

Thursday, 25 January 2024

1
2 (10.00 am)
3 **MR BEER:** Good morning, sir, can you see and hear us.
4 **SIR WYN WILLIAMS:** Yes, thank you very much.
5 **MR BEER:** May I call David Teale, please.
6 **DAVID SUTHERLAND TEALE (sworn)**
7 **Questioned by MR BEER**
8 **MR BEER:** Good morning, Mr Teale.
9 **A.** Morning.
10 **Q.** As you know, my name is Jason Beer and I ask questions
11 on behalf of the Inquiry. Can you give us your full
12 name, please?
13 **A.** David Sutherland Teale.
14 **Q.** Thank you very much for coming to give evidence to the
15 Inquiry today and thank you for the provision of
16 a witness statement addressing the questions that we
17 asked you. Can we look at that witness statement to
18 start with, please, it's WITN10550100. That will be
19 displayed on the screen and I think you have the hard
20 copy in front of you too.
21 I think there are four corrections that you wish to
22 make to your witness statement, the first of which is on
23 page 4. If we can turn to that, please, and four lines
24 in, do you see the words "a list of productions"?
25 **A.** Yes.

1

1 years"; can you see that?
2 **A.** I do.
3 **Q.** I wonder whether they could be highlighted. Thank you.
4 Is there an amendment that you wish to make to all
5 of the words between the two highlights?
6 **A.** Deletion, please.
7 **Q.** You would like to delete those. You were saying in your
8 statement that:
9 "It would have been difficult, if not impossible, to
10 prove the actual amount embezzled [by Mr Quarm] given
11 that the Horizon audit depended largely on the bogus
12 figures [inputted by him]. If the case had given to
13 trial, [you] would have had to rely on evidence from
14 [his] admissions as to how much he considered he had
15 embezzled and the period over which he considered he had
16 been operating falsely and other evidence such as
17 average takings over previous years."
18 **A.** Yes.
19 **Q.** Why do you now wish to delete that?
20 **A.** On consideration, I just realised that that wasn't the
21 case.
22 **Q.** You'd previously thought that proof of the case at trial
23 was reliant on Mr Quarm's admissions?
24 **A.** That's right.
25 **Q.** What caused you to think that proof of the case at trial

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1 **Q.** Is there an amendment you would like to make to those
2 four words?
3 **A.** That to be deleted.
4 **Q.** Thank you. So we can understand the effect of that,
5 you're here talking about the material that you would
6 have received from the Post Office in the Procurator
7 Fiscal's office in Lochmaddy in early 2009 and you're
8 providing a list of the documents or species of
9 documents that you say you would have received, and
10 you're deleting from that list the list of productions?
11 **A.** That's right.
12 **Q.** Thank you.
13 Can we turn, please, to page 7, and the very first
14 line at the top. You're addressing the sentence that
15 was passed upon William Quarm, and you say that he was
16 sentenced to 150 hours community service and you say
17 "reduced from 2,000 hours" for a guilty plea. Should we
18 delete one of the zeros?
19 **A.** Correct.
20 **Q.** That's just a typo; correct?
21 **A.** Correct.
22 **Q.** Thank you. Do you see the third line starting "It would
23 have been difficult"?
24 **A.** Yes, I do.
25 **Q.** Then the ninth line, ending with the words "previous

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1 was not reliant on Mr Quarm's admissions?
2 **A.** Just once I got into the -- into considering in more
3 depth, as I was mulling it over, since I first made this
4 statement in December, I realised that that was probably
5 not the situation.
6 **Q.** Okay, well, we'll come to what other evidence there was
7 to prove the amount alleged to have been embezzled by
8 Mr Quarm a little later. Then is the fourth amendment
9 that you wish to make on page 8, and that's
10 paragraph 19. You're here dealing with Mr Quarm's
11 interview; is that right?
12 **A.** That's right.
13 **Q.** You say the things that he said:
14 "... it is difficult to treat them as serious
15 challenges given that Mr Quarm admitted taking cash
16 coming into his post office branch ..."
17 Then the words:
18 "... equivalent of around £4,200 every week for
19 an unknown period but conservatively estimated to be 10
20 or 11 months, and without putting it through his till."
21 Do you wish to delete those words?
22 **A.** I do.
23 **Q.** Is that because you realised that, in fact, Mr Quarm did
24 not make such admissions in his interview?
25 **A.** That's effectively right.

4

1 **SIR WYN WILLIAMS:** So that I can be clear, there should now
2 be a full stop after "branch", is that it, and then the
3 rest of that sentence deleted?

4 **A.** That's right.

5 **SIR WYN WILLIAMS:** Thank you.

6 **MR BEER:** Is that because you re-read his interview and
7 realised that the admissions that you attributed to him
8 there he hadn't, in fact, made?

9 **A.** Effectively, yes.

10 **Q.** Thank you.

11 With those four amendments brought into account, are
12 the contents of the witness statement true to the best
13 of your knowledge and belief?

14 **A.** They are.

15 **Q.** Is your signature there on page 12 to attest to that
16 fact?

17 **A.** It is.

18 **Q.** Thank you very much. That can come down, the witness
19 statement.

20 Now, Mr Teale, you're the first Scottish prosecutor
21 that the Inquiry has heard from who has been involved in
22 the prosecution of a subpostmaster, where evidence
23 provided by the Post Office was the basis for the
24 prosecution. I want to ask you, therefore, some
25 questions about the approach that the Procurator Fiscal

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1 **Q.** Can I turn, then, to your involvement in prosecutions
2 involving subpostmasters before the prosecution of
3 William Quarm. In your witness statement, there's no
4 need for it to be displayed, you say over the years you
5 would have received and considered many reports from the
6 Post Office regarding criminality by their workforce.

7 **A.** That's correct.

8 **Q.** You say that:

9 "I found their reports were straightforward and
10 I cannot recall any instances where there was any
11 suggestion that the information provided was misleading.
12 I cannot recall any other Post Office case considered by
13 me which relied on data from the Horizon system."

14 So are you referring there, to receiving and
15 considering many reports about the Post Office
16 workforce, to your many years' of experience as
17 a Procurator Fiscal Depute?

18 **A.** Yes.

19 **Q.** Was that in busy offices in Glasgow, for example?

20 **A.** Correct.

21 **Q.** And Greenock as well?

22 **A.** And Greenock.

23 **Q.** With that experience in mind, and also borrowing some of
24 your knowledge on some legal issues, can you help us on
25 these four topics: firstly, the law of corroboration in

7

1 Service and you took to such cases.

2 **A.** Indeed.

3 **Q.** I think you're no longer a Procurator Fiscal; is that
4 right?

5 **A.** That's right.

6 **Q.** That role ceased for you in June 2015; is that right?

7 **A.** That's correct, when I retired.

8 **Q.** But you remain a practising solicitor; is that right?

9 **A.** That is right.

10 **Q.** In terms of your background, you qualified as
11 a solicitor according to Scots Law in 1980?

12 **A.** Yes.

13 **Q.** You then went into private practice, is that right, but
14 then in 1982 you joined the Crown Office and Procurator
15 Fiscal Service as a Procurator Fiscal Depute?

16 **A.** That's correct.

17 **Q.** In 2000 you were appointed, is this right, Procurator
18 Fiscal for the Western Isles?

19 **A.** Yes.

20 **Q.** Does that include, within its jurisdiction, the Sheriff
21 Court District of Lochmaddy?

22 **A.** That's correct.

23 **Q.** Within that jurisdiction, was the Post Office owned and
24 operated by William Quarm situated?

25 **A.** It is.

6

1 criminal proceedings in Scotland. We've had described
2 to us -- the cross-reference is paragraph 4 of the
3 witness statement of Kenneth Donnelly, I think you would
4 know Mr Donnelly; is that right?

5 **A.** I do.

6 **Q.** He is presently the Deputy Crown Agent for Specialist
7 Casework at the Procurator Fiscal office?

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

9 **Q.** He says:

10 "There must be evidence from at least two separate
11 sources (corroboration) to establish that a crime known
12 to the law of Scotland was committed and that the
13 accused was the perpetrator."

14 **A.** That's correct.

15 **Q.** Is that a fair summary?

16 **A.** Very fair.

17 **Q.** So for all of the period that we're looking at, say from
18 2000 onwards until your retirement in June 2015, was
19 that the position?

20 **A.** Yes.

21 **Q.** Would you, therefore, expect that to be something which
22 was addressed in the reports submitted to you by
23 Specialist Reporting Agencies, including reports from
24 the Post Office?

25 **A.** Yes.

8

1 Q. Because if that's the law, it needs to be confronted,
2 doesn't it, it needs to be addressed?
3 A. It does.
4 Q. Just on Specialist Reporting Agencies, is it right that
5 that's a term of art within Scotland: an SRA,
6 a Specialist Reporting Agency?
7 A. Yes.
8 Q. Are there a number of those?
9 A. Quite a number.
10 Q. I've seen a figure of 172, presently; does that sound
11 about right?
12 A. That wouldn't surprise me.
13 Q. One of those is the Post Office.
14 A. Correct.
15 Q. So if that's the evidence that satisfies the Scottish
16 law of corroboration that you would expect to be
17 addressed specifically in a report submitted to
18 a Procurator Fiscal, that would be something which you,
19 adds the Procurator Fiscal, would wish specifically to
20 address in your decision making?
21 A. Correct.
22 Q. So when you're deciding whether to commence criminal
23 proceedings against an individual, you'll want
24 specifically to address the issue of where is the
25 corroborative evidence?

