember now if
18 I -- that's something I approved after the event
19 or whether I advised before. I'm afraid I can't
20 remember that.

21 **Q.** Can we see if we can get any help from the
22 skeleton argument that you lodged for the abuse
23 of process argument. That's POL00054346. If we
24 can look at page 5, we can see you signed this
25 off on 7 March. Can we look on page 2, please,
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1 has been rather frustrating but it may have been
2 in part because the defence put its request on
3 hold while it asked for justification of the
4 cost ... the Crown has chosen therefore, at
5 a cost of over £20,000, to obtain logs for the
6 period December 2006-December 2007. The chosen
7 time period covers the full extent of the
8 Defendant's admitted false accounting. It also
9 post-dates the time when the Defendant claims to
10 have put a stop to thefts by employees."

11 To what extent here were you rehearsing your
12 instructions, or were you rehearsing your own
13 advice, or repeating your own advice, as to the
14 date parameters.

15 **A.** I can't remember, that's the difficulty, because
16 it's not in the -- it's not in a written
17 document. So I can't remember. I can't
18 remember whether this was suggested to me and
19 I approved it or whether I suggested it.
20 I suspect it's the former, actually, from the
21 wording here, because -- but I can't remember,
22 I'm afraid.

23 **Q.** Okay, I understand. Can we move forwards,
24 please, to look at Mr Jenkins' witness statement
25 of 9 March. POL00001643. Can you see that this
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1 and paragraph 7 at the foot of the page. You
2 say:

3 "One of the main sticking points in the
4 disclosure process has been the cost of
5 obtaining Horizon data ... The Defence's request
6 has been for logs from 6 months prior to the
7 Defendant's tenure to the present day. [That]
8 is far too wide and the cost of obtaining that
9 data would frankly be astronomical (see
10 paragraph 8 for the cost ...). The Crown has
11 explained on numerous occasions how expensive it
12 is to obtain this material. The expense simply
13 results from Royal Mail's contractual
14 obligations to Fujitsu. We have asked the
15 Defence repeatedly to consider a narrow timespan
16 for their request or a narrow field of types of
17 transactions. The reason for this suggestion
18 was that the Defendant's false inflations
19 increased consistently over a long period of
20 time."

21 Then 8:

22 "The Defence has made no proposal as to
23 an appropriate span of data, even though it has
24 the potential advantage of the Defendant's
25 insider knowledge. This failure by the defence
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1 is his witness statement of 9 March?

2 **A.** Yes.

3 **Q.** If we scroll down, please. He says that:

4 "Further to [the two statements that we've
5 seen earlier were served by Mr Singh] on
6 8 February ... I would like to add the
7 following:

8 "I have examined the 5th Interim Technical
9 report", and then he comments on it and that's
10 how the statement proceeds.

11 If we just go to the top, please. This is
12 in Criminal Justice Act form isn't it? It's
13 an MG11 --

14 **A.** Yes.

15 **Q.** -- if it was a police case format. How is it,
16 if, by this time, Mr Jenkins was being treated
17 as an expert witness, that he was giving his
18 evidence, by way of a Criminal Justice Act,
19 a section 9 witness statement that doesn't
20 comply with either the common law or the
21 Criminal Procedure Rules for expert evidence?

22 **A.** That was -- I think, follows from my advice that
23 his responses to the expert, which were meant to
24 assist, rather than being a formal report --

25 **Q.** These are served evidence in the case?
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1 A. Well, they are served evidence and I suggested
 2 putting in a witness statement. What I should
 3 have done was to say "Oh, actually, the time has
 4 clearly come where it needs to be set out more
 5 clearly as an expert's report". But my advice
 6 was given in order to speed matters along. It
 7 clearly wasn't the right advice.

8 Q. Can we move forwards to July 2010, please, and
 9 look at FUJ00153157, and can we look at the
 10 second page, please, and scroll down? Thank
 11 you. Can you see there an email of 22 July 2010
 12 sent at 7.30 in the morning by the defence
 13 solicitor Issy Hogg --

14 A. Yes.

15 Q. -- to the prosecution solicitor Mr Singh, in the
 16 case of *Misra*:
 17 "Jarnail,
 18 "As a result of the meeting that took place
 19 between Charles McLachlan and Gareth Jenkins, as
 20 directed by the judge, we now need to have:
 21 "access to the system in the Midlands where
 22 it appears there are live, reproducible errors.
 23 "access to the operations at Chesterfield to
 24 understand how reconciliation and transaction
 25 corrections are dealt with.

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1 seen an email such as this, would Known Error
 2 Log have jumped out at you as having a special
 3 significance, or would it be just one of another
 4 species of material that --

5 A. It should have leaped out at me because the very
 6 words have that objective quality that I was
 7 seeking and I suspect, in considering this, I've
 8 been blinded by the first two requests, which
 9 are less obviously important for the trial.

10 Q. So scrolling back up, then, we see that it was
 11 sent to you five days later, on 27 July and then
 12 scroll up again, please. Mr Longman sends it on
 13 to Fujitsu through Penny Thomas:
 14 "Could you ask Gareth to explain in more
 15 detail how the three points raised by Issy Hogg
 16 below came about."
 17 Then scroll up.
 18 We can see Penny Thomas's reply to
 19 Mr Longman, and she says she's had
 20 a conversation with Gareth, and his views on the
 21 email string are as follows. This is
 22 essentially an email cut into her email. I'm
 23 going to skip 1 and 2, which is about access to
 24 the system:

25 "3. System Change Requests: Basically, he

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1 "access to the system change requests, Known
 2 Error Log and new release documentation to
 3 understand what problems have had to be fixed."
 4 So this is a defence shopping list or
 5 request for disclosure, arising out of an expert
 6 meeting. You'll see that it includes Known
 7 Error Logs. Can we scroll up, please. Mr Singh
 8 forwards that email to you and to the
 9 Investigator, Mr Longman:
 10 "I enclose a copy of an email received from
 11 Issy Hogg ... content ... is self-explanatory.
 12 Could you please be kind enough to let me have
 13 your urgent instructions as to the access and
 14 information she is requesting in respect of the
 15 system in the Midlands, the operation at
 16 Chesterfield and the error logs. [He'll]
 17 contact Gareth to find out what happened at the
 18 meeting with Charles ..."
 19 I think it follows from this that the
 20 evidence you gave earlier that you hadn't heard
 21 of Known Error Logs must be in error after all
 22 this time?

23 A. Well, yes precisely. I mean, it is a long time
 24 ago.

25 Q. Just scrolling down, if you, at the time, had

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1 was asking to look at all system faults.
 2 I suggested that as we kept all testing and Live
 3 faults in the same system and that there were
 4 around 200,000 of them, then this wasn't going
 5 to get him far. He then suggested looking at
 6 the system changes and would like to see all
 7 changes that have happened to the system.
 8 Again, I don't think this will help and I don't
 9 know how practical it is for Fujitsu's Release
 10 Management to provide that. I think all we can
 11 do is ask the question."
 12 Do you see what this overlooks is a response
 13 by Mr Jenkins to-- when I say "overlooks", I put
 14 that to -- does not include, putting it very
 15 neutrally, any response to any request for Known
 16 Error Logs?

17 A. Yes.

18 Q. Would you agree this is not really a response of
 19 substance to the defence's disclosure requests,
 20 is it?

21 A. Well, no, it's not properly thought through,
 22 I agree.

23 Q. Can we go, please, to POL00055073. We can see
 24 that that email of 3.39 on the 27th from Longman
 25 to Singh was almost immediately eight minutes

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1 later, sent on to you. Does it follow that you
2 didn't pick up that the defence were asking for
3 something of potential significance, Known Error
4 Logs, the type of material that you were looking
5 for, some objective recognition of fault?

6 **A.** Yes, I agree. Precisely.

7 **Q.** And that Mr Jenkins had not answered that
8 question?

9 **A.** Yes, I agree.

10 **Q.** Can you recall what your response was to what
11 was said, that there were some 200,000 system
12 faults in Horizon?

13 **A.** Could I just -- could it just be scrolled down
14 because I can't see it in front of mine --

15 **Q.** It's at paragraph 3, the cut-in part of the
16 email.

17 **A.** Thank you.

18 Well, I haven't -- I obviously haven't
19 considered this properly because that's ...

20 **Q.** I can't see, Mr Tatford, any follow-on advice
21 from this.

22 **A.** I know. I think --

23 **Q.** Telling the Post Office the steps that it needed
24 to take to ensure that it met its disclosure
25 obligations by reference to what is disclosed by

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1 cure that.

2 **MR BEER:** There's a number of quips I could make
3 there, sir, but I'll resist the temptation!

4 **SIR WYN WILLIAMS:** Yes, I'm, shall we say, nervous
5 about some aspects of not being with you,
6 Mr Beer.

7 **MR BEER:** Yes.

8 Mr Tatford, we were looking at the email
9 exchange of 27 July that was forwarded to you by
10 Mr Singh for your information and consideration.
11 Can we look at what happened when you got it,
12 ie the next day, 28 July 2010, by looking at
13 POL00055118. So this is the day after you were
14 forwarded the email exchange containing the
15 three Issy Hogg disclosure requests, two about
16 access to systems, the third about a variety of
17 things, including system change requests and
18 Known Error Logs, and Mr Jenkins' reply,
19 including the "There are 200,000 system faults".

20 The attendance note is:

21 "One telephone call received from Warwick
22 Tatford ... After discussion he confirmed that
23 they [I think that's the defence] are seeking
24 exactly what they were seeking before and to
25 respond to the Defence that if they wish

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1 paragraph 3?

2 **A.** No, I agree. I haven't thought this through.
3 I think I've been distracted by the other
4 requests and haven't thought this through. I'm
5 sorry.

6 **MR BEER:** Sir, I wonder whether that would be
7 an appropriate moment to take a break --

8 Sir, I wonder if that would be

9 an appropriate moment to take a break. We can't
10 hear you at the moment. I think you're saying
11 yes.