9

1 A. Embezzlement.
2 Q. So, on its own, the fact that there's a shortfall is
3 evidence that there has been embezzlement?
4 A. No, maybe it would be easier if I just explain what
5 I took from the report. Of course, I was looking for
6 corroborated evidence, evidence from two sources,
7 pointing (a) to a crime having been committed and (b)
8 that it was the accused who was the perpetrator. Now,
9 the evidence for both of these came from the evidence
10 that an audit had disclosed a shortfall of £40,000, and
11 the second source of evidence was his admission that he
12 had been taking funds from the Post Office and using
13 them to prop up his retail business.
14 Q. How much had he taken and how?
15 A. He'd taken £40,000.
16 Q. He admitted to taking £40,000, did he, in your mind?
17 A. It would probably be easier to look at precisely what he
18 said, rather than --
19 Q. Okay, we'll come you to the interview.
20 A. -- rather than taking it as a generality.
21 Q. But in your mind, there was an admission to taking
22 £40,000, correct?
23 A. No, the overall -- the audit had indicated that there
24 was a shortfall of £40,000.
25 Q. Now, am I right that none of the available documents

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1 A. Correct.
2 Q. Although I'm getting ahead of myself a bit here, I think
3 it's right that that issue was not addressed in the
4 report submitted to you in the case of William Quarm?
5 A. No, I think it was addressed.
6 Q. Head on, did it say, "We understand that there is
7 requirement for there to be corroborative evidence and
8 the at least two pieces of evidence that we rely on to
9 satisfy that test are as follows"?
10 A. I don't think it said that in these words but the body
11 of the report indicated that there were two sources of
12 evidence.
13 Q. Were there two sources of evidence?
14 A. From the reports, yes.
15 Q. Again, we're getting ahead of ourselves a bit but, just
16 at this point in time, can you identify what the two
17 sources of evidence were?
18 A. Yes, there was the audit, the evidence of the shortfall,
19 and --
20 Q. What did that show?
21 A. That there was a shortfall of £40,000.
22 Q. Which crime did that show had been committed?
23 A. Altogether, the evidence was --
24 Q. No, just that one: which crime did that show that that
25 had been committed, the fact that there is a shortfall?

10

1 that you have record contemporaneously what the two
2 sources of evidence that you considered to exist to
3 amount to corroboration were?
4 A. No, I'm sorry, could you repeat that question?
5 Q. Yes, there's no contemporaneous document recording your
6 decision making on why this was a case that should go
7 for prosecution?
8 A. No, you mean my minutes, which I would have made on the
9 case file; is that what you're getting at?
10 Q. Yes.
11 A. No, there isn't, at least as far as I know. I haven't
12 been presented with any such documents.
13 Q. You mention minutes on a case file. At this time, would
14 this have been electronically or would it have been by
15 paper that you make a minute of your decision making?
16 A. As this date by paper.
17 Q. By paper?
18 A. This is 2008, we're talking about.
19 Q. So how much of your decision making would you reduce to
20 writing in a case like this?
21 A. Anything that I considered to be important in the
22 decision-making process. Sometimes it's perfectly
23 obvious and you don't have to say anything.
24 Q. So there would be nothing?
25 A. Well, I don't know whether there was anything or not --

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1 Q. No, no, no. In such a case where it was perfectly
 2 obvious that you don't have to say anything, you would
 3 literally just write nothing down?
 4 A. You would just write "Proceed share(?) of summary" or
 5 "Proceed by petition", or whatever.
 6 Q. What about in a case like this, would you isolate the
 7 evidence in the way you've just done, "There were two
 8 pieces of evidence that amounted to corroboration here,
 9 they are the shortfalls shown at audit plus the
 10 admissions interview"; something like that?
 11 A. Possibly something like that.
 12 Q. But we should be able to, if those minutes still exist,
 13 we should be able to find a record of your
 14 contemporaneous thought process?
 15 A. There might be something, this might -- it seemed to me
 16 pretty obvious, on re-reading it in December of last
 17 year, what the evidence was to proceed. So whether or
 18 not I would have been equally satisfied in 2008, I just
 19 don't know.
 20 Q. Can we turn to the second issue I want to ask for your
 21 assistance on, please, namely the test that a Procurator
 22 Fiscal applies when deciding whether to commence
 23 criminal proceedings against an individual or not. Is
 24 it right that that's governed by a document called the
 25 Crown Office and Procurator Fiscal Service Prosecution

1 Q. So is it right that in Scotland, too, there were two
 2 elements to the test?
 3 A. That's correct.
 4 Q. Then under the heading "Legal considerations":
 5 "In considering cases the Procurator Fiscal must
 6 decide whether the conduct complained of constitutes
 7 a crime known to the law of Scotland and whether there
 8 is any legal impediment to prosecution. For example, it
 9 may be necessary to consider the effect of any delay",
 10 then something about international law.
 11 Then "Evidential considerations, Sufficiency of
 12 evidence":
 13 "The Procurator Fiscal must be satisfied that there
 14 is sufficient admissible evidence to justify commencing
 15 proceedings.
 16 "In general, for there to be sufficient evidence
 17 there must be corroboration, that is evidence from at
 18 least two separate sources to establish the essential
 19 facts of the case, ie
 20 "that the crime was committed; and
 21 "that the accused was the perpetrator."
 22 Then we see reference to the burden and standard of
 23 proof:
 24 "The prosecution must prove these matters beyond
 25 reasonable doubt."

1 Code or the "Prosecution Code" for short?
 2 A. I don't know if there was a Prosecution Code in 2008.
 3 Q. I think we have got one that starts in 2001 --
 4 A. Okay.
 5 Q. -- the first edition of it. Was that a document that
 6 you would have at your fingertips?
 7 A. You mean physically or just know what it's about?
 8 Q. Yes, either or both.
 9 A. Yes, of course.
 10 Q. Can we look at the one that has been provided to us,
 11 WITN10510101. Thank you. You can see this was first
 12 published on 1 May 2001 but it was updated last year in
 13 July, and it's not possible to tell which parts have
 14 been the subject of amendment between those two dates.
 15 I'm not saying that this was in these precise terms
 16 applicable when you made your decision in 2008 but
 17 I just want to get your evidence, please, on the test
 18 that Procurators Fiscal applied.
 19 If we scroll down, please, and look at "Criteria for
 20 decisions", thank you:
 21 "In considering the action to be taken in relation
 22 to reports of crime the prosecutor must take account of
 23 both legal and public interest considerations."
 24 Is that a familiar distinction to you?
 25 A. Yes.

1 Then there's a bit about the sources of evidence and
 2 then, if we move on, please, we then see that the
 3 prosecutor, under these next three headings, before we
 4 get to "Public interest considerations", is directed to
 5 consider admissibility, reliability, and credibility.
 6 So "Admissibility":
 7 "The laws of evidence determine whether a court can
 8 consider certain types of evidence ... the prosecutor
 9 will assess whether, having regard to the laws of
 10 evidence, the court will allow the evidence to be
 11 considered in the case."
 12 Then "Reliability":
 13 "Although there may be sufficient admissible
 14 evidence to justify proceedings, consideration must also
 15 be given to the reliability of that evidence. This
 16 involves an assessment of the quality of the evidence."
 17 Then "Credibility":
 18 "As with reliability, the assessment of credibility
 19 of evidence is ultimately a matter for the court.
 20 However, there may be doubt about the credibility, or
 21 truthfulness, of a witness's evidence", et cetera.
 22 Are those three things -- admissibility, reliability
 23 and credibility -- things that, when you were making
 24 decisions as a Procurator Fiscal, you consistently
 25 addressed?

1 **A.** Yes.

2 **Q.** On reliability, would you accept that, if your case is
3 founded on evidence that's produced by a computer, then
4 it's necessary for the prosecutor to consider the
5 reliability of the evidence produced by that computer?

6 **A.** Yes.

7 **Q.** Now, the document then turns to consider public interest
8 considerations, which I'm not going to address with you.
9 What the Prosecution Code does not do is describe the
10 test that a prosecutor must apply when deciding whether
11 to commence criminal proceedings or not; do you
12 understand?

13 It says the things you must address are evidential
14 sufficiency and public interest but it doesn't say what
15 the test is that a prosecutor must apply. What was the
16 test that the prosecutor must apply?

17 **A.** I don't know. I'm sorry, I just don't know what you're
18 saying, what you're asking me.

19 **Q.** Well, in England and Wales a prosecutor is directed, and
20 has been for the last two decades, to be satisfied that
21 there is a realistic prospect of a conviction, and the
22 Code in England says that a realistic prospect of
23 a conviction is an objective test and it explains that
24 realistic prospect of conviction means that a jury or
25 a bench of Magistrates, properly directed in accordance

17

1 so; I'm certain that that's so.

2 Was there no fulcrum around which the issue turned?

3 **A.** No, you're very much guided by what the report tells you
4 and, on that, you assess the quality of the evidence and
5 whether there's sufficient evidence, sufficient
6 corroborated evidence, from two sources pointing to the
7 facts that the crime has been committed and committed by
8 the accused.

9 **Q.** What I'm trying to probe is: it's correct, then, that in
10 Scotland there was no test that was applied across the
11 Procurator Fiscal Service, so far as you are aware, that
12 ensured consistency of decision making, so that everyone
13 had a datum point past which the evidence must pass, in
14 the prosecutor's mind, before proceedings were
15 commenced?

16 **A.** No.

17 **Q.** What test in your own mind did you apply: I think this
18 case will succeed; I believe this case will succeed;
19 I suspect this case will succeed; I'm pretty convinced
20 this case will succeed?

21 **A.** No, likelihood of success doesn't come into the decision
22 of whether to prosecute or not.

23 **Q.** That was an irrelevant consideration, how likely it was
24 that the evidence was sufficient to establish guilt?

25 **A.** There's some cases that you would take up that you would

19

1 with the law, will be more likely than not to convict
2 the defendant of the charge alleged.

3 So there's an explanation of the standard that must
4 be achieved in the prosecutor's mind in order to
5 commence criminal proceedings.

6 **A.** Well, that doesn't exist in that form in Scotland.

7 **Q.** What test was applied?

8 **A.** Public interest.

9 **Q.** Now, the public interest is addressed, separately in the
10 document, whether, for example, proceeding is in the
11 interest of the victim, the accused and the wider
12 community, and matters of that sort. I am asking about
13 the evidential sufficiency part of the test. What test
14 was applied?

15 **A.** Well, there isn't a test as such, as I understand it,
16 from what you're asking me.

17 **Q.** Well, what approach was taken, then?

18 **A.** Well, we look at the evidence, we look at the evidence,
19 is it admissible, is it reliable and is it credible?