12 **SIR WYN WILLIAMS:** *(The Chair nodded)*

13 **MR BEER:** You are. Can we say again by non-verbal
14 communication, 2.55, please?

15 **SIR WYN WILLIAMS:** *(The Chair nodded)*

16 **MR BEER:** Thank you very much. 2.55.

17 **(2.39 pm)**

(A short break)

18 **(2.55 pm)**

20 **MR BEER:** Sir, good afternoon, can you see and hear
21 me?

22 **SIR WYN WILLIAMS:** I can, much to my relief.

23 I should explain that, just as you were asking
24 me to break, the battery in my mouse ran out and
25 so I couldn't unmute myself, but I managed to

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1 disclosure of these items they need to make
2 a Section 8 application to the Court and also
3 that our Expert Mr Jenkins has informed their
4 Expert that the material from Chesterfield that
5 is the Logs is not relevant information that
6 would assist them."

7 I suspect you no longer remember this
8 telephone conversation?

9 **A.** No.

10 **Q.** The gist of it is that what the defence was now
11 seeking, the Issy Hogg email request, was what
12 they were seeking before. That's, in fact, not
13 correct, is it?

14 **A.** Well, I think it's -- I think I'm concentrating
15 on the first two requests, and -- well, not
16 deliberately ignoring but missing the third one,
17 which is actually the one that really matters.
18 But it's clearly -- I mean, I've no reason to
19 suggest -- to think that this is inaccurate in
20 any way. I understand --

21 **Q.** Why would disclosure of the Known Error Logs
22 require a defence Section 8 application?

23 **A.** Well, no that wouldn't. That's precisely the
24 point I'm trying to make, that I think -- I'm
25 presuming that I'm referring to the first two.

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1 So request for an access -- to another site in
 2 the Midlands, request to access to Chesterfield.
 3 That's, I think, what I've thought of in
 4 relation to a Section 8 application.
 5 I've obviously missed the third one and the
 6 third one, as I've just said. That's primary
 7 disclosure, the first one. That's exactly I've
 8 said I was looking and now I've obviously failed
 9 in my own test, and I apologise for that.
 10 **Q.** Can we go to POL00055126. This is from Jarnail
 11 Singh on 28 July 2010. It's sent to Hannah
 12 Ivory, who is another solicitor in the defence
 13 firm:
 14 "I refer you to Ms Issy Hogg's email of
 15 22 July 2010.
 16 "These have been previously requested by you
 17 and our view is consistent. The prosecution do
 18 not have [I think the word 'an' is missing]
 19 obligation to grant you access and [then I think
 20 'that' is missing] you require or are not
 21 prepared to disclose this material. However you
 22 are perfectly entitled to make a Section 8
 23 application to the Court."
 24 You accept that Mr Singh's response to
 25 Mrs Misra's solicitors reflects the advice that
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1 **A.** Oh, I'm quite happy to accept it.
 2 **Q.** -- the 2005 edition.
 3 **A.** No, I do accept it. I can see, thinking things
 4 through, where I'm going to be at fault.
 5 I accept it says that and I accept being aware
 6 of it, I think. But -- yes.
 7 **Q.** Can we turn, with that in mind -- the duty to
 8 retain drafts where contents differ from the
 9 final version and record them on a schedule of
 10 unused material -- to what became Mr Jenkins'
 11 October 2010 witness statement. Can we look,
 12 please, at FUJ00123006. Can you see this is
 13 a draft witness statement dated 6 October
 14 2010 --
 15 *(No audible response)*
 16 -- in Mr Jenkins' name. If we scroll down,
 17 please, and again, then look at page 2., can you
 18 see in the second paragraph there Mr Jenkins
 19 writes:
 20 "In Section 1.2 of his report, Professor
 21 McLachlan lists a number of 'Hypothetical
 22 issues' with the Horizon system. However there
 23 doesn't appear to be a thorough justification as
 24 to why these might be relevant."
 25 Then there's some text that appears after
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1 you're recorded as giving on --
 2 **A.** Oh, yes, and it reflects the answer I gave
 3 previously.
 4 **Q.** So here, the important parts of the defence
 5 disclosure requests have been overlooked?
 6 **A.** I'd agree with that. Well, I certainly agree
 7 with it now. The problem that I faced
 8 throughout this case was that there were so many
 9 disclosure requests and I've obviously made
 10 mistakes, but that's the context. That's all
 11 I'm trying to say. As I said earlier, you've
 12 just shown that I failed my own test.
 13 **Q.** Can we turn, then, to Mr Jenkins' draft witness
 14 statements of October 2010. That can come down.
 15 Before we look at them, would you agree that
 16 by 2010, there was a requirement under the Code
 17 of Practice issued under the Criminal Procedure
 18 Investigations Act 1996 to retain and record
 19 final versions of witness statements and draft
 20 versions of witness statements where their
 21 content differs from the final version?
 22 **A.** Well, I think that is right. Whether I applied
 23 that to my mind, I rather doubt, from what
 24 I know of the notes and suggestions. But ...
 25 **Q.** I'm reading from paragraph 5.1 of --
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1 it, which, in the original, was red.
 2 **A.** Oh, I see, yes. I understand.
 3 **Q.** Can you see?
 4 **A.** Yes.
 5 **Q.** I wonder whether that can be marked up, the
 6 "I wonder if you might be", and the rest of the
 7 paragraph down to "hypotheses at all". Thank
 8 you.
 9 So what happened was Mr Jenkins' draft
 10 statement was sent to you for comment and you
 11 replied, and these are your replies --
 12 **A.** Yes.
 13 **Q.** -- in what was originally red.
 14 **A.** Yes.
 15 **Q.** Can you see there that Mr Jenkins said:
 16 "... there doesn't appear to be a thorough
 17 justification as to why these [issues listed by
 18 Professor McLachlan] might be relevant."
 19 You said:
 20 "I wonder if you might be prepared to use
 21 slightly stronger wording. There doesn't appear
 22 to be any evidential basis for the hypotheses at
 23 all."
 24 Yes?
 25 **A.** Yes.
 160

1 Q. Can we move forwards, please, to page 8. Can we
2 see, on page 8, the red text beginning with "Can
3 you expand on this?" So:

4 "Professor McLachlan explores issues with
5 training of Users in section 2.3.4 of his
6 report. I support his finding regarding
7 discrepancies in cash in almost every period."

8 Then you added:

9 "Can you expand on this and explain in
10 layman's terms, perhaps giving a couple of
11 examples? I do not understand exactly what
12 [Professor McLachlan] is referring to and your
13 agreement might be interpreted as a concession
14 that the Crown's case is entirely flawed.
15 Discrepancies are always to be expected."

16 Yes?

17 A. Yes.

18 Q. Then if we carry on reading, scroll down,
19 please. Towards the end of the red section
20 beginning with "M":

21 "M seems surprised that thefts over a long
22 period should go undiscovered."

23 You wrote:

24 "This is rubbish. If a [subpostmaster] is
25 cooking the books only an audit will reveal the

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1 "Finally, towards the end of the section
2 Professor McLachlan hypothesises 'There are
3 missing Transaction Corrections which would
4 reduce the cash balance expected by the Horizon
5 system (ie be in favour of Misra)'."

6 Then Mr Jenkins said:

7 "This may indeed be true."

8 Then you said, if this can be highlighted:

9 "Why? Isn't this wish "Thinking by
10 [Professor McLachlan]? There is no evidential
11 basis whatsoever for his assertion. Have the
12 transaction corrections disappeared by magic?
13 However my understanding is that normally", and
14 I think that's back to Mr Jenkins' writing.

15 Then further down the page, Mr Jenkins
16 writes:

17 "Section 2.5.2 of the report discusses
18 remittances. However I don't understand the
19 relevance of this discussion to the case.
20 Professor McLachlan mentions that my analysis
21 'identified a pattern or remittance transactions
22 which is consistent with Misra's statement that
23 she declared cash held in remittance pouches in
24 the safe which were not actually present'."

25 Mr Jenkins continues:

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1 truth."

2 Then can we go forward to page 10, please.
3 Second line onwards, it's the entirety of this
4 paragraph.

5 "Please provide your full explanation of why
6 Callendar [Square] doesn't apply so that this
7 statement can stand alone. The Defence are
8 going to bang on about this."

9 Then five lines on:

10 "My understanding is that Misra is unable to
11 describe at all what may have been going wrong
12 with her system. According to her Defence
13 Statement she simply put the losses down to
14 theft by employees and/or incompetence. This
15 appears to be to me to be ludicrously vague.
16 She should at least be able to say where the
17 losses were occurring. Are you not surprised
18 that [Professor McLachlan's] reports appear to
19 have received no guidance whatsoever from Misra?
20 Were you surprised to see that Callendar
21 [Square] was still an issue for [Professor
22 McLachlan]? Did you have any idea that he
23 wanted the earlier logs before you received his
24 final report?"

25 Page 13, top part:

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1 "In my view is this not an indication of
2 guilt?"

3 Then you added:

4 "Please rephrase and expand. It is surely
5 surprising that a [subpostmaster] should go to
6 all the trouble of preparing scores of empty
7 bags rather than trying to find out what the
8 problem was. In fact Misra had considerable
9 computer experience -- you may want to speak to
10 Jon Longman as to her CV."

11 Then lastly page 14, the foot of the page:

12 "Section 3.2 mentions screen calibration
13 issues. While I can't [I think that's supposed
14 to say 100%] rule out such issues as causing
15 some issues. However I can't see how this could
16 account for anything like the full extent of the
17 losses."

18 You added:

19 "Please rephrase. This will be taken as
20 a damaging concession. You need to explain what
21 is meant by 'screen calibration issues'. Give
22 examples if you can. How can any such issue
23 lead to a deficiency? Above you any refer to
24 the possibility of confusion arising, not
25 a deficiency."

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1 Thank you, that can come down here.
 2 Mr Tatford, is what we see here prosecution
 3 counsel seeking to harden up his expert?
 4 **A.** Well, I'm seeking him to consider various
 5 points, points that I see as legitimate, and
 6 I was trying to express it in a way that merely
 7 to invite further consideration, but I'm asking
 8 him to focus on what I understand to be the
 9 evidence.
 10 **Q.** Would you agree that the way you went about it
 11 was inappropriate?
 12 **A.** In the context of everything that we've gone
 13 through, I should have acted differently,
 14 I think. I think it's -- I think I may have
 15 been lulled into feeling that your experts are
 16 cooperating and I was merely clarifying details
 17 to make sure that Mr Jenkins really meant what
 18 he said. But it all comes back to the
 19 safeguards that are there in the Criminal
 20 Procedure Rules, that they should have been
 21 followed, and --
 22 **Q.** But here this isn't about just the rules; this
 23 is about what you personally did?
 24 **A.** Oh, yes. No, I agree. It's --
 25 **Q.** You ask questions in a very leading way, don't
 165

1 there.
 2 **Q.** You said in your witness statement that you were
 3 at pains throughout to ensure that Mr Jenkins
 4 understood that he was subject to a duty of
 5 independence, that he was the subject of a duty
 6 to be impartial and that he was under a duty to
 7 assist the court and not the Post Office. Do
 8 you think that the approach that we see in the
 9 examples I've given you of trying to press
 10 Mr Jenkins to say that it was likely that
 11 Mrs Misra had stolen the money is consistent
 12 with those claims that you've made?
 13 **A.** No, I accept that it isn't but what I was trying
 14 to do in my witness statement was remember the
 15 overall picture, which I did think -- genuinely
 16 thought involved mutual cooperation and trying
 17 to focus on the issues. But -- well, I've
 18 summarised matters in that way, in a way
 19 that's -- that makes me appear better than
 20 I clearly have been. I accept those failings,
 21 you rightly pointed them out.
 22 **Q.** Finally on this topic, do you see any
 23 inconsistency with your view that Mr Jenkins was
 24 called at trial as an expert witness and your
 25 approach as disclosed by this marked-up witness
 167

1 you, in this? You point out what your view is.
 2 **A.** I do, I do. I should have been -- I should have
 3 handled it differently.
 4 **Q.** Consistently with the Criminal Procedure Rules,
 5 do you agree that this draft statement marked up
 6 by you should have been retained and recorded on
 7 a schedule of unused material?
 8 **A.** Yes, I think that's right and that's something
 9 I didn't consider. I obviously wasn't thinking
 10 these things through at all. I'm sorry for
 11 that.
 12 **Q.** Thirdly, do you agree, as a consequence, that
 13 the defence at trial were denied the opportunity
 14 to explore with Mr Jenkins how his written
 15 evidence came to look as it did at trial, if the
 16 facts of this exercise and the records of it
 17 were not revealed to the defence and to the
 18 court?
 19 **A.** Well, that would follow.
 20 **Q.** Would you agree that that is not only a breach
 21 of the rules but an unfairness in itself?
 22 **A.** No, I think it is unfair and I'm sorry for that.
 23 I can -- I think what I was doing was just
 24 trying to clarify matters and make things clear
 25 but I do agree that I've overstepped the mark
 166

1 statement of seeking to push the independent
 2 expert to take a more unequivocal view in his
 3 witness statement?
 4 **A.** I was seeking to push him on the issues and to
 5 focus clearly on the issues. But I agree,
 6 looking at it now, I don't think I should have
 7 done it.
 8 **Q.** Can we look now at what Mr Jenkins did in
 9 response to some of the comments that you made.
 10 POL00167219, thank you. This is going to be
 11 very difficult to read because there are four
 12 colours going on in it.
 13 This is essentially a version of Mr Jenkins'
 14 October 2010 witness statement, returned by him
 15 to you and the prosecution team, setting out
 16 amendments that he'd made which are coloured in
 17 red when he makes it an addition, are
 18 struck-through and coloured in red when he makes
 19 a deletion and then, including in a box, which
 20 sets out in yellow and sometimes blue his
 21 response to your comments.
 22 So can we look, please, as an example, the
 23 bottom of page 5. I wonder whether we can
 24 display the text just at the top of page 62. So
 25 we can see what your comment was, "WT", Warwick
 168

1 Tatford:

2 "I wonder if you might be prepared to use
3 slightly stronger wording. There doesn't appear
4 to be any evidential basis for the hypotheses at
5 all.

6 "Gareth Jenkins: is that better?"

7 Then if we go up to see what changes he
8 made. Originally as drafted, the sentence read:

9 "However there doesn't appear to be
10 a justification as to why these might be
11 relevant."

12 It's been changed to:

13 "However there doesn't appear to be any real
14 justification as to why these might be relevant.

15 The purpose of these statements appears to be to
16 plant seeds of doubt without a factual basis."

17 You see he's picked up your point, there
18 isn't any factual basis for this, yes?

19 **A.** Yes.

20 **Q.** Then can we look, please, at the bottom of
21 page 16, thank you:

22 "WT: Can you expand on this and explain in
23 layman's terms", et cetera.

24 We just read that, yes, in the previous
25 marked-up version?

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1 "WT: Please rephrase and expand. It is
2 surely surprising that a [subpostmaster] should
3 go to all the trouble of preparing scores of
4 empty bags rather than trying to find out what
5 the problem was. In fact Misra had considerable
6 experience -- you may want to speak to Jon
7 Longman as to her CV."

8 Reply:

9 "I've tried to do that. Not sure what the
10 relevance of her CV is to me. I'm just trying
11 to describe how Horizon works not her
12 competency."

13 Again, Mr Jenkins pushing back.

14 **A.** Yes, to his credit.

15 **Q.** Bottom of page 25, please.

16 "WT: As I mention above, if the
17 [subpostmaster] is fiddling the accounts only
18 an audit will uncover the problem. Misra will
19 have known this.

20 "Gareth Jenkins: Agree, but it is not for me
21 to say."

22 Again, pushback by Mr Jenkins?

23 **A.** Yes. No, absolutely.

24 **Q.** That can come down, thank you.

25 Overall it seems, would this be right, that

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1 **A.** Yes.

2 **Q.** Then scroll down to see what his reply is:

3 "Gareth Jenkins: I'm not sure I can cover
4 all you suggest, but have made an attempt
5 above."

6 We can see, if we go up to page 16, the
7 entirety of that page is new text, yes?

8 **A.** Yes.

9 **Q.** Then if we can go on to page 17, please, and
10 scroll down -- if we scroll up a little bit,
11 thank you:

12 "WT: Isn't theft rather more likely? Are
13 these equally valid possibilities? Why would
14 a [subpostmaster] not monitor the system well on
15 a daily basis? Not to do so risks throwing
16 their own money down the drain.

17 "Gareth Jenkins: I would tend to agree, but
18 surely that is something for Post Office to
19 show. My expertise is in the system and not in
20 how a Post Office is operated."

21 So this is the expert pushing back on you,
22 isn't he?

23 **A.** Yes, he is.

24 **Q.** At the bottom of page 24, please, and on to
25 page 25. Thank you.

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1 you were trying to materially to alter the
2 content of Mr Jenkins' evidence and, in some
3 cases, you succeeded and, in other cases, he
4 stood his ground; would you agree?

5 **A.** I wouldn't agree materially to all -- all to the
6 content. I was asking him to focus on issues as
7 I understood them to be, albeit the distinction
8 is quite narrow. Looking at it now, if I was
9 doing it now, I wouldn't have done it in that
10 way.

11 I think it's dealing with a different --
12 a new and what was for me an unusual case and
13 I think I hadn't thought things through
14 properly. And that's my error, and I apologise
15 for it.

16 **Q.** Thank you. Can we turn to a new topic, please,
17 disclosure of training material. Can we just
18 turn up your witness statement, please, at
19 paragraph 50, which is on page 25 -- in fact,
20 it's the second part of paragraph 50 on page 26.
21 You're referring to Mrs Misra's interview and
22 you say:

23 "On the contrary, she said that she had been
24 able to find the cause of the losses -- her
25 dishonest employees. Her interview had not made

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1 mention of her suffering losses right from the
2 beginning, in the presence of her trainers while
3 they were training her, before any possible
4 theft was involved, which was something that she
5 later relied on heavily in her evidence at
6 trial."

7 So the point that you're making here, is
8 this right, that at trial Mrs Misra relied on
9 an occasion or occasions where a loss was
10 suffered whilst a trainer was in the premises
11 with her, in the post office with her?

12 A. Yes.

13 Q. You're making the point: but, hold on, that's
14 not something she relied on interview?

15 A. Well, I think she -- I dealt with this.
16 I specifically went -- well, normal practice is
17 to go specifically to the questions to see
18 whether it is a matter that could legitimately
19 be raised at that time. But I'm trying to
20 remember exactly how it was.

21 I appreciate I made the point and -- that
22 I made that point in my speech and then
23 persuaded the judge that there was a potential
24 adverse inference on that point.

25 Q. So a Section 34 inference --
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1 Q. "Training Delivery Team to complete", at the
2 foot of the page. Request received, 25 July
3 2005; days allocated, 27 July and Wednesday,
4 3 August 2005. The trainer Michael Opebiyi,
5 yes?

6 A. Yes.

7 Q. If we just look at the rest of the page,
8 "Balancing Procedure", this is for the field
9 trainer to complete. "Balancing procedure",
10 topic covered:

11 "Check daily procedures, weekly procedures,
12 weekly Horizon reports and cash account."

13 So it looks like there'd been a request for
14 *ad hoc* training, specifically in relation to
15 balancing procedures, that looks like it led to
16 Michael Opebiyi being allocated to perform
17 training on 27 July and 3 August.

18 Q. So, overall, this is a request for training
19 relating to Mrs Misra specifically relating to
20 balancing, yes?

21 A. Yes.

22 Q. Can we look, please, at POL00065114,
23 an "Intervention Manager Visit Log". This looks
24 like it's completed by the Intervention Manager
25 for the area, called Alan Ridoutt, and he's
175

1 A. Yes.

2 Q. -- against her. But, in any event, you're
3 making the point here that Mrs Misra relied
4 significantly on the fact that some of the
5 losses occurred in the presence of her trainer?