20 **Q.** Overall, is there a compendious approach that you take
21 when you've done those things: I think there's enough
22 evidence to go ahead; I believe there's enough evidence
23 to go ahead; I guess there's enough evidence to go
24 ahead; I think it's more likely than not that the
25 accused will be committed; I'm fairly sure that that's

18

1 think -- you wouldn't say, "I'm bound to succeed in this
2 case" or "I'm doubtful whether I'll succeed so I won't
3 take it up", if they're sufficient and it's in the
4 public interest to prosecute then, by and large, you
5 would take that decision to prosecute.

6 **Q.** Very well.

7 Thirdly, can I ask you about computer evidence in
8 Scotland. What was the law regulating the admissibility
9 of evidence produced by a computer before 2015, the year
10 that you left?

11 **A.** I don't know of any such evidence.

12 **Q.** You don't know of any such law?

13 **A.** Law, I beg your pardon.

14 **Q.** Is that because you never addressed your mind to it --

15 **A.** Um --

16 **Q.** -- or that you know positively that there isn't such
17 a law?

18 **A.** It's because I haven't addressed my mind to it.

19 **Q.** You've told us that, in a number of cases, you
20 considered files by the Post Office as a specialist
21 prosecuting agency?

22 **A.** Yes.

23 **Q.** Did a number of those rely on computer evidence?

24 **A.** I don't think -- I can't think of any that did.

25 **Q.** Other than this one?

20

1 A. Other than this one.
 2 Q. What were the other cases about?
 3 A. Theft, theft of mail.
 4 Q. So would they be Royal Mail Group cases, so to do with
 5 the post rather than the Post Office?
 6 A. I suppose, as you make that distinction, yes.
 7 Q. I think you were going to go on and describe some other
 8 species of case?
 9 A. I can't -- I can tell you that I can't remember any
 10 other case which positively relied on computer evidence.
 11 I started, in Lochmaddy, or the Western Isles, in 2000,
 12 and I certainly didn't receive any Post Office cases
 13 between 2000 and 2008.
 14 Q. You referred in your statement to receiving and
 15 considering many reports from the Post Office regarding
 16 criminality by their workforce --
 17 A. Yes.
 18 Q. -- which is in paragraph 6. What were the other cases
 19 of criminality by the Post Office workforce?
 20 A. Well, as I say, theft of the mail came into it.
 21 Q. So was that by postmen, as opposed to subpostmasters?
 22 A. Correct. I can't remember any other postmaster that
 23 I was involved in the prosecution.
 24 Q. Did you, outside of the cases involving prosecution of
 25 subpostmasters, prosecute any other cases that relied on

21

1 be revealed to the defence.
 2 Q. Do you mean that, that everything that a Procurator
 3 Fiscal receives must be transmitted?
 4 A. Pretty well everything. I'm being broad but, yes, broad
 5 terms.
 6 Q. What's the exclusion, then, that isn't within the
 7 "pretty well everything"?
 8 A. I suppose, if there was something that the police
 9 provided that was deemed --
 10 Q. Sensitive?
 11 A. Correct.
 12 Q. So public interest immunity material?
 13 A. Correct.
 14 Q. Can you remember -- appreciating it's eight years or so
 15 back since you left the PF -- can you remember the test,
 16 the approach to disclosure that was the law in Scotland?
 17 A. No, I think things changed in 2010. I think the 2010
 18 Act provided that there was effectively going to be far
 19 greater disclosure than there had hitherto been. It was
 20 closely regulated following that.
 21 Q. Well, if I suggested to you that, for the entirety of
 22 the period we're looked at, say 2000 until after the
 23 prosecution of William Quarm, there was a duty to review
 24 all of the evidence and information that the Procurator
 25 Fiscal had received, would that be right?

23

1 evidence produced by a computer?
 2 A. I can't think of anything.
 3 Q. So that would have been from 1982 until 2015, no
 4 computer evidence in any of your cases?
 5 A. Well, all I'm saying is that I can't remember whether
 6 there were any or not. I'm not saying that there
 7 wasn't.
 8 Q. I mean, in that 33-year period it's likely that there
 9 were some, weren't there?
 10 A. I don't know.
 11 Q. You don't think that there would have been, in a 33-year
 12 period, a case involving computer evidence?
 13 A. Listen, I can't remember whether there were any cases
 14 involving computer evidence or not.
 15 Q. But, in any event, in that 33-year period, you can't
 16 recall ever checking what the law was on admissibility
 17 of evidence produced by a computer in Scotland?
 18 A. No.
 19 Q. Can I turn to the fourth topic, then: the duty of
 20 disclosure. What's your current understanding -- and
 21 obviously we're talking now, but it would have applied
 22 to when you were a Procurator Fiscal -- of the
 23 Procurator Fiscal's duty of disclosure or revelation?
 24 A. That everything must be -- that everything that
 25 a Procurator Fiscal receives must be transmitted, must

22

1 A. Oh yes, absolutely it would.
 2 Q. And that you would have to reveal/disclose information,
 3 even if it would materially undermine or weaken the
 4 evidence led by the prosecution --
 5 A. Of course.
 6 Q. -- and if it would materially strengthen the accused
 7 case?
 8 A. Equally.
 9 Q. How did the Procurator Fiscal, in a case involving
 10 a Specialist Reporting Agency, go about ensuring that
 11 that legal duty was discharged?
 12 A. Well, they have a duty, when they report a case, to
 13 ensure that they're disclosing to the Fiscal everything
 14 that should be disclosed.
 15 Q. So you're dealing with the report stage at that point;
 16 is that right?
 17 A. Well, no, I'm dealing with the case as a whole, yes.
 18 Q. Okay. We're going to come on, in a moment, to the
 19 process by which cases were reported from Specialist
 20 Reporting Agencies and then prosecuted, and then it
 21 seems that there are essentially two stages: one is the
 22 submission of a report; and then the documents come
 23 later --
 24 A. That's right.
 25 Q. -- in stage 2. Is that a fair, very high-level summary?

24

1 A. That's fair.
 2 Q. At the first stage, that's when the decision to
 3 prosecute is made?
 4 A. Yes.
 5 Q. So that's taken -- we're going to come on to this in
 6 more detail in a moment -- not on the basis of the
 7 Procurator Fiscal looking at the documents; he or she is
 8 looking at a report?
 9 A. Correct.
 10 Q. So looking at the Investigator's summary of the
 11 evidence?
 12 A. Correct.
 13 Q. At that stage, did the Specialist Reporting Agency owe
 14 a duty to reveal to the PF material of the kind that
 15 we're talking about --
 16 A. Yes.
 17 Q. -- ie material that undermined the proposed
 18 prosecution's case or may assist the proposed defendant?
 19 A. Yes.
 20 Q. So that was something that has to be in the report?
 21 A. Yes.
 22 Q. Then when it came to providing documents to the
 23 Procurator Fiscal at the second stage, the later stage,
 24 again, was that duty of disclosure one that applied to
 25 the Specialist Reporting Agency at that stage too?

25

1 a section, an area of the report that forced the
 2 Specialist Reporting Agency to address that?
 3 A. No.
 4 Q. Thank you. Can we look, please, at the relationship
 5 with the Post Office. I just want to try to tap into
 6 your long experience as a Procurator Fiscal to hear
 7 about the way in which the Post Office and the
 8 Procurator Fiscal interacted when the Post Office was
 9 acting as a Specialist Reporting Agency. Now, we've
 10 been told by Kenneth Donnelly in this witness statement
 11 that the Crown Office and Procurator Fiscal Service has
 12 been unable to identify any document at all issued by
 13 the Procurator Fiscal to the Post Office about
 14 prosecutions before the 5 September 2013. Are you aware
 15 of any document, policy, a protocol, something written
 16 down, by which each organisation set out the
 17 expectations of the other?
 18 A. No.
 19 Q. Mr Donnelly has told us that no specific internal
 20 guidance was issued before 2013 that's now been
 21 identified advising how prosecutors were to assess
 22 reports and evidence submitted to them by the Post
 23 Office. Again, does that accord with your recollection?
 24 A. Yes, it does.
 25 Q. So for the three decades or so that you were doing this

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1 A. Of course.
 2 Q. So it was a continuing duty throughout the life of the
 3 prosecution?
 4 A. Correct, and even after your stage 2, throughout the
 5 life of the case.
 6 Q. Yes.
 7 A. That duty --
 8 Q. So right up until trial. I'm not going to come at the
 9 moment to duties post-conviction.
 10 A. Okay.
 11 Q. How, in the report stage, was that duty of disclosure,
 12 as a matter of practice, discharged?
 13 A. It was -- the reporting agency was under a duty.
 14 Q. That's a restatement of the existence of the duty. So
 15 to give you an example, in England and Wales there are
 16 a series of forms that the police service have to fill
 17 out, and one of them is specifically in relation to this
 18 issue. Was there an equivalent in Scotland --
 19 A. Prior to 2010, no, as far as I can remember.
 20 Q. -- ie a part of the report or a separate document given
 21 over to the identification of material that may
 22 undermine the proposed prosecution case or advance that
 23 of the proposed defendant?
 24 A. No.
 25 Q. So, in the report you got, there wasn't a box,

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1 work, nothing was ever written down as to how the
 2 Procurator Fiscal is going to address proposed
 3 prosecutions by the Post Office?
 4 A. No.
 5 Q. Now, as we've just discussed, I think it's right that,
 6 when the Post Office Investigator wrote a report to you,
 7 I think that was known as a Standard Prosecution Report;
 8 is that right?
 9 A. Yes.
 10 Q. An SPR. I think after 2006, they were submitted via
 11 a web portal; is that right?
 12 A. Yes.
 13 Q. You've explained that that would not attach the witness
 14 statements to it?
 15 A. It may have but, by and large, not.
 16 Q. It wouldn't attach the exhibits or the productions to
 17 it?
 18 A. No.
 19 Q. So your decision was based solely on what the
 20 Investigator chose to reveal in the report?
 21 A. Correct.
 22 Q. Did, to your mind, the Investigator have a duty of
 23 candour to you, in the same way as in England and Wales
 24 when one lays an information before a Magistrates Court
 25 seeking a summons, there's such a duty of candour?

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- 1 A. Of course.
 2 Q. In other words, they owed a heightened responsibility to
 3 tell you of anything adverse to their case?
 4 A. Of course.
 5 Q. So that would ensure, would it, if discharged, that your
 6 decision was made in the interests of justice, rather
 7 than just the interests of, in this case, the Post
 8 Office?
 9 A. Correct.
 10 Q. What safeguards were in place to ensure that the
 11 Procurator Fiscal was getting the full picture from the
 12 Investigating Officer in the report?
 13 A. I don't know if there was -- if there were any
 14 safeguards. It was understood by the reporting agency
 15 that they had to have a duty of candour.
 16 Q. They may not summarise all of the evidence, mightn't
 17 they?
 18 A. That's a possibility that they might not, yes.
 19 Q. They might missummarise the evidence?
 20 A. Correct.
 21 Q. They might not fully summarise what an exhibit or the
 22 exhibits showed?
 23 A. Correct.
 24 Q. They might missummarise what an exhibit showed?
 25 A. Correct.

29

- 1 Q. Okay. So there wasn't a process of allocation, that
 2 just naturally followed jurisdiction; is that right?
 3 A. Correct.
 4 Q. So there wouldn't have been, is this right, any sort of
 5 cross-sharing of information within the Procurator
 6 Fiscal about issues or problems that the Post Office
 7 cases may have presented?
 8 A. No.
 9 Q. Do you recall taking cases involving subpostmasters
 10 before the introduction of the Horizon computer system
 11 in 2000?
 12 A. No, I can't recall.
 13 Q. I think you told us that the only one that you took
 14 post-2000 was this one: William Quarm?
 15 A. Correct.
 16 Q. How would you describe the Procurator Fiscal's
 17 relationship with the Post Office when it was acting as
 18 a Specialist Reporting Agency, so far as you could see
 19 from your, as you've said, quite remote jurisdiction?
 20 A. Yeah, it was fine.
 21 Q. Would you take any steps to interrogate the suggestions
 22 and findings presented to you in a Post Office
 23 Investigator's report?
 24 A. You mean the SPR?
 25 Q. Yes.

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- 1 Q. They may not summarise what happened in the interview?
 2 A. Correct. Properly, yes.
 3 Q. Sorry?
 4 A. They may not properly summarise what happened --
 5 Q. Yes.
 6 A. -- in the interview, yes.
 7 Q. le getting over to you the full nuances of what happened
 8 in an interview?
 9 A. If there were vital nuances, correct.
 10 Q. Yes. You wouldn't have any means of knowing that?
 11 A. At that early stage, no.
 12 Q. So you would have to take it on trust that everything
 13 was being done correctly by all Investigators in all
 14 cases?
 15 A. At that stage of report, yes.
 16 Q. Were the Post Office cases directed within the
 17 Procurator Fiscal Service to one specific team to
 18 consider?
 19 A. Not in the sort of offices that I worked in, which are
 20 remote and manned really just by me.
 21 Q. So they weren't all directed to a central office; they
 22 were spread across whichever jurisdiction the Procurator
 23 Fiscal covered, according to where the branch was
 24 situated?
 25 A. Yes.

30

- 1 A. I could, yes.
 2 Q. Would you ordinarily engage with the Investigation
 3 Manager at the Post Office in a dialogue? This is
 4 pre-decision to prosecute.
 5 A. Yes, I could and would, if it was necessary.
 6 Q. What might make it necessary?
 7 A. Lack of clarity.
 8 Q. Would you typically go back with questions or ask for
 9 further enquiries to be conducted?
 10 A. When you say "typically", I've said that I hadn't had
 11 any cases between 2000 and 2008, so typically is quite
 12 a difficult question to answer.
 13 Q. What about the cases involving the post, rather than
 14 subpostmasters?
 15 A. They're in the '90s, '80s, I can't remember.
 16 Q. Did you ever engage with anyone other than the
 17 Investigation Manager within the Post Office?
 18 A. Not that I can remember.
 19 Q. Taking your evidence on this as a whole, would it be
 20 fair to say that you worked on an assumption that the
 21 Post Office Investigator had pursued all reasonable
 22 lines of inquiry, including those that point away from
 23 the guilt of the accused and had fully and fairly
 24 summarised all of the witness and exhibit evidence,
 25 documentary evidence, in their report?

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- 1 A. Yes, of course.
- 2 Q. You took that on trust?
- 3 A. Yes.
- 4 Q. Within the last couple of weeks, Mr Donnelly has made
5 a public statement on behalf of the Procurator Fiscal
6 Service in relation to the Horizon cases that were
7 prosecuted in Scotland, and he said that the estimation
8 of the service is that up to 100 cases involving
9 Scotland may be affected and that that is a lower number
10 than in England and Wales, due to the Procurator
11 Fiscal's policy decisions made in response to awareness
12 of Horizon system issues.
- 13 Before 2013, were you aware of any -- what he
14 describes as Procurator Fiscal policy decisions made in
15 response to awareness of Horizon system issues?
- 16 A. No.
- 17 Q. When did you first learn of possible issues or
18 challenges to the accuracy of Horizon data?
- 19 A. I can't recall, I'm afraid.
- 20 Q. Can you remember how you learned it?
- 21 A. Equally, I can't recall.
- 22 Q. Was it before or after you left the service in June
23 2015?
- 24 A. I can't recall.
- 25 Q. Were there communications within the Procurator Fiscal

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1 earlier. I'm just going to use this as a basis for
2 asking you some questions about these issues rather than
3 what the Lord Advocate said to the Scottish Parliament
4 on 16 January.

5 If we can go to page 13, please, and paragraph 43.
6 I should say that this is a statement made on behalf of
7 the Service, the Procurator Fiscal Service.
8 Mr Donnelly, on behalf of the service, says that:
9 "Between 2000 and 2013, [the Procurator Fiscal
10 Service] was not institutionally aware of the bugs and
11 errors in the [Post Office Limited] Horizon ... system
12 that significantly impacted the reliability of evidence
13 submitted by the Post Office."

14 Then paragraph 44, he says:
15 "On 14 May ..."

16 At that time, 14 May 2013, you would still be
17 employed; is that right?

- 18 A. Yes.
- 19 Q. "... [Post Office], via their Scottish agents, BTO
20 Solicitors, contacted [the Procurator Fiscal Service] to
21 request a discussion about issues with the Horizon
22 Online system ... On 29 July 2013, solicitors for [the
23 Post Office] explained to [the Procurator Fiscal
24 Service] that as a result of the 'Second Sight' and
25 'Helen Rose' reports, [Post Office Limited] had

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- 1 Service before you left in June 2015 in relation to the
2 accuracy and reliability of Horizon data?
- 3 A. Well, I personally can't recall. That's not to say that
4 there weren't. I know that the Lord Advocate addressed
5 Scottish Parliament recently on 16 January and I think
6 she said in that that Procurator Fiscals were advised by
7 Crown Office to desist from prosecutions.
- 8 Q. In 2015?
- 9 A. I can't remember the date --
- 10 Q. Yes, we'll come to that in a moment, I'll give you a bit
11 of detail to help on that. But, at the moment, from
12 your memory, can you recall whether any announcement was
13 made before you left in June 2015 --
- 14 A. I can't remember.
- 15 Q. -- by the service to all Procurator Fiscal Deputes, for
16 example making them aware of possible issues with the
17 reliability of Horizon data?
- 18 A. Well, I can't remember.
- 19 Q. What about the other way round? Were you ever asked by
20 the Service of your experience of reviewing cases? It
21 would have been limited, I think, to Mr Quarm's.
- 22 A. No.
- 23 Q. Can we look then, please, at WITN10510100. This is
24 Mr Donnelly's statement to the Inquiry, the relevant
25 parts of which were read into the Inquiry record

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1 instructed their ... solicitors, Cartwright King, to
2 carry out a review of all cases reported against
3 subpostmasters/mistresses, dating from the rollout of
4 Horizon Online in January 2010. In cases where an
5 [subpostmaster] had raised an issue with either Horizon
6 Online or their training of the system, both the 'Second
7 Sight' and 'Helen Rose' reports were being disclosed to
8 the defence by [Post Office Limited]. BTO then advised
9 [the Procurator Fiscal Service] that it would be
10 reviewing all the Scottish cases that could be affected
11 by the issues identified in these two reports. On
12 9 August 2013, [the Procurator Fiscal Service] Policy
13 Division made Senior [Procurator Fiscal Service]
14 officials aware of the developments and asked that
15 information regarding the issues with Horizon Online be
16 passed to prosecutors dealing with ongoing reported
17 cases."

18 So, in summary, Mr Donnelly is telling us that, in
19 2013, Post Office solicitors told the Procurator Fiscal
20 Service about some challenges around the Horizon
21 evidence, yes?

- 22 A. Yes.
- 23 Q. You were not, I think, present in any of these meetings.
24 Were you told about the fact that they were taking place
25 or the issues that came out of them?

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1 A. Not that I recall, no.
 2 Q. Were you told about the Second Sight review --
 3 A. No, not that I recall.
 4 Q. -- and the Helen Rose report?
 5 A. No.
 6 Q. The last sentence, "[The] Policy Division made Senior
 7 ... officials aware of the developments and asked that
 8 information regarding issues with Horizon Online be
 9 passed to prosecutors dealing with ongoing Post Office
 10 reported cases"; did that happen to you?
 11 A. I can't recall.
 12 Q. Okay. Were you, in fact, in 2013 dealing with
 13 an ongoing Post Office case or not?
 14 A. No.
 15 Q. You weren't? Okay. Were you aware of the instruction
 16 of BTO Solicitors in 2013?
 17 A. No.
 18 Q. Can we move on, please, to paragraph 45. If we just
 19 scroll down, we're moving to later in the year, in 2013:
 20 "On 5 September ... a meeting took place between
 21 [Post Office], BTO Solicitors [that's the Post Office's
 22 Scottish solicitors], Cartwright King [that's their
 23 solicitors for England and Wales] and Crown Office
 24 Policy Division officials at the Crown Office in
 25 Edinburgh. Cartwright King senior counsel, Simon

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1 A. Correct.
 2 Q. You can't recall any memorandum or edict coming out from
 3 the centre about the treatment of a Post Office case, if
 4 one was to land on your desk?
 5 A. No.
 6 Q. Okay. Were you equally asked to provide any details of
 7 all cases which you had as ongoing?
 8 A. No, I don't think so.
 9 Q. If we move on to paragraph 47, please.
 10 "[Post Office Limited] advised [the Procurator
 11 Fiscal Service] that a full examination of the Horizon
 12 system would be undertaken and would be completed within
 13 6 to 8 months."
 14 I take it that kind of information wasn't fed down
 15 to you either?
 16 A. No.
 17 Q. Paragraph 48:
 18 "In the light of these revelations, an instruction
 19 was thereafter circulated within [the Procurator Fiscal
 20 Service] for prosecutors to consider [Post Office]
 21 reported cases on their facts and circumstances in
 22 determining whether they should be adjourned pending the
 23 outcome of [Post Office's] review. [The Procurator
 24 Fiscal Service] did not terminate all Scottish [Post
 25 Office] cases."