6 A. Yes.

7 Q. I just want to look at what was disclosed in the
8 trial, as against material that the Inquiry has
9 now uncovered?

10 A. Oh, right. All right.

11 Q. The Post Office has disclosed to us the
12 following document. It's called a "Request for
13 *Ad Hoc* Training", specifically in relation to
14 balancing procedures. Can we look at it,
15 please. POL00047578. Can you see it's called
16 "Request for *Ad Hoc* Training"?

17 A. Yes.

18 Q. Name of the outlet, West Byfleet, and its
19 identification code. "Agent's name", misspelt
20 Mrs Misra.

21 A. Yes.

22 Q. Then if we scroll down:
23 "Ad Hoc Training Required ...
24 "Balancing procedures."

25 A. Yes.

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1 recorded:

2 "This branch was visited on 10, 17 and
3 27 August 2005 regarding balancing issues and
4 the setting up of individual stock units.

5 I have spent many hours sorting out balancing
6 issues and helping with the stock setup as well
7 as arranging *ad hoc* training.

8 "The [subpostmaster] is still new and is
9 looking for support on many issues -- she has
10 the capability but needs occasional guidance."

11 Then this, if we can just scroll down and
12 highlight it:

13 "This branch is currently holding a loss of
14 £466.73 and an over of £96.80. That was put
15 into the suspense account by the trainer
16 'Michael'. Who told the [subpostmaster] that
17 a voucher would be issued to clear it. I have
18 spoken to Michael who confirmed that he did
19 this. I have warned the [subpostmaster] that
20 unless an error comes back they could be
21 liable."

22 Would you agree that this appears to be
23 a record that, whilst a trainer was there, he
24 agreed that an amount of £466.73 and an over of
25 £96.80 could be put in a suspense account.
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1 A. Yes, it does. Can I just clarify, it's me not
 2 understanding this: was this something that was
 3 disclosed in the trial or it has come forward
 4 more recently?
 5 Q. More recently.
 6 A. Well, it rather looks like I've made an error
 7 and a bad, unfair point.
 8 Q. You're ahead of me because I think you're
 9 thinking ahead to the cross-examination of
 10 Mrs Misra --
 11 A. Yes.
 12 Q. -- when, essentially, you said that what she was
 13 saying wasn't true.
 14 A. Yes, and it looks like a bad point. I'm sorry
 15 about that. My understanding was, from what
 16 I remember, the training records were disclosed.
 17 Q. Well, let's before we get ahead of ourselves --
 18 A. Forgive me, I'm getting ahead. My fault, I'm
 19 sorry.
 20 Q. Just see how disclosure unfolded at the trial.
 21 Can we look, please, at POL00058503. Can we see
 22 at the foot of this page an email from
 23 28 November 2009 from Keith Hadrill to you:
 24 "Hi Warwick
 25 "Sorry to disturb your weekend. However,

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1 mind the request came from a trainer, as to the
 2 cause of this loss."
 3 If we go back to page 1, please. You
 4 forwarded this, so you were getting it directly
 5 from defence council. You forwarded it that
 6 night, so the following night, to Jon Longman
 7 and Phil Taylor:
 8 "Dear Jon & Phil,
 9 "Please find yet another disclosure request
 10 from the defence, albeit, to an extent, a rehash
 11 of what has gone before."
 12 Does the language you've used there reflect
 13 your frustration at the defence making
 14 disclosure requests?
 15 A. Yes. Not the act of making disclosure requests;
 16 that's not a problem. The problem was their
 17 wideness and they were very wide, and they --
 18 well, the trouble with very wide defence
 19 requests that don't focus on matters is that
 20 it's possible to be distracted by some things
 21 and not concentrate on other more important
 22 things. That's a potential danger.
 23 A good prosecutor should be able to deal
 24 with everything. But there were a lot of
 25 disclosure requests, as I think is clear from

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1 herewith the further disclosure request drafted
 2 by Issy.
 3 "Call me if you need any further
 4 clarification."
 5 Then if we can look at the disclosure
 6 request, next page, please. Look under the foot
 7 of the page, under the cross-heading "Training",
 8 copy of the training manual, when it was
 9 supplied, all records provided to the defendant
 10 qualifications of the trainer. Then this at
 11 paragraph 5:
 12 "During the second week of the Defendant's
 13 tenure as a subpostmistress at West Byfleet the
 14 trainer was present during the weekly
 15 reconciliation. He called the helpline to
 16 request explanation as to a loss as, in his
 17 opinion, the Defendant had at all times followed
 18 procedure. No explanation was given and the
 19 Defendant made good the loss. Please provide
 20 the following information:
 21 "a) The name and contact details of that
 22 trainer (to assist in identification the
 23 defendant recalls his name was Michael and he
 24 was black).
 25 "b) What enquiries were made, bearing in

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1 the paperwork, and they were very wide.
 2 Q. That one we've looked at was pretty specific,
 3 wasn't it, in the --
 4 A. Oh yes, it's one of the ones and I think I'd
 5 dealt with that in my advice and I think Jon
 6 Longman was providing information on that. It
 7 maybe that he -- he wasn't aware of the full
 8 information when he made disclosure but I'm sure
 9 we'll come to that.
 10 Q. Can we look at what happened at trial, please,
 11 UKGI00014845. So this is the transcript of the
 12 trial for 18 October 2010. If we can turn up
 13 page 52, please. I'm jumping right in here,
 14 this is her evidence-in-chief:
 15 "What happened whilst Michael was there?
 16 Did he also sit behind and watch what you were
 17 doing?"
 18 Mrs Misra says:
 19 "Yeah, he was sitting behind me, but
 20 I mentioned to him -- as he come in 'how is it
 21 going?' I said 'not good. I am having to put
 22 money in every day to the post office'. He was
 23 more concerned than Junaid. He said 'that
 24 should not be happening. Let us see how it
 25 goes'.

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1 "Question: Did it get any better?
 2 "Answer: No. I have to again put money in
 3 every day and then when balancing with Michael
 4 it came round at £400 short.
 5 "Question: At the end of the week?"
 6 Then scroll down. End of D:
 7 "... second balancing in office with
 8 Michael.
 9 "Question: So the first day with Michael on
 10 the second week?
 11 "Answer: That is right -- no -- yeah. That
 12 is right.
 13 "Question: It is £400 short?
 14 "Answer: No, no, no, that is on the second
 15 balancing £400 short.
 16 "Question: So that is the end of the second
 17 week?
 18 "Answer: End of second week.
 19 "Question: Did you get any error
 20 corrections there?
 21 "Answer: No. Michael said 'it is a bit
 22 unusual. I know you have been doing the
 23 transaction correctly'. Then I remember him
 24 staying behind and he made a phone call from
 25 [my] office ... he said he had been observing we
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1 these things were at the time of interview?
 2 "Answer: I can't remember, basically ...
 3 "Question: If you cannot remember,
 4 Mrs Misra --
 5 "Question: -- in an interview in 2008 how
 6 is it you remember your dealings with Michael
 7 and Junaid in 2005?
 8 "Answer: It happen. It happen in my post
 9 office.
 10 "Question: If it happened why didn't you
 11 tell the Post Office this in interview?"
 12 You were suggesting here, not directly, but
 13 by implication, through the use of the word
 14 "if", followed up by the failure to mention
 15 something in interview, that what she was saying
 16 was false, weren't you?
 17 A. Well, yes, that would follow from the not being
 18 mentioned there that I'm not sure I was that
 19 piece of more recent disclosure. But it may --
 20 if I'm wrong about that and I've made a mistake,
 21 I'll let you go to where we need to go.
 22 Q. If it's the case, which appears to be the case
 23 that those records were not disclosed to the
 24 defence or disclosed to you, relating to the
 25 trainer Michael's experience, when he was in
 183

1 are doing the transaction correctly ... they
 2 have been putting the money in every day to
 3 balance the till and he can't understand why the
 4 £400 shortfall is."
 5 So she was showing quite a good recall for
 6 the figures there, the £400, wasn't she?
 7 A. Yes.
 8 Q. Can we go towards page 132, please, B:
 9 "Question: It is this interview I am
 10 looking at. All right?"
 11 This is you cross-examining:
 12 "Answer: Okay.
 13 "Question: In this interview you have not
 14 mentioned Michael, Junaid, what auditor
 15 threatened you with, the £500 and then you will
 16 lose the post office. You don't mention Timiko
 17 Springer. Yes? All those things are missing
 18 from this interview. Do you accept that?
 19 "Answer: I accept I gave answer to the
 20 questions what they asked for.
 21 "Question: Right what I want to understand
 22 is why these things are missing because in fact
 23 you have just given us another potential reason.
 24 Is it because you were not asked the question or
 25 is it because you had not realised how important
 182

1 branch, that led you to cross-examine Mrs Misra
 2 on a false basis, didn't it?
 3 A. Yes, it was a bad point. My understanding was
 4 that the training records had been disclosed and
 5 that they couldn't remember the details but I'm
 6 trying to remember where that was from. But it
 7 certainly appears clear and it's unfortunate, if
 8 there's a piece of disclosure I didn't have
 9 that's caused me to take a bad point then it's
 10 an unfair point. It's not Mrs Misra's point
 11 it's the fault of the prosecution as a whole.
 12 Q. Can I turn, please, to the call logs and I'd
 13 like, if I may, to explore a different aspect of
 14 how the prosecution team went about giving
 15 disclosure of evidence to Mrs Misra and her
 16 legal representatives, and that's disclosure of
 17 the logs of calls made by Mrs Misra to Helpdesks
 18 about problems that she was having with the
 19 Horizon system, including in relation to
 20 balancing and discrepancies.
 21 We know that there were 135 calls that she
 22 made. Let's start with the raw material,
 23 a record of a call. Can we start, please, with
 24 POL00061793. Can we turn to pages 25 and
 25 following, please. Look at the bottom half of
 184

1 the page, and keep going. Thank you.