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1 Clarke, was in attendance. At the meeting BTO
 2 Solicitors explained that it had carried out a review of
 3 all live Scottish cases and had determined that the
 4 Horizon system defects identified in the 'Second Sight'
 5 and 'Helen Rose' reports did not play a part in any live
 6 Scottish cases save for one. BTO's review processes
 7 assessed cases as either 'Type A' or 'Type B'; 'Type A'
 8 ... in which Horizon had provided the information as to
 9 wrongdoing but was not the provider of primary evidence.
 10 In almost all of these cases the [subpostmaster] had
 11 admitted to the taking of monies belonging to [the Post
 12 Office] for their own unauthorised purposes. 'Type B'
 13 ... where Horizon or the training of its use had been
 14 raised by the [subpostmaster]. Cartwright King and BTO
 15 Solicitors advised that only 'Type B' cases were cases
 16 which, in their view, required disclosure of [those two
 17 reports]. BTO's review concluded that all but one live
 18 Scottish case was 'Type A' and that all concluded cases
 19 were 'Type A' cases which did not necessitate further
 20 review or disclosure."

21 Was that communicated to you, that this distinction
 22 between cases existed, that they were to be treated
 23 differently?

24 A. Not that I can recall, no.

25 Q. You didn't have a case on your books at the time?

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1 Can you remember that kind of instruction or
 2 memorandum coming out?
 3 A. No, I can't.
 4 Q. Paragraph 50:
 5 "Ultimately, it is understood that [Post Office] did
 6 not commission a second report [as had been discussed].
 7 [Post Office] subsequently advised [the Procurator
 8 Fiscal Service] that despite consulting with academics,
 9 a further interrogation of the Horizon Online system was
 10 not possible."
 11 Moving on to paragraph 51, please. 6 October, there
 12 was a meeting. By then you'd left; is that right?
 13 A. Yes.
 14 Q. So 6 October, you had left the service by then. I'm not
 15 going to ask you about anything there.
 16 It seems that, up until the point you left, from
 17 when -- the first date that this statement talks about
 18 a revelation occurring in May 2013 -- there was a form
 19 of ongoing dialogue between the Post Office and its
 20 various solicitors, on the one hand, and the Procurator
 21 Fiscal Service, on the other. Was any of that revealed
 22 to you as a Procurator Fiscal?
 23 A. No.
 24 Q. As I've said, you weren't asked to make a return to
 25 establish whether or not you were prosecuting any cases?

40

1 A. Not that I --
 2 Q. In fact, you weren't.
 3 In fact, you weren't prosecuting any such cases
 4 then?
 5 A. Correct.
 6 Q. Okay. The system that was, by then, in operation,
 7 a web-based portal, as I've described it, for submission
 8 of reports, I think that had, is it right, a unique
 9 identifier for each of the Specialist Reporting
 10 Agencies?
 11 A. Yes.
 12 Q. Would it be possible for somebody at the centre, as I'm
 13 calling them, ie in the Procurator Fiscal Service, to
 14 identify how many cases there were that were being put
 15 before Procurators Fiscal by the Post Office?
 16 A. I can't answer that question. I don't --
 17 Q. I'm just trying to understand whether it required
 18 positive action by the centre to come out to each of the
 19 Procurators Fiscal to find out whether you had a case on
 20 your books or whether they could tell from the computer?
 21 A. I don't know.
 22 Q. You don't know. Okay, thank you.
 23 Can we turn, please, to the prosecution of William
 24 Quarm. That can come down from the screen, that witness
 25 statement.

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1 Procurator Fiscal could, in practice, apply at the point
 2 of deciding whether to prosecute was somewhat lacking?
 3 A. I wouldn't go as far as that. It's certainly got the
 4 potential for problems arising, if there is lack of
 5 candour.
 6 Q. But in England and Wales, for example, police officers
 7 produce a summary of the evidence to a prosecutor on
 8 a document called an MG5, and many, many prosecutors,
 9 indeed members of the Bar as well, would say, and indeed
 10 are taught, "Don't rely in what a police officer says
 11 the summary of the evidence is. Go and read the
 12 evidence. Look at the witness statements. Read the
 13 exhibits. Read the documents. See for yourself what
 14 the evidence actually shows. Not rely on what somebody
 15 who might have a vested interest in presenting a rosy
 16 picture might say". That was an impossibility for you,
 17 at the point of prosecution?
 18 A. At the point of raising the prosecution, it's not
 19 an impossibility because, if there was some doubt about
 20 any aspect, you would, of course, go back to the
 21 reporting officer and ask for clarification.
 22 Q. But that's -- only if the way they had written the
 23 document --
 24 A. I beg your pardon?
 25 Q. That would any be if the way they had written the

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1 I think overall in your witness statement -- would
 2 this be fair -- you seek to convey the view that the
 3 prosecution of Mr Quarm was carried out entirely in
 4 accordance with the applicable law and practice in
 5 Scotland and raised no concerns for you whatsoever?
 6 A. That's correct.
 7 Q. Does that remain the case?
 8 A. It does.
 9 Q. Can we look, please, at your witness statement at
 10 paragraph 11, which is on page 4. If we scroll down,
 11 it's at the foot of the page. You say:
 12 "It goes almost without saying that the Procurator
 13 Fiscal will inevitably rely on the accuracy of any such
 14 report ..."
 15 There we're dealing with the report submitted by the
 16 Specialist Reporting Agency to the Procurator Fiscal:
 17 "... inevitably rely on the accuracy of any such
 18 report on which to base his decision and it is well
 19 accepted that he is entitled to rely entirely and
 20 absolutely on its accuracy for justification of any
 21 consequent actions taken by him."
 22 So that is reflection, I think, of the evidence
 23 you've given to us already about total and utter
 24 reliance on the Post Office Investigator.
 25 Does that mean that the level of scrutiny that the

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1 document raised an issue.
 2 A. Well, no, it might be apparent by virtue of a lack of
 3 saying something.
 4 Q. You continue:
 5 "If there were ever any concern by a reporting
 6 officer in any agency whether police, DWP, SSPCA
 7 [I think that's Scottish Society for the Prevention of
 8 Cruelty to Animals] or Post Office that any part of
 9 their report was open to doubt then that should be
 10 brought to the attention of the Procurator Fiscal in the
 11 body of the report."
 12 Is that the safety net, then? Is that what you're
 13 describing there?
 14 A. Yes.
 15 Q. So have I understood this correctly, that it places
 16 responsibility on the author of a document to identify
 17 anything in his or her document, if there is anything in
 18 that document, that they're writing isn't accurate or
 19 open to doubt?
 20 A. They should have, they should make the Fiscal aware,
 21 yes.
 22 Q. Are they the best person in the world to identify
 23 whether what they're writing might be inaccurate?
 24 A. Well, I can't answer that, but that's what happened.
 25 Q. You continue:

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1 "If, in this case, had there been any doubt as to
 2 the accuracy of the data produced by Horizon known to
 3 the reporting officer, then, of course, that should have
 4 been made very clear since it would have seriously
 5 affected the decision made by the Procurator Fiscal."
 6 Can I understand what you're saying there? It
 7 appears to be that doubt as to the accuracy of the data
 8 produced by Horizon had to be shown before the accuracy
 9 of the data produced by Horizon needed to be checked?
 10 **A.** Give me that again, please?
 11 **Q.** Yes. Is what you're saying there that doubt as to the
 12 accuracy of the data produced by Horizon had to be shown
 13 before the accuracy of the data produced by Horizon had
 14 to be checked?
 15 **A.** No, I didn't mean that.
 16 **Q.** Okay, what did you mean?
 17 **A.** I meant that, if the reporting officer had known that
 18 there was some doubt, generally, about the accuracy of
 19 the Horizon system, then that should have been -- the
 20 sort of doubt that came to light later on.
 21 **Q.** I see. If you were relying on data produced by Horizon,
 22 or a document which is made up of data produced by
 23 Horizon, or an analysis which relies on documents
 24 produced on the back of data produced by Horizon, like
 25 an audit, to prove that a loss had occurred, to prove

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1 **Q.** But if somebody, a suspect, the defendant, had said the
 2 system is not working properly, would that be sufficient
 3 to trigger what you speak about in paragraph 11?
 4 **A.** It would certainly trigger concerns in my mind.
 5 **Q.** You go on later in your witness statement to say that no
 6 Horizon ARQ data was sought in this case?
 7 **A.** I didn't seek it.
 8 **Q.** Yes, I mean, I think what you say, this is paragraph 24:
 9 "I have been asked whether any Horizon data and in
 10 particular ARQ logs was requested from Fujitsu in this
 11 case. No Horizon data was requested from Fujitsu."
 12 **A.** By me, no.
 13 **Q.** Or by anyone, so far as you're aware?
 14 **A.** Well, I'm not aware of that, by me.
 15 **Q.** All right, have you seen any positive evidence, even
 16 now, that Horizon ARQ data was sought by anyone?
 17 **A.** No, I haven't seen any such evidence.
 18 **Q.** Okay.
 19 **A.** But that's not to say that there hasn't been. I just
 20 haven't seen it.
 21 **Q.** Well, we've heard from Mr Daily and Mr Grant, the
 22 Investigators, and they've told us from your chair that
 23 no such data was sought in this case.
 24 **A.** That's fine.
 25 **Q.** So let's work on the basis that no ARQ data was sought.