2 We can see that this is a record of a call
3 dated 23 February 2006. Thank you. The caller,
4 left-hand side, is Mrs Misra, the postmaster,
5 yes?

6 **A.** Yes.

7 **Q.** If we go over the page, please, we can see new
8 call taken by Joanne Rowland:

9 "[Postmaster] states that she has losses
10 every week in two stock units.

11 "NBSC states they have gone through all
12 checks with [postmaster].

13 "NBSC states that on the CC stock unit
14 [postmaster] has rolled over with 1,500 loss,
15 JSA stock unit PM has rolled over with a £200
16 loss. NBSC states that on Saturday, 18 February
17 [postmaster] declared her cash and she had
18 a £900 loss up until Saturday and then when the
19 [postmaster] declared her overnight cash on Sat
20 at 1.00 went back to £200 loss. NBSC also
21 states that her AA stock unit has a £6,000 loss
22 [postmaster] has rolled over this as well."

23 Then reading four or five lines on:

24 "[Postmaster] states she has that 3 stock
25 units which are showing losses. [Postmaster]
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1 undertake extractions of audit data held on the
2 Horizon system.

3 Then page 2, please, the middle paragraph
4 there beginning, "I have reviewed":

5 "I have reviewed the [Horizon Helpdesk]
6 calls pertaining to the West Byfleet branch
7 [between] 30 June 2005 to 31 December 2009.
8 There were 135 calls ... to the HSH. This
9 equates to [2 to 3] calls ... which is average
10 for this size Post Office. All the calls are of
11 a routine nature and do not fall outside the
12 working parameters of the system or would affect
13 the working order of the counters."

14 He then proceeds to summarise them --

15 **A.** Yes.

16 **Q.** -- the calls, if we scroll on, next page. Can
17 you see? If we skip to page 8, if we can scroll
18 down, please, to number 29 at the foot of the
19 page there. That's the summary of the call log
20 that we have just read, and the summary is:

21 "Annetee NBSC -- PM states that she has
22 losses every week in two stock units.

23 "Call close by Dave Dawe: PM was getting
24 discrepancies. SSC have investigated and
25 advised that the NBSC take a second look at this
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1 has rolled over and [postmaster] states NBSC
2 went through checks with her."

3 Then a little bit further down about,
4 a third of the way down that page there, KEL
5 reference number, "No KEL found", so no Known
6 Error Log found.

7 **A.** Yeah.

8 **Q.** "Please check [two lines on] why [postmaster]
9 has losses in three of her stock units.
10 [Postmaster] has rolled these over before.
11 I could check her system. NBSC states they have
12 gone through all her paperwork with her. Please
13 see call for details."

14 Then at the foot of the page,
15 an intervention by Anne Chambers. Can you see
16 that at the foot of the page? If you just
17 scroll down, please. "Update by Anne Chambers".

18 Can we just go to the summary of this call
19 in Mr Dunks' witness statement, please.
20 POL00058457.

21 This is a witness statement of Mr Dunks of
22 29 January 2010. Just scroll down, please. He
23 introduces himself and says he has a working
24 knowledge of the computer system known as
25 Horizon. He's authorised by Fujitsu to
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1 as the office stock units appear to be in
2 a mess.

3 "Outcome

4 "SSC advice that call be passed back to NBSC
5 for further investigation."

6 At trial, was this the extent of the
7 information disclosed in the hearing as to the
8 nature and extent of the calls that Mrs Misra
9 had made.

10 **A.** Do you mean the statement and the log that we
11 looked at as well?

12 **Q.** Yes, was the log disclosed too?

13 **A.** I think so. I can't actually remember --

14 I thought it had been --

15 **Q.** You agree that this summary of it doesn't really
16 do justice to what we read?

17 **A.** No, it doesn't deal with the amounts, and so
18 forth. It's not quite as much detail, I agree.

19 **Q.** Well, it's an inadequate summary of it, isn't
20 it?

21 **A.** Yes, but my recollection was the call logs were
22 disclosed.

23 **Q.** What are you basing that recollection on?

24 **A.** Well, it's just what I remember. I mean, if I'm
25 wrong about that, then I'm wrong, but I would
188

1 expect them to be disclosed. Not simply
2 a statement.

3 **Q.** Not simply a statement summarising?

4 **A.** No. And if -- but -- I mean, obviously it can
5 be checked easily enough. I don't want to waste
6 time if I've misremembered something. Looking
7 at it now, if I was prosecuting a case now, I'd
8 expect the call logs to be disclosed together
9 with the witness statements. That's what I'm
10 assuming happened but I can't actually remember
11 it now. I thought that had happened but I can't
12 actively remember it.

13 **Q.** Can you recall whether at trial the contents of
14 the call logs themselves, the underlying data,
15 was brought in to evidence?

16 **A.** I can't specifically recall it. That's what
17 I thought had happened but, actually, a memory
18 of it and seeing a document of it, I can't
19 remember at the moment. But I'm sure it can be
20 checked. It's either there or it isn't, I would
21 have thought.

22 **Q.** Well, we do have a document from Mr Dunks
23 exhibiting something --

24 **A.** Yes.

25 **Q.** -- and we don't know what the something consists
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1 coloured buttons, big buttons, and it has got
2 clear instructions in English, but it has also
3 been a system that has been used for a very long
4 time now and it has in fact recently been
5 replaced by an upgraded Horizon system but it
6 was rolled out to post offices between 1999 and
7 2002 and has continued until ... 2010.

8 "So at the time we are concerned with there
9 would have been -- a lot of post offices shut
10 down of course recently -- but in the time we
11 are concerned with there would have been around
12 14,000 post office branches, and you can just
13 imagine how many transactions the Horizon system
14 has to go through when you think of that number
15 of branches. The computer system will literary
16 process millions of transactions every single
17 day, and in peak times like around Christmas
18 perhaps nearly 20 million transactions per day.

19 "So it has got to be a pretty robust system
20 and you will hear some evidence from an expert
21 in the field as to the quality of the system.
22 Nobody is saying it is perfect and you will no
23 doubt hear about a particular problem that was
24 found, but the Crown say it is a robust system
25 and that if there really a computer problem the
191

1 of?

2 **A.** Well, you see, he was cross-examined at some
3 detail and I can't see how he can be
4 cross-examined without the log. That's what
5 made me think we had the logs. It is obvious
6 that one should disclose the logs. If
7 a statement summarises, one should disclose the
8 logs that are being summarised. That's obvious
9 and that should happen. I thought it had
10 happened. If it hadn't, then that was wrong.
11 It should have happened.

12 **Q.** Thank you. Lastly on the Misra case, your
13 opening and closing speeches to the jury. Can
14 we look, please, at UKGI00014994. We can see
15 this is a transcript for the 11 October 2010
16 and, if we scroll down, we can see you're listed
17 as prosecution counsel.

18 If we go to page 30, please, and scroll
19 down, please, we can see there where your
20 opening speech commences.

21 **A.** Yes.

22 **Q.** Can we go to page 49, please. At B you describe
23 what the Horizon system is. You say:
24 "The system the Crown say is actually
25 a fairly simple system to use. It has got nice
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1 defendant would have been aware of it. That is
2 the whole point because when you use a computer
3 system you realise there is something wrong if
4 not from the screen itself but from the
5 printouts you are getting when you are doing the
6 stocktake.

7 "So that is one issue in the case, whether
8 the Horizon system is any good or not. The
9 Crown say it must be good otherwise the whole
10 Post Office would collapse but you are
11 nevertheless going to have to consider that very
12 carefully and consider all the evidence that you
13 are going to hear."

14 Would you agree that what you're saying
15 there is a version of a prosecutor's fallacy,
16 namely the chances of Horizon getting fictitious
17 shortfalls must be small because it works
18 reliably in 14,000 offices, millions of times
19 a day and, therefore, you can conclude Mrs Misra
20 is guilty?

21 **A.** I don't think so, no. I'm saying that generally
22 it works but I also say, in my -- I think in
23 both opening and closing speeches, all computers
24 can have glitches and these things happen. But
25 all I think I'm saying by that is not that it's
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1 a probability exercise; I'm saying it's
2 generally a robust system. It's not perfect and
3 I made it clear that it was not perfect; it
4 wasn't infallible.

5 When the defence suggested the Crown were
6 saying that, I made clear that wasn't what we
7 were saying. I don't think -- I certainly
8 didn't mean it as some sort of exercise in
9 probability.

10 **Q.** Why were you mentioning all of the other post
11 offices in --

12 **A.** So --

13 **Q.** -- which it worked and all of the other
14 transactions --

15 **A.** Well, because -- to show that it was generally
16 a robust system, which is what I understood it
17 to be. If a system does work in a lot of
18 offices, there must be a lot of good to the
19 system. It's not excluding the possibility
20 there might be glitches. Glitches happen on
21 computers. Every day in a courtroom, if
22 something happens with a computer, it doesn't
23 mean the computer itself is bad. It means that
24 glitches are relatively a part of -- part and
25 parcel of a system that, in general terms, is

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1 **A.** No -- well -- well, there's a difference between
2 saying "A system generally works" and "It's very
3 unlikely it's failed in this case". I'm not
4 making the second point. I'm making the point
5 that it works generally, which means generally
6 it's probably pretty good. But nothing is
7 perfect and some glitches happen. I was very
8 clear about that, in both opening and in
9 closing. Very clear to tell the jury that, if
10 they thought the loss might largely be explained
11 as a result of computer error, they'd be very
12 likely to acquit.

13 **Q.** Thank you. That can come down.

14 In relation to Mr Jenkins' oral evidence at
15 trial, I think it's right that when you called
16 him, you didn't seek to establish that he
17 understood his expert duties.

18 **A.** Not in the witness box, no, but I thought it was
19 obvious from everything I saw of him, and I give
20 an example in my witness statement of how
21 careful he was.

22 **Q.** Thank you very much, that's all I ask on
23 Mrs Misra's case.

24 Can I turn to two other cases much more
25 shortly. Firstly, Carl Page.

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1 relatively good.

2 **Q.** From whom did you receive instructions that the
3 integrity of the system was such that it could
4 be described as robust?