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1 that certain transactions had been conducted by
 2 a subpostmaster, wouldn't you have to establish the
 3 accuracy and reliability of those data, in any event?
 4 **A.** Well, at what stage are you talking about? Are you
 5 talking about the reporting stage?
 6 **Q.** Yes. Remembering the Prosecution Code, which says, in
 7 deciding whether to prosecute, you must have regard to
 8 admissibility, reliability, and credibility. On
 9 reliability, if you're relying on data produced by
 10 a computer to prove a loss, to prove transactions, don't
 11 you have to establish the reliability of those data
 12 first?
 13 **A.** Well, I think you're entitled to expect that the
 14 reporting officer will have satisfied themselves as to
 15 the reliability, in the same way that you accept the
 16 evidence from a forensic science laboratory, that their
 17 DNA analysis is accurate and hasn't been tainted, in the
 18 same way that you expect a police officer who's
 19 operating a speed gun to be satisfied that it's
 20 operating accurately. There are certain things that, at
 21 that stage, you simply, almost as a matter of course,
 22 accept.
 23 **Q.** So you would proceed on the basis of an assumption that
 24 the computer was operating properly?
 25 **A.** Yes.

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1 **A.** All right.
 2 **Q.** Were you aware of the facility to ask for ARQ data?
 3 **A.** No.
 4 **Q.** Even if you didn't know that it was called ARQ data,
 5 were you aware of the facility to ask for information,
 6 material evidence, to establish to some extent whether
 7 transactions conducted in a branch were attributable to
 8 a subpostmaster?
 9 **A.** Sorry, go back to the beginning of that question.
 10 **Q.** Were you aware, when you were prosecuting this case, of
 11 the facility to ask for information, for evidence, that
 12 would establish to some extent whether transactions
 13 conducted in a branch were attributable to the
 14 subpostmaster?
 15 **A.** No, I wasn't aware as such but I was aware that, if
 16 I had need to find that information, I would have asked
 17 the Investigating Officer.
 18 **Q.** What about this: were you aware of a facility to find
 19 out information, to get data, to see whether any system
 20 faults had occurred that were material to the
 21 transactions that had been carried out or the process of
 22 balancing?
 23 **A.** No.
 24 **Q.** Were you aware of something called the Horizon Helpdesk?
 25 **A.** No.

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1 Q. So I think it follows that you weren't aware of the
2 facility to ask for Horizon Helpdesk records?
3 A. That is correct.
4 Q. Similarly, a body called the National Business Support
5 Centre, the NBSC, were you aware of that when you were
6 prosecuting this case --
7 A. No.
8 Q. -- and, therefore, its records about issues that may
9 have been phoned in by a subpostmaster concerning
10 Horizon or balancing?
11 A. No.
12 Q. Were you aware, was it revealed to you, a species of
13 documents called PinICLs or PEAKs --
14 A. No.
15 Q. -- which recorded faults or suggestions of faults with
16 Horizon --
17 A. No.
18 Q. -- that either related to an individual specific branch
19 or to a type of problem or to the system generally?
20 A. No.
21 Q. Okay. Was it revealed to you that there was a species
22 of documents called a KEL, a Known Error Log --
23 A. No.
24 Q. -- that recorded, amongst other things, known bugs,
25 errors and defects in the Horizon system, and the steps

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1 MR BEER: Thank you very much.
2 (11.16 am)
3 (A short break)
4 (11.30 am)
5 MR BEER: Good morning, sir, can you continue to see and
6 hear us?
7 SIR WYN WILLIAMS: Yes, thank you very much.
8 MR BEER: Just before we move on with the questions that
9 I was proposing to ask Mr Teale, I've been asked to
10 display a document.
11 It's not relevant to the answers that Mr Teale gave
12 but should be displayed in any event: WITN10510200.
13 It's a second witness statement from Mr Donnelly, it's
14 dated 15 January and it's a correction to his first
15 witness statement. If we go down the page, please. In
16 the first paragraph, he says:
17 "This [statement] seeks to clarify and correct
18 an inaccuracy in my first statement ..."
19 Paragraph 2:
20 "In my first statement, at paragraph 46 [this was
21 a paragraph I read to Mr Teale], I [said this]", and you
22 can see what's there.
23 SIR WYN WILLIAMS: Yes.
24 MR BEER: Do you remember it said that the Second Sight and
25 Helen Rose reports did not play a part in any live

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1 that might be taken or had been taken to seek to resolve
2 them?
3 A. No, remember, at this stage, I'm only reading the report
4 and I think we've got the report here.
5 Q. Yes.
6 A. I don't think any of that was mentioned.
7 Q. No.
8 A. If it wasn't mentioned then I wouldn't know about it.
9 Q. I think that applies to the rest of the prosecution as
10 well, all of the categories of material that I have
11 mentioned, ARQ data, records of calls to Helpdesk,
12 records of calls to the NBSC, PinICLs, PEAKs and KELs,
13 they weren't revealed to you in the course of the
14 prosecution at all?
15 A. No.
16 Q. You tell us that the investigation appeared to have been
17 conducted thoroughly and fairly?
18 A. As far as I could see, at that stage, yes.
19 Q. Everything was addressed promptly and properly by the
20 Post Office?
21 A. It seemed to be, yes.
22 MR BEER: Thank you very much. I wonder whether we can take
23 a break there, please, until 11.30.
24 SIR WYN WILLIAMS: Yes, of course. So we'll resume at
25 11.30.

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1 Scottish case, save for one? He says:
2 "The final part of this passage is incorrect.
3 "At the meeting ... BTO explained to [the Service]
4 that the review of live Scottish cases had determined
5 that the defects identified in ... 'Second Sight' and
6 'Helen Rose' ... did not play a part in any live
7 Scottish cases.
8 "It is not the case that BTO advised [the Procurator
9 Fiscal Service] that one case had been reviewed and the
10 defects identified in the two reports had been
11 determined to 'play a part' in the case."
12 Then just read page 2, paragraph 5:
13 "The single case ... had been determined to be
14 a 'Type B' case. It is not the position system defects
15 identified [I think there's an error in this correction
16 statement] in the 'Second Sight' and 'Helen Rose'
17 reports impacted this case."
18 Thank you, I don't think that affects the answers
19 that you've given, because you weren't told about this
20 at all. Thank you.
21 A. (*The witness nodded*)
22 Q. Can we go back to your witness statement, please. At
23 paragraphs 20 and 21, which is on page 8, please --
24 page 8, paragraph 20 -- you say:
25 "At the time of taking my decision to prosecute [and

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1 we're dealing here with the section of your statement
2 that deals with Mr Quarm] I can safely say that I would
3 not have had any doubts as to the reliability of the
4 evidence provided in the Post Office report."

5 Why would you have no doubts as to the reliability
6 of evidence?

7 **A.** Because none were raised by the Investigating Officer.

8 **Q.** So, again, you were relying on this sort of
9 self-policing fairly to summarise and identify issues
10 about the reliability/credibility of evidence?

11 **A.** Yes.

12 **Q.** So there's nothing in there where the reporting officer
13 identifies that there may be an issue with this evidence
14 or that, for example, in the interview, there may be
15 nuances to what Mr Quarm was saying?

16 **A.** No.

17 **Q.** You continue:

18 "Certainly there was no suggestion at all that the
19 Horizon IT system had produced or was producing
20 unreliable data. [Had there been] I would have
21 seriously considered proceeding further against the
22 accused."

23 By that, do you mean that, if it had been identified
24 to you that the data produced by Horizon, which had been
25 used to produce the audit report, was unreliable or may

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1 my two sources of corroborative evidence"?

2 **A.** Yes.

3 **Q.** "I need to be satisfied that the data relied on to
4 produce that audit report is itself reliable"?

5 **A.** Correct.

6 **Q.** "Where is the evidence of that?"

7 **A.** Correct.

8 **Q.** Where was the evidence the positive evidence that the
9 data relied on was reliable?

10 **A.** Well, it would have come from an examination,
11 presumably, of a detail of the audit, and a comparison
12 with the bank statements.

13 **Q.** When you say a comparison to the bank statements, had
14 you got those at the time that you made your decision to
15 prosecute?

16 **A.** No.

17 **Q.** Were they summarised, in any way at all, in the report?

18 **A.** I would have to look back at the report and I'm prepared
19 to do that.

20 **Q.** In your witness statement, I don't blame you for this at
21 all, you refer to a report as being the report that you
22 were sent. I think you know that that's probably
23 erroneous. That was an internal report to within the
24 Post Office and that the report that you were sent on
25 the system is a rather different document. Have you now

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1 have been unreliable, you would have considered
2 seriously not proceeding further?

3 **A.** Correct.

4 **Q.** We've got some evidence from William Seaton, who I think
5 you will remember was Mr Quarm's solicitor, a local
6 solicitor; is that right --

7 **A.** That's correct, yes.

8 **Q.** -- who says in his evidence, looking back, it was
9 assumed that the Post Office IT system was faultless.
10 The Procurator Fiscal's position was the same. He was
11 a bit like "How dare we challenge it", is what he says.
12 Does that fairly reflect your approach to the system at
13 the time? It just wasn't an issue?

14 **A.** That doesn't reflect accurately. That suggests that
15 I was approached by him to say that there was something
16 wrong with the system, it can only be the system, and
17 I've refused to listen to him, and that was certainly
18 not the case.

19 **Q.** What was your approach to the system then?

20 **A.** What was my approach?

21 **Q.** Yes.

22 **A.** That, as far as I could tell, there was nothing to
23 indicate it was working -- that it was not working.

24 **Q.** Did you, so far as you can remember, go through thought
25 process that "I'm relying on an audit report as one of

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1 realised that?

2 **A.** Well, I think it was me that brought it to the Inquiry's
3 attention.

4 **Q.** Right. Good, excellent, then.

5 **A.** Thank you.

6 **Q.** So if we look at your witness statement and if we look,
7 please, at paragraph 9 on page 3, if we scroll down, you
8 say:

9 "I have been asked to describe my role in ... this
10 case. The report from the Post Office was received ...
11 in early 2009. [You say] I read it and considered it.
12 [They] follow a standard form ... There follows
13 a summary of the evidence against the accused ..."

14 Over the page: submitted by the officer in the case
15 who you expect to have been Raymond Grant, given the
16 contents of the document. Then you refer to the report
17 as POL00166596. If we can look at that, please.

18 That's the report you speak about in your witness
19 statement; can you see that, yes?

20 **A.** Yes.