5 **A.** Well, the robust term was used regularly by the
6 Post Office and I sought to justify it by
7 argument, not to rely on it simply being
8 a mantra. I was affected also by the evidence,
9 as I understood it, from Mr Jenkins and also
10 from the proposition, which I thought at the
11 time was significant that I understood from my
12 instructing solicitor, that Crown Offices, where
13 there wasn't a shop attached, didn't seem to
14 have the same sort of problems.

15 But I appreciate that I may have missed
16 things, I may have been misinformed but that's
17 the information as I understood it to be.

18 **Q.** You say in your witness statement:

19 "I did not seek to hide behind the mantra
20 that Horizon was robust."

21 **A.** No, I don't seek to hide behind a mantra;
22 I sought to justify the term. That's what
23 I mean.

24 **Q.** You're justifying the term in terms of
25 probabilities here, aren't you?

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1 Firstly, a general question. Can you help
2 us as to whether or not Mr Jenkins had any role
3 in the prosecution of Carl Page, whether by
4 provision of a witness statement or giving
5 evidence at trial?

6 **A.** He had no role. My understanding is that his
7 first involvement as a witness -- this is my
8 understanding but it is -- from my conversations
9 with him, I think his first involvement as
10 a witness in a trial was the Misra case.

11 I understand that Debbie Stapel -- I knew
12 her as Debbie Helszajn -- that she suggested
13 Gareth Jenkins gave evidence at the Dudley trial
14 and that's simply incorrect. It's simply
15 misremembering. I was at the trial for six
16 weeks. I called a number of witnesses. I took
17 notes of all the evidence -- I wish I had the
18 notes still, they're long gone on an old
19 computer -- but I heard all the evidence.
20 Gareth Jenkins was not a witness in that case.

21 And also, I've -- there's an email that's --
22 I don't need to take you to it but you'll
23 remember the email when Gareth Jenkins says it
24 was nice to put names to faces after the
25 conference. If I'd met him before at Merry

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1 Hill, Dudley, then he wouldn't have said that.
2 So it seems clear to me that, from my memory but
3 also the logic of the evidence, Gareth Jenkins
4 wasn't involved in the *Page* case at all.

5 **Q.** I think it's right that you've seen, like us, no
6 witness statement from him?

7 **A.** Yes, and that's the reason, and I checked
8 because I looked at Debbie Stapel's evidence
9 yesterday and I checked it against the witness
10 statements I have, and there's an absence of any
11 reference to computers working. The Inquiry
12 will be aware that often the Post Office tried
13 to rely on Section 69 of PACE, long after it had
14 fallen away, but my recollection is that nobody
15 sought to suggest the computer systems --
16 anything about the computer systems in the *Page*
17 case. It was really dealt with on the basis of
18 the branch trading accounts.

19 **Q.** He's not mentioned in yours and Mr John's
20 opening note, is he?

21 **A.** No, he's not mentioned by the experts. He's not
22 mentioned significantly in a list of witnesses,
23 so I find it very hard to see how he could
24 possibly have become involved.

25 And Debbie Heszajn -- Debbie Stapel,
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1 Thank you for your apology and, without any
2 desire to harrow your feelings, I would like to
3 remind you of what happened to Mrs Misra as
4 a result of her being prosecuted to conviction.

5 As you recall, on the 11 November 2010, she
6 was sentenced to 15 months' imprisonment for the
7 offence of theft and six months' imprisonment on
8 each of the false accounting charges to run
9 concurrently. She went to prison on her son
10 Adi's 10th birthday, at a time when she was ten
11 weeks' pregnant with her second son, Jai.

12 Immediately upon being sentenced, she
13 collapsed in shock, complaining of severe
14 abdominal pain and was taken straight to
15 hospital for overnight observation, before being
16 removed to HMP Bronzefield the following
17 evening.

18 You may not be aware of this but she was
19 pilloried in the local press before and after
20 her imprisonment as a pregnant thief who got off
21 lightly. She was released on tag after nearly
22 four months inside. It was a hellish time. Her
23 husband, Davinder, was racially abused and
24 beaten up in the street. He suffered the
25 vilest, racist abuse in the months that followed

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1 I should say now -- she was present for the
2 first week of the trial, because it's far away.
3 From London you have to stay up there, it's
4 quite awkward to get to the Merry Hill site, and
5 she, I think, would have seen some witnesses
6 because I think she was there for the first week
7 but she wasn't for the remainder.

8 So when she said, "I remember seeing Gareth
9 Jenkins give evidence", it seems to me that she
10 may be confused on that point.

11 **Q.** Thank you.

12 In view of the time, I'm not going to ask
13 you about the other case, the Susan Rudkin case.
14 Thank you very much.

15 **A.** Thank you.

16 **MR BEER:** Those are the only questions I ask
17 Mr Tatford.

18 I think there are some questions from Core
19 Participants. No from Howe+Co.

20 No, thank you, from Hudgells.

21 But yes, from HJA, so Mr Henry. Thank you.

22 **Questioned by MR HENRY**

23 **MR HENRY:** Mr Tatford, I represent several
24 subpostmasters, one of course is Seema Misra who
25 hits besides me.

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1 his wife's trial and imprisonment and Mrs Misra,
2 on her release from prison, was a pariah. No
3 one would talk to her, offer friendship, support
4 or consolation.

5 Because she was ostracised, the childminding
6 business she'd started failed, as no one wanted
7 to employ her.

8 As for her eldest son, Adi, she deliberately
9 took him late to school, so that she wouldn't be
10 shunned by the other parents at the school gate,
11 and she tried to conceal the shame of her
12 imprisonment from him saying she'd been in
13 hospital when she had not. Adi, who knows, may
14 have become complicit in this pretence to
15 protect his mother, but was not officially told
16 the truth, whatever he may have gathered in the
17 playground or elsewhere, that his mother had
18 been jailed whilst carrying his brother Jai,
19 until the results of the *Bates* litigation, some
20 nine years later.

21 Turning to the family's financial position,
22 perhaps you were aware, I'm sure you were, that
23 a considerable amount of family wealth had been
24 used to make up for shortfalls before she was
25 prosecuted.

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1 A. Yes, and that came out in the evidence.
 2 Q. You were aware of that?
 3 A. *(The witness nodded)*
 4 Q. Then, of course, compounded by her subsequent
 5 conviction and disgrace, that family wealth was
 6 obliterated. Her family lost almost everything
 7 and, despite the *Bates* litigation, Mrs Misra
 8 was, as a convict person, excluded from being
 9 a claimant and was only given a meagre *ex gratia*
 10 payment by those who settled the case. Perhaps
 11 you weren't aware of that?

12 A. I wasn't aware of that, no.

13 Q. No. Even now, her family's financial state
 14 remains insecure and they live a precarious
 15 existence.

16 So thank you for your apology but, having
 17 listened to what I've just precised from the
 18 Human Impact hearing, which was heard on
 19 25 February 2022, is there anything further you
 20 would wish to say to her about how you, as
 21 independent counsel, were misled and how you,
 22 despite, as you say, trying your best, came to
 23 preside as independent prosecution counsel over
 24 what you have accepted yourself was a disaster?

25 A. Yes. Well, I've thought about Mrs Misra's case
 201

1 I have changed my view. It's taken me
 2 a long time. I suspect I was in denial for
 3 a long time, perhaps in a self-justificatory
 4 way, and I apologise for that.
 5 Q. Mr Tatford, thank you very much. I do not doubt
 6 your feelings as expressed. Do you now
 7 consider, particularly in the light of Counsel
 8 to the Inquiry's questions to you and the way in
 9 which matters, even today, have been revealed to
 10 you, do you now consider that you were misled by
 11 the Post Office as to the reliability and
 12 robustness of the Horizon system before and
 13 during Mrs Misra's trial?

14 A. I think I was misled. I find it difficult to
 15 understand where the original source is and
 16 that's something the Inquiry will no doubt show.
 17 But the -- to give an example, I hope this
 18 helps, because I haven't been asked about the --

19 Mandy Talbot, for instance, was asked about
 20 some documents that she -- in her evidence,
 21 about a draft report in relation to the
 22 *Castleton* case, and also some -- a report from
 23 Mr Coyne and an Advice from counsel in a case
 24 from Blackpool -- Wolstenholme, I think, is the
 25 name of the case. I wasn't shown that material.

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1 for a very long time and I found it difficult at
 2 the time, I found it a stressful case to
 3 prosecute, and have thought about it on many
 4 occasions afterwards, and I've followed the
 5 publicity. And it's taken me a very long time,
 6 in fact, to come to the view that I expressed at
 7 the beginning of my evidence.

8 I've actually found -- I've actually found
 9 the exercise -- and it's been quite a demanding
 10 exercise to do a witness statement and go
 11 through matters -- I have found that's clarified
 12 my mind as to what happened and, when I said
 13 I felt ashamed, I do. I actually feel worse
 14 because it's become quite clear in the way that
 15 the evidence has properly been put before me
 16 that there are many failings that I had ignored
 17 on my part and I perhaps created a rosier vision
 18 in my memory that wasn't really there.

19 I apologise unreservedly for what happened.
 20 I hope it can be remedied in some way. I hope
 21 that -- I don't know what happens with
 22 compensation in the future. That's obviously
 23 something outside of my control but this Inquiry
 24 process has been highly informative, and it's
 25 some good, I hope, will come from it.

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1 Now, I haven't -- I did go to some trouble
 2 to try to discover material, and I remain very
 3 surprised that those two items were not given to
 4 me, particularly as I attended the civil office
 5 on two separate days with a period of time in
 6 between.

7 But I am conscious of a way of thinking
 8 which is betrayed in that robust -- the robust
 9 mantra that is used, and so it's difficult for
 10 me to -- I remain in a certain sense of
 11 confusion. I'm not trying to be difficult. It
 12 seems to me that, if it is right, and I don't
 13 know the full facts in terms of the disclosure
 14 from the appeal and other matters about
 15 Horizon -- it appears that there clearly were
 16 matters that should have been brought to my
 17 attention from the very beginning, should have
 18 been brought to my attention, potentially the
 19 Criminal Law Department.

20 Quite where the failure to provide
 21 evidence -- information has come from is unclear
 22 to me. But I was not given a full position of
 23 the problems with Horizon, that's absolutely
 24 clear, which involves being misled in some way.
 25 By whom, it's difficult for me to say and I have

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1 to be careful about this because I simply don't
2 know.

3 But what is clear, and I discover more about
4 it and I'll be learning more as the Inquiry
5 progresses, but there are problems that should
6 have been relatively straightforward to put
7 before those who prosecute the cases and who
8 decide whether to charge people. And that
9 didn't happen and quite why that happened is --
10 I remain unclear about that.

11 **Q.** So you mentioned there that you visited the
12 civil offices and important documents
13 concerning, for example, the Cleveleys case were
14 not shown to you?

15 **A.** No, and I should be careful. Certainly, the
16 Cleveleys documents. I looked at *Castleton*
17 files -- it's so long ago I can't remember now
18 what exactly I saw, but I would be very
19 surprised if I had missed a draft report that
20 suggested a Horizon error because that's
21 precisely what I was looking for, and I didn't
22 see all the boxes.

23 **Q.** So if I were to put names to you, you would not
24 wish to -- because of the uncertainty that still
25 exists in your own mind, you would not wish to,

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1 that.

2 And the -- I wouldn't -- the feeling of --
3 that the Horizon system worked, it seemed to me
4 that was a feeling genuinely widely held but it
5 may follow from that that there's a fear that
6 an attack to a system that's thought well of
7 needs to be confronted, and so that, in a way,
8 that's a siege mentality; in a way, that is
9 a way to describe it, I suppose.

10 **Q.** So there could be the benign siege mentality
11 based on overconfidence in the system or there
12 could have been -- and I don't suggest that you
13 would have been a part of this -- a malign siege
14 mentality, being aware of the deficiencies and
15 defects but deliberately seeking to suppress
16 them?

17 **A.** There -- certainly in terms of -- the email
18 I talked about, Jarnail Singh to Gareth Jenkins,
19 that's a good example of potentially a benign
20 siege mentality, I'd agree with that. Quite to
21 what extent there was a deliberate attempt by
22 any person to withhold information, that remains
23 to me -- a little unclear to me.

24 I simply don't know enough about what has
25 been disclosed in the appeal process. For

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1 for example, point the finger at any individual.

2 Is that --

3 **A.** Well, I think -- no, that is right. I don't
4 know. The --

5 **Q.** From what you have seen today, however,
6 particularly given Counsel to the Inquiry's
7 questions, a certain sort of mindset, do you now
8 accept that there appeared to be, within the
9 Legal department and those connected to the
10 Legal department at the Post Office, a certain
11 siege mentality, that Horizon was under attack,
12 it was being assailed by, for example, Mrs Misra
13 and others, and that, if the walls were
14 breached, then chaos, confusion and widespread
15 theft by subpostmasters would follow?

16 **A.** Well, there was certainly a fear about -- well,
17 as was shown in the email that was shown to be
18 from my instructing solicitor, which I don't
19 think I was aware of -- the suggestion to
20 Mr Jenkins what he should do. I have to
21 confess, I seem to have been guilty of similar
22 suggestions. But there was a very clear mindset
23 there, I think the word "risible" was suggested
24 in terms of how to instruct an expert and that
25 is indicative of my mindset, I'd have to accept

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1 instance, I've never seen -- I've seen --

2 I simply have seen the judgment in *Hamilton and*
3 *others*. I haven't seen any disclosure. I was
4 asked a question about a piece of disclosure,
5 for instance, which I haven't seen since, which
6 I refer to in my witness statement. I'm not
7 sure I quite have enough information. I'm not
8 trying to be unhelpful.

9 **Q.** No, I accept that.

10 **A.** But I am very conscious that one -- I can only
11 really deal with what I have knowledge of.

12 **Q.** Well, can I move on now to Fujitsu. Do you now
13 consider you were misled by Fujitsu as to the
14 reliability and robustness of Horizon, at the
15 time of Mrs Misra's trial?

16 **A.** Again, I don't know the full extent of faults,
17 although I remember -- as I said earlier,
18 I watched Debbie Stapel's evidence yesterday and
19 what she said about that dynamite document.

20 I remain very troubled about what I said in
21 my advice, that Fujitsu needed to be asked and
22 I appreciate it may have been more complicated
23 than that, the watering down effect,
24 I acknowledge. But I did ask the question and
25 it doesn't ever seem to have been answered.

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1 Q. But concerning -- and I suppose arising from
 2 what you've just said -- the vital issue of
 3 disclosure, you unequivocally accept that,
 4 because of a flawed approach to disclosure,
 5 Mrs Misra did not receive a fair trial?
 6 A. Oh, yes, and that's -- it's more important
 7 that's what the Court of Appeal have decided,
 8 and what was conceded significantly by the most
 9 experienced criminal team for the respondents
 10 that one can imagine.
 11 Q. As was elicited and elucidated by Counsel to the
 12 Inquiry, the manner in which she was
 13 cross-examined and the premise upon which the
 14 case was open and closed was regrettably
 15 specious and spurious was it not?
 16 A. Well, at the time I felt it was fair. That was
 17 based on the evidence. Now, I feel
 18 uncomfortable reading what I say about a robust
 19 system, and so forth.
 20 Q. More than uncomfortable, surely?
 21 A. Oh yes, well, I don't have the full information,
 22 but I feel -- I do feel very uncomfortable
 23 reading that, yes.
 24 Q. Now, you have, in answer to questions posed by
 25 Counsel to the Inquiry and just recently, in
 209

1 concerning your own witness, who was to become
 2 an expert witness, at that. Do you accept that?
 3 A. No, I think that is right, yes.
 4 Q. So I don't take you to the statement of
 5 6 October 2010 that you commented upon but you
 6 will accept, don't you, that many of the changes
 7 that you were suggesting were not out of
 8 clarification or elucidation but they were
 9 designed to insulate the prosecution case from
 10 attack, weren't they?
 11 A. They were designed to meet points raised by the
 12 defence expert, which --
 13 Q. Which would be to insulate --
 14 A. Well, in a way, yes, that would be right. I saw
 15 it, at the time, as clarifying issues. That
 16 may -- I can look at that now and think that's
 17 perhaps wishful thinking on my part.
 18 Q. Well, I now want to come to the issue of
 19 robustness. If your witness statement,
 20 Mr Tatford, WITN09610100, could be put up on
 21 screen, I want to concentrate on part of
 22 paragraph 98, which is to be found at page 53 of
 23 your witness statement, Mr Tatford.
 24 A. Thank you.
 25 Q. Thank you. You can see, in that paragraph:
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1 your -- one of your recent responses to me, you
 2 acknowledge the possibility, don't you, that you
 3 got caught up in the battle over Horizon's
 4 reliability, for example, in the way in which
 5 you were interacting with Mr Jenkins?
 6 A. Well, I certainly -- that may be right. I got
 7 caught up in what was a very stressful
 8 disclosure exercise and, in a way, that's being
 9 caught up in the battle. It wasn't on my part,
 10 I hope, any idea to want to preserve Horizon
 11 because, of course, I'm a self-employed
 12 barrister. I'm not --
 13 But I was certainly caught up in the
 14 pressures of the situation and, looking at it
 15 now, I did some things that nowadays I wouldn't
 16 do. I'm more experienced now than I was then
 17 but I was pretty experienced at the time.
 18 Q. I mean, essentially, you became embroiled in the
 19 battle, and I'm not suggesting that you had any
 20 stake in the battle, because you were
 21 independent counsel, but you became embroiled in
 22 it, didn't you?
 23 A. I think it did affect me, yes.
 24 Q. I mean, I suggest to you that, at times, you
 25 failed to exercise detachment and objectivity
 210

1 "... I hope my speeches were fair -- they
 2 are all set out in the transcripts, so others
 3 can judge. I did not seek to hide behind the
 4 mantra that Horizon was 'robust'. I argued that
 5 point on the evidence. I did not suggest that
 6 the system was infallible and I conceded that
 7 all computer systems can have glitches, which is
 8 a matter of common sense and human experience
 9 ..."
 10 May I ask you this, Mr Tatford: do you not
 11 think that the prosecutorial decision not to
 12 obtain the services of an independent forensic
 13 IT expert for the prosecution ought to have
 14 caused you to be highly cautious and
 15 circumspect, in respect of all of your
 16 submissions, whether to the court or the jury,
 17 on the central issue of Horizon's reliability?
 18 A. Well, it certainly had an impact that -- the way
 19 we dealt with expert evidence in the case and,
 20 I mean, if it is the case that there are
 21 manifold weaknesses and problems with Horizon
 22 that I wasn't aware of, then my words are very
 23 hollow indeed.
 24 Q. Can I take you to a transcript from your closing
 25 speech, and this is POL00065708 at pages 23 to
 212

1 24. Thank you. Pages 23 to 24. Just scrolling
2 down please, just scrolling down. Yes.

3 At letter G there, Mr Tatford:

4 "I conceded in my opening speech to you that
5 no computer system is infallible. There are
6 computer glitches with any system. Of course
7 there are. But Horizon is clearly a robust
8 system, used at the time we are concerned with
9 in 14,000 post offices. Mr Bayfield talked
10 about 14 million transactions a day. It has got
11 to work, has it not, otherwise the Post Office
12 would fall apart? So there may be glitches.
13 There may be serious glitches. That is
14 perfectly possible as a theoretical possibility,
15 but as a whole the system works and has been
16 shown in practice."

17 Now, Mr Tatford, very briefly, because this
18 has already been addressed by learned Counsel to
19 the Inquiry, if it hasn't happened on 14 million
20 occasions, then it cannot have happened on the
21 14 millionth and 1st. That is a version of the
22 prosecutor's fallacy, isn't it?

23 **A.** Well, I wasn't trying to seek to make that
24 argument.