21 **Q.** That's not the report you received, is it?

22 **A.** No.

23 **Q.** That's an internal report within the Post Office.

24 **A.** That's correct.

25 **Q.** So you never got to see this report?

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1 A. I never got to see which report?
 2 Q. The one we're looking at.
 3 A. I think it was part of the bundle, was it not?
 4 Q. When you say "the bundle" --
 5 A. Oh, you mean did I see it at the time of taking my
 6 decision?
 7 Q. Yes.
 8 A. No, I wouldn't have seen that.
 9 Q. Okay, so we can correct your witness statement when it
 10 says, "I read the report and this is the report"; this
 11 is not the report at all, correct?
 12 A. That's correct.
 13 Q. All right. Well, let's have a look at the report that
 14 you did get to see.
 15 A. I have to say I didn't -- when I was writing
 16 paragraph 9, I didn't -- I knew that it wasn't the
 17 report that I did receive and I made that clear. And if
 18 you look at my paragraph 31.
 19 Q. Yes, got it.
 20 A. I wonder if that could be shown.
 21 Q. Yes, that's on page 11.
 22 A. That might just explain the position.
 23 Q. Page 11 of the witness statement. You say you don't
 24 have access to the papers, missing is a copy of the case
 25 report. It's important because it contains a summary of

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1 "Since the interview Mr Quarm has disclosed
 2 financial details."
 3 Then I think there is a reference to Alliance &
 4 Leicester bank statements, Bank of Scotland statements
 5 with one account number, a credit card statement with
 6 another account number, RBS statements with another
 7 account number and a loan.
 8 Then, over the page, reference to some more
 9 documents that he has, since the interview, produced
 10 because the interview was back on 7 August 2008 and this
 11 is April 2009.
 12 A. That's right.
 13 Q. There wasn't any analysis of those documents in this
 14 report, was there?
 15 A. Correct.
 16 Q. And they weren't provided to you?
 17 A. Correct.
 18 Q. What was your understanding of what was alleged to have
 19 occurred in terms of the transfer of money by Mr Quarm
 20 from the Post Office to either his Royal Bank of
 21 Scotland account or his Alliance & Leicester accounts?
 22 A. Well, I wonder if I could just look at the document
 23 which I have. Can you identify which number it would be
 24 in my bundle so I can access it quite easily?
 25 Q. You have to tell me a bit more than that.

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1 the evidence. I can only surmise that the summary of
 2 evidence would have been roughly similar to the document
 3 we've just looked at.
 4 A. Correct.
 5 Q. So let's look, then at COPF0000002. If we just skip
 6 over that page, the second page, and then go to the
 7 third page; is that the report --
 8 A. Yes.
 9 Q. -- that was submitted to you?
 10 A. Yes.
 11 Q. Is this, if we just go back to the first page, please,
 12 in the standard form that, by this time, 2009, it's
 13 April 2009, the document was received --
 14 A. Yes.
 15 Q. -- that they were submitted?
 16 A. Correct.
 17 Q. If we go forwards to page 3, we see a summary of the
 18 evidence. Go to page 4., the summary continues. Then
 19 over to page 6, please, some Branch Trading Statements
 20 are produced -- yes --
 21 A. Yes.
 22 Q. -- or referred to. They're not actually produced to
 23 you?
 24 A. Correct, referred to, yes.
 25 Q. Then, at the foot of the page:

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1 A. How do I find the document that you're looking at in the
 2 bundle which I'm holding in my hands?
 3 Q. Oh, right. It's tab E1.
 4 A. Thank you. I've only got to D35.
 5 Q. We can look on the screen. It's a short document.
 6 A. It's what?
 7 Q. We can look at it on the screen, we can scroll backwards
 8 and forwards.
 9 A. It's easier if I can see it in its entirety.
 10 Q. Okay, you can have mine. *(Handed)*
 11 A. Thank you. I've been told that, actually, I have them
 12 but they're in the shelf here.
 13 Q. Maybe take them out of the shelf then I can have mine
 14 back.
 15 A. Good.
 16 Q. Thank you.
 17 A. E1. Thank you. *(Handed)*
 18 Q. Thank you.
 19 A. No, I'm sorry, but could you ask me again, please?
 20 Q. Yes, what was your understanding of how it was alleged
 21 that Mr Quarm had transferred money from the Post Office
 22 accounts into his Alliance & Leicester and/or Royal Bank
 23 of Scotland accounts? *(Pause)*
 24 A. It starts at the bottom of -- it starts with the
 25 paragraph "When asked how he removed money from the Post

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1 Office".

2 Q. So which page of the document?

3 A. I beg your pardon, 4.

4 Q. Yes, so let's display that on the screen, COPF0000002,

5 page 4. You're referring to the last paragraph on the

6 page, yes?

7 A. Yes.

8 Q. "When asked how he removed the money from the post

9 office Mr Quarm was at first very hesitant to give

10 details of how the [£163,000] came to be missing."

11 A. No, it's not 163,000, it's 40,000.

12 Q. Yes, £40,277.76, so that's some extra digits and

13 an ampersand added to that line, yes?

14 A. Which appears to be a function throughout the document.

15 Q. Anyway, that amount of money came to be missing. He

16 then gave an explanation, I think, that he would credit

17 his A&L account number:

18 "... with sums of money equivalent to around £4,200

19 every week without putting the cash in the till. He

20 would then use this money by means of drawing on this

21 account by cheque payments to pay his suppliers."

22 Yes?

23 A. Yes.

24 Q. So is the summary of what is alleged based on, and only

25 on, what Mr Quarm said?

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1 A. I don't know the answer to that.

2 Q. It doesn't emerge, does it?

3 A. I'm sure it doesn't.

4 Q. No, because one would expect to see some document which

5 showed the money leaving the post office account, I'm

6 going to call it, wouldn't you?

7 A. Eventually, that -- you'd have to do that to prove the

8 case.

9 Q. Yes, and you'd expect to see on the Alliance & Leicester

10 and the Royal Bank of Scotland bank statements money

11 coming in from a post office account, wouldn't you?

12 A. Yes, you would.

13 Q. So that's where you would look, wouldn't you?

14 A. You would.

15 Q. Did you?

16 A. I can't remember whether I did or not. The bank

17 statements would be there and, remember, we're talking

18 about different times. You're asking me -- you asked me

19 a moment ago when I'm reading the report, do I know

20 precisely how he was -- how the money was being

21 transferred? And the basic report doesn't tell me that.

22 But what I am interested in is, in broad terms, is

23 there evidence that he's taking Post Office money, he's

24 misappropriating it? And the audit seems to show that,

25 I'm told that it does. At this stage, of course,

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1 A. Well, the details of the mechanics of how he went about

2 it are based on that.

3 Q. Did you understand what's being alleged is that he

4 fictitiously created the receipt of a sum of money --

5 yes -- into the post Office?

6 A. Partly that. If we go over the page it continues. We

7 can go through that if you want.

8 Q. Let's just stick with this bit at the moment.

9 A. Okay.

10 Q. So he fictitiously created the receipt of sums of money

11 in cash, yes?

12 A. That's right.

13 Q. Using his Post Office Horizon system?

14 A. Yes.

15 Q. "I've received £1,000 here, £2,000 there, £4,000 there",

16 so that on the post office account it would show money

17 in credit?

18 A. Correct.

19 Q. Then he transferred that money from what?

20 A. From his accounts to --

21 Q. No, no, from what? How did he transfer money out of the

22 post office account into this own bank account?

23 A. Well, the summary doesn't tell you that.

24 Q. Well, okay, looking at all the papers, how did he do

25 that?

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1 I can't say exactly what the audit tells me.

2 Q. Did you ever establish how it was said that the money

3 was transferred from the post office accounts into his

4 bank account?

5 A. I can't remember whether I did or not. I think maybe it

6 might --

7 Q. To be fair, is that because this ended up as a guilty

8 plea?

9 A. Effectively, yes.

10 Q. Therefore, there was not the need for you to do that?

11 A. Correct.

12 Q. Is that a fair way of looking at it?

13 A. Yes. I think maybe you should also be aware what was

14 happening in the case. He -- a plea of not guilty was

15 tendered and immediately a devolution minute was lodged,

16 and that is a challenge to the fairness of -- that's

17 a human rights issue, challenge to the fairness of the

18 trial, no legal representation during the interview.

19 Now, had that --

20 Q. That was heard by the court --

21 A. It was heard by the court.

22 Q. -- and dismissed.

23 A. It was. Now, that was -- the outcome of that would

24 determine whether the case would have proceeded further.

25 If the evidence --

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1 Q. Just stopping there, sorry to interrupt you, does that
2 mean that if the evidence which was being relied on as
3 admissions was excluded, you had insufficient evidence
4 to proceed?
5 A. Correct.
6 Q. Why couldn't you prove the case without Mr Quarm's
7 admissions?
8 A. Because they were one of the sources.
9 Q. Yes, but why couldn't you prove the case without his
10 admissions?
11 A. Because there wouldn't be corroborated evidence.
12 Q. Why not?
13 A. Because one of the strands would be missing. For
14 corroboration here, there are two strands: there's his
15 admissions and there's the evidence of the audit. Take
16 one away -- it's like a page being held up by two
17 pillars: audit, admissions. If one of them goes, the
18 whole page collapses.
19 Q. If the evidence actually showed this --
20 A. Sorry, if the evidence actually showed what?
21 Q. If the evidence actually showed the following, that I am
22 outline to you, amounted to corroborated evidence,
23 documents from the Horizon system showing credits of
24 cash, documents from a Horizon account showing payments
25 of sums of money into Mr Quarm's private bank accounts,

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1 to that in Scotland.
2 **SIR WYN WILLIAMS:** Well, I think you're right to the extent
3 that, when you and I started to practice, Mr Teale,
4 there was a significant law of corroboration in England
5 and Wales but, over the years, it's been whittled away
6 to be very insignificant and, in most cases, doesn't
7 exist.
8 **MR BEER:** Almost non-existent.
9 A. Right. Thank you.
10 Q. What was the point you were making there about the
11 absence of an equivalent law of corroboration in
12 England?
13 A. Because I get the impression that you haven't accepted
14 what I'm saying, you haven't understood what I'm saying,
15 and --
16 Q. Both of those things might be true in any given case.
17 What I'm asking is, I understand that, in fact, you had
18 two pillars --
19 A. Correct.
20 Q. -- audit and admission --
21 A. Correct.
22 Q. -- and you're viewing this as, if admission is taken
23 away, I've only got one pillar --
24 A. Correct.
25 Q. -- and therefore the case can't proceed?

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1 bank statements showing the receipt of those sums of
2 money into his private account --
3 A. Mm-hm.
4 Q. -- and then the use of those funds to pay his suppliers
5 on the grocery business --
6 A. Correct.
7 Q. -- that would be sufficient sources of corroborated
8 evidence, would it not?
9 A. It would prove that money was taken from the Post
10 Office, yes, for his own purposes.
11 Q. Yes, that would prove embezzlement, wouldn't it?
12 A. It would.
13 Q. So why was the admission key?
14 A. Well, that would only be one source.
15 Q. But you've just told us that, without the admissions,
16 the case could not proceed?
17 A. Correct. You need both.
18 Q. Why did you need the admissions if the underlying
19 evidence would prove the case?
20 A. It wouldn't prove the case. It would be just one strand
21 of the case.
22 Q. Okay.
23 A. Am I understanding it correctly that corroboration
24 doesn't exist in England?
25 Q. Well, there is a law of corroboration but it's different

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1 A. Correct.
2 Q. I'm saying, if there is all of this underlying evidence
3 about the dishonest inflation of cash figures, the
4 transfer of money from a post office account into
5 a private account and the dishonest use of that money to
6 pay grocery suppliers, why is that not sufficient
7 evidence?
8 A. You would have to then prove that it was him who had
9 done it.
10 Q. You'd have to prove that?
11 A. It was him who had transferred that money.
12 Q. So who were the other alternative people?
13 A. Haha. Well, I don't think I can explain it very much
14 more than I have. I'm saying in Scotland --
15 **SIR WYN WILLIAMS:** I think I've got the point of difference
16 between you but the reality, Mr Teale, is that, at the
17 stage we are now talking about, the stage where there is
18 evidence of an audit shortfall and evidence of
19 admissions, if you knocked one of those out, I fully
20 understand that, even though the other one existed, that
21 wouldn't be enough because of the law relating to
22 corroboration.
23 Mr Beer's point, I think, is that, even without the
24 admissions, there were lines of inquiry which could and
25 perhaps should have been followed which would themselves

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1 have produced evidence which, if they had turned out in
 2 a particular way, would have been capable of being
 3 corroboration. We'll never know because nobody followed
 4 those lines of inquiry, isn't that it, in reality?
 5 **A.** That is perfectly right. But can I just add to that, we
 6 didn't need to pursue those lines of inquiry because we
 7 had enough corroboration, given his admissions.
 8 **SIR WYN WILLIAMS:** Yes, you didn't need to, once the judge
 9 refused to rule inadmissible the admissions.
 10 **A.** Absolutely.
 11 **SIR WYN WILLIAMS:** That's what you're telling me, isn't it?
 12 **A.** Yes, that's exactly right.
 13 **SIR WYN WILLIAMS:** Yes, fine.
 14 **MR BEER:** Did you read the transcript of Mr Quarm's
 15 interview?
 16 **A.** Have I read it?
 17 **Q.** No, did you?
 18 **A.** Yes. At the time, you mean?
 19 **Q.** At what stage of the process did you read it?
 20 **A.** When the statements had come in.
 21 **Q.** Sorry?
 22 **A.** When the full statements -- when the -- when the full
 23 statements and the transcription would have come in to
 24 the office.
 25 **Q.** So I think that's August 2009, we can see.

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1 **Q.** So does it amount to this: because there was
 2 an admission, as you saw it, in interview and because
 3 the Post Office audit --
 4 **A.** Hold on. An admission by a letter that in his interview
 5 he had admitted writing.
 6 **Q.** Did you see this as a case that did not, in fact,
 7 require further investigation?
 8 **A.** I couldn't have said that at the time of the report
 9 coming in. Things -- once the devolution minute had
 10 been refused then the case was proceeding -- would have
 11 proceeded to trial, and it's at that stage that my
 12 investigation would have taken a more serious -- in
 13 fact, a very serious turn. I would have had to have
 14 investigated everything to show the court, to
 15 demonstrate to the court, what has been happening.
 16 **Q.** So do you think, if it had reached that stage, you would
 17 have then scrutinised the underlying evidence and asked
 18 for further enquiries of the type that I've mentioned to
 19 be pursued?
 20 **A.** Yes, and I can say that, having read the court minutes,
 21 I can see when the -- the date of the --
 22 **Q.** By "court minutes", just so that we all understand,
 23 that's a record in summary terms of an appearance in
 24 a court?
 25 **A.** Correct, and they show that the debate of the devolution

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1 **A.** All right.
 2 **Q.** So, again, for the purposes of the decision to
 3 prosecute, you're relying on this summary we've just
 4 looked at --
 5 **A.** Correct.
 6 **Q.** -- which that can in fact come down from the screen.
 7 **A.** Correct.
 8 **Q.** In his interview, Mr Quarm raised some issues about
 9 training on Horizon; do you recall?
 10 **A.** Yes.
 11 **Q.** Was that investigated or does that fall into the same
 12 category as, because you had admissions and an audit
 13 shortfall, there was no need to?
 14 **A.** Correct.
 15 **Q.** In his interview, Mr Quarm raised issues about seeking
 16 help from the Helpdesk because of difficulties in the
 17 operation of Horizon. Does that fall into the same
 18 category, not investigated to your knowledge, because of
 19 the admissions and the shortfall?
 20 **A.** Correct.
 21 **Q.** In the interview, Mr Quarm identified that he had sought
 22 help in relation to an ATM error resulting in
 23 an unexplained loss of money: the same question, same
 24 answer?
 25 **A.** Yes.

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1 minute was held on a certain date and I see from
 2 Mr Seaton's statement that he approached me, and,
 3 I suspect, immediately after the court hearing, to begin
 4 negotiations which resulted in the guilty plea. So he
 5 would be indicating at that stage that this was going to
 6 be a guilty plea.
 7 **Q.** A plea case, okay. Just on those negotiations, you were
 8 negotiating with him the amount of money that was said
 9 to have been lost?
 10 **A.** Yes.
 11 **Q.** I'm not going to go through all the correspondence but
 12 you liaised with your Post Office client, essentially --
 13 **A.** No, not a client.
 14 **Q.** Okay, your Specialist Reporting Agency --
 15 **A.** Correct.
 16 **Q.** -- who sought to persuade you to hold out for a higher
 17 sum of money?
 18 **A.** Yes, slightly higher.
 19 **Q.** Yes. They wanted you to agree to state that £30,000 had
 20 been lost, whereas the proposal was £27,000.
 21 **A.** I think the proposal was 24.
 22 **Q.** And it got negotiated up to 27?
 23 **A.** Correct.
 24 **Q.** Is that normal, that you negotiate an agreement as to
 25 the amount of money that has been lost?

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- 1 A. Yes.
- 2 Q. Is there anything that regulates that kind of plea
3 negotiation?
- 4 A. Nothing formal: experience and good sense, and
5 a realisation of what happens if a guilty plea is
6 accepted, which doesn't reflect the seriousness of the
7 offence.
- 8 Q. For you and for the SRA the difference between £24,000,
9 £27,000 and £30,000 was not sufficient, is that right,
10 to affect the seriousness with which the court might
11 view the offending?
- 12 A. Correct. I think it was the difference between 40,000,
13 which the Auditor showed as the shortfall, and the
14 eventual outcome, 27,000.
- 15 Q. How do you go about that, then? What's the thought
16 process? Is it that the evidence shows that I might not
17 be able to prove a loss of £40,000?
- 18 A. No.
- 19 Q. So why do you ever accept an amount less than £40,000?
- 20 A. Haha. Pragmatism to a certain extent, a certainty of
21 plea, a certainty of outcome.
- 22 Q. So you can do a deal, essentially?
- 23 A. No, that's not the way to put it.
- 24 Q. How would you put it, then?
- 25 A. Well, I would put it that the Fiscal is always

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- 1 that be the Lord Advocate?
- 2 A. Oh, no, no, no.
- 3 Q. Okay. Help us, please, with the system going up
4 hierarchically above you?
- 5 A. Above me directly would be the Area Procurator Fiscal
6 and that would cover the whole of the Highlands and the
7 Islands and, above him, would be a Deputy Crown Agent,
8 I presume, and then, after that, the Crown Agent.
- 9 Q. Okay. So your work, as the Procurator Fiscal for the
10 jurisdiction of the Western Isles, would it be fair to
11 say that, operationally, you were in charge of
12 prosecutions within that area of the Western Isles?
- 13 A. That's correct.
- 14 Q. Right. So Mr Beer has examined some of the material in
15 relation to another statement that deals with the
16 question of contact from the Post Office with the Lord
17 Advocate's office, yes?
- 18 A. Yes.
- 19 Q. Okay. Would it be fair to say that any issues that may
20 have had an impact on your decision making for
21 prosecutions within the Western Isles area, should have
22 been, therefore, provided to you?
- 23 Shall I try that again?
- 24 A. Please.
- 25 Q. All right. If the Lord Advocate's office is provided

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- 1 considering whether you're going to cause difficulties
2 for the sheriff, for the judge, when it comes to
3 sentencing. I mean, if I were to accept a plea of
4 guilty to £5,000, that would have been a considerable
5 difference. As it stood, the difference between 27,000
6 and 40,000 would really not have affected his sentencing
7 powers. If he'd have wanted to send Mr Quarm to prison,
8 he could just as well have done it to the basis of
9 27,000 as 40,000.
- 10 MR BEER: Thank you.
- 11 Mr Teale, they're the only questions I ask.
- 12 I think there are some questions from Mr Stein.
- 13 **Questioned by MR STEIN**
- 14 MR STEIN: Mr Teale, I've just got a few questions for you.
- 15 I represent subpostmasters and mistresses. I'm
16 instructed by a firm of solicitors called Howe+Co, okay?
- 17 Can you just help me a little bit by way of the
18 procedure in Scotland. You were appointed the
19 Procurator Fiscal for the jurisdiction of the Western