25 **Q.** Do you think, though, that it could easily have
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1 And if the reality is, as Debbie Stapel said
2 yesterday -- I've said that she may be mistaken
3 about something she remembers, I actually think
4 of her very highly, and was a very able lawyer,
5 and she was the person, for instance, that
6 explained the case of Carl Page to me. But her
7 reaction I found very powerful yesterday and
8 it's part of my continuing reflection on this.

9 When she said that document was dynamite,
10 well, I rather agreed with that and it caused me
11 considerable concern. I didn't -- I still don't
12 have the full context of that. I hope to find
13 out as the Inquiry goes along.

14 **Q.** I'm not suggesting you would be up to speed on
15 this, but it's the Horizon IT Issues judgment
16 and, in contradistinction to your submission,
17 which was a submission which was made to the
18 learned judge in that case, Mr Justice Fraser,
19 as was, he deprecated that approach and he
20 stated that the proper approach -- or to use his
21 exact words:

22 "The correct analytical approach is to
23 consider the branch activity for that branch for
24 that period, consider the evidence both for and
25 against (i) the existence of a bug and (ii) the
215

1 been misconstrued? The chances, for example, of
2 Horizon generating fictitious shortfalls are
3 very small because, as you've told the jury, it
4 works reliably in 14,000 offices with 14 million
5 daily transactions and, from there, it is not
6 difficult for a jury to understand your
7 submission that, therefore, Mrs Misra must be
8 guilty?

9 **A.** No, there is a danger of that and I'm actually
10 looking at my words, as well. I'm very
11 uncomfortable, actually, at the words
12 "theoretical possibility". I think that's
13 a word that I shouldn't have used. What I tried
14 to do, in my speech, was actually to say that
15 glitches are possible, and if -- but --

16 **Q.** But then you would have offered no evidence.

17 **A.** Well, if I'd known that -- which may be the
18 case -- it's a matter, I think, for the Inquiry
19 to determine and they're matters that I don't
20 know -- but I rely to a great extent on
21 decisions that Mrs Misra made, things that were
22 said later, changes of the defence, and so
23 forth. I accept all of that doesn't amount to
24 a hill of beans if the prosecution case is based
25 on foundations of sand.
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1 likely cause of the discrepancy, bearing in mind
2 both the burden and standard of proof, make
3 findings on the cause of the discrepancy and
4 then apply those findings."

5 So based on that, Mr Tatford, and bearing in
6 mind, of course, the burden and standard of
7 proof in a criminal trial, the correct question
8 for the jury was whether they could be sure that
9 Horizon generated the shortfall at West Byfleet
10 as a genuine loss of cash from the tills over
11 the indictment period or whether it was
12 an artifact. So it has to be analysed that the
13 jury have to be sure, on your case, that the
14 Horizon-generated shortfall reflected a genuine
15 loss of cash from the tills. You accept that?

16 **A.** Yes.

17 **Q.** If, based on all the evidence about the
18 existence of bugs, errors and defects, the
19 shortfalls were likely, or may have been, the
20 result of bugs, errors and defects, then the
21 right verdict would have been not guilty, would
22 it not?

23 **A.** Yes.

24 **Q.** Can I now move on to my final subject, which is
25 flaws obvious to the user. During your opening
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1 and closing statements, as well as during
 2 cross-examination of witnesses, you asserted
 3 repeatedly that errors would be obvious to the
 4 user. That isn't controversial, is it? You
 5 remember saying that?
 6 **A.** Well, what I meant by that -- I hope I've tried
 7 to make clear -- is that the user is able, by
 8 the Horizon printouts, to see where problems
 9 arise. I wasn't seeking to show that one can
 10 simply see the errors emerge in front of one
 11 just by looking at the screen. I didn't seek to
 12 make that point. If that's how it's understood,
 13 then that would be wrong and, if I haven't made
 14 that clear enough, then I was wrong.
 15 **Q.** Could it have been that the theme that such
 16 flaws would have been obvious to the user was
 17 a strategy to convince the judge, on the
 18 application, and the jury for the verdict, that
 19 Mrs Misra should have been keenly aware of any
 20 Horizon problems, that she should have been able
 21 to discern and diagnose bugs, errors and
 22 defects?
 23 **A.** I wasn't trying to make that point. If it came
 24 across that way, then I haven't made it clear
 25 enough. All I was trying to make the point was
 217

1 screen if you do recall it, but it's
 2 POL00054346 -- this was your response to
 3 Mr Hadrill's abuse of process.
 4 **A.** Yes.
 5 **Q.** "If, as the defence allege, there was
 6 a continuing problem [this is your paragraph 2]
 7 with the Horizon system at West Byfleet,
 8 Mrs Misra should have been keenly aware of it at
 9 the time it was occurring."
 10 **A.** By that, I meant by losses occurring.
 11 **Q.** I see.
 12 **A.** All I was seeking to make the point, in that
 13 argument, was simply to suggest it might be
 14 a basis for a more -- for what I saw as more
 15 focused disclosure requests.
 16 **Q.** I see. I now want to go, in conclusion, to
 17 an example or an extract, I should say, from
 18 your closing speech, which is POL00065708.
 19 While that is being put up on the screen, it
 20 occurs to me that, of course, in view of your
 21 last answer, that it would have been vitally
 22 important that the summary of calls to the
 23 Helpdesk were very, very accurately precised, if
 24 they were going to be precised at all, because,
 25 otherwise, again, the trial would proceed on
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1 that, by the various printouts, it's possible to
 2 determine where a loss is arising. That's the
 3 point I was trying to make. From your repeated
 4 questioning, it seems to me I obviously didn't
 5 make that clearly enough and clarity is
 6 important in prosecuting.
 7 **Q.** Well, I'm grateful for your concession. Do you
 8 also think that framing the issue in that way
 9 was to reverse the burden of proof because, of
 10 course, in law, it was the Post Office's duty,
 11 prosecuting the case in the name of the Crown,
 12 to prove that the system was working, to satisfy
 13 the jury that they were sure that the system was
 14 working. It was not for Mrs Misra to identify
 15 when it may not have been?
 16 **A.** But I wasn't trying to take it quite as far as
 17 that. I was suggesting that Mrs Misra might be
 18 in a position to say where problems might be
 19 arising. I can see the danger in that, though.
 20 I can see, by pushing it just a bit too far, the
 21 danger you have alerted me to can arise and, if
 22 I took it too far, then that's a mistake.
 23 I tried not to do that but I can see the danger
 24 potentially there.
 25 **Q.** Do you recall -- and no need to put it up on
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1 a false premise. You accept that?
 2 **A.** Yes.
 3 **Q.** So could we please go to the top of page 26.
 4 The top of page 26:
 5 "... but the point the Crown make is if
 6 something is going wrong, the operator knows it,
 7 that is the point, and Mrs Misra has given you
 8 no evidence whatsoever of being aware of
 9 a computer problem."
 10 That would tend to have been contradicted by
 11 the full logs to the Helpdesk, wouldn't it?
 12 **A.** Yes. Would you mind, could we just scroll up to
 13 the bottom of the previous page --
 14 **Q.** Of course. By all means. Bottom of page 25.
 15 **A.** Yes, if we can scroll down to the next page,
 16 please. I'm sorry.
 17 Yes, I've got the context. I'm sorry, could
 18 you repeat the question? It's my fault. I'm
 19 sorry.
 20 **Q.** Of course. The theme was the same:
 21 "... if something is going wrong the
 22 operator knows it, that is the point, and
 23 Mrs Misra has given you no evidence whatsoever
 24 of being aware of a computer problem."
 25 That would tend to be contradicted, wouldn't
 220

1 it, by the more full account of the calls to the
 2 Helpdesk?
 3 **A.** Yes, I think those calls, though -- the losses
 4 they relate to may, I think, refer to the time
 5 of the thefts from employees, rather than the
 6 later computer problem. It's quite early in the
 7 time period.
 8 **Q.** I see. But returning to it in general, and this
 9 is my final point, again --
 10 **SIR WYN WILLIAMS:** That's the third final point,
 11 Mr Henry, so I'm going to hold you to it now.
 12 **MR HENRY:** I'm very sorry, sir. I do apologise.
 13 This is my final point and it's one sentence.
 14 Based upon what you have submitted to the
 15 jury there, Mr Tatford, and I'm grateful for
 16 your assistance thus far:
 17 "... if something is going wrong the
 18 operator knows it, that is the point, and
 19 Mrs Misra has given you no evidence whatsoever
 20 of being aware of a computer problem."
 21 You, of course, are now aware that there are
 22 a number of bugs, errors and defects that were
 23 not disseminated to the network of
 24 subpostmasters and were withheld -- the
 25 knowledge of them was withheld; you're aware of
 221

1 that?
 2 **A.** Yes.
 3 **Q.** But do you again, on reflection, feel that you
 4 framed the issue in a way that it inevitably
 5 reversed the burden of proof?
 6 **A.** Well, I think that the wording I use in that
 7 passage is too strong. I agree with that.
 8 **MR HENRY:** Mr Tatford, those are the questions
 9 I ask. Thank you.
 10 **SIR WYN WILLIAMS:** Is that it, Mr Beer?
 11 **MR BEER:** Yes, it is, sir.
 12 **SIR WYN WILLIAMS:** Well, I know that Mrs Misra is
 13 present and the day has been about her case,
 14 virtually exclusively, but certainly very
 15 largely. So I hope, Mrs Misra, that you've
 16 found today informative.
 17 So far as you, Mr Tatford, are concerned,
 18 I'm very grateful to you for a detailed witness
 19 statement and for answering a great many
 20 questions today.
 21 So we'll now close today's session and
 22 resume again at 10.00 tomorrow morning.
 23 **MR BEER:** That's right, sir.
 24 **SIR WYN WILLIAMS:** Thank you.
 25 **MR BEER:** Thank you.
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1 **(4.33 pm)**
 2 **(The case adjourned until 10.00 am**
 3 **the following day)**
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I N D E X

WARWICK HENRY PATRICK TATFORD (sworn) .. 1

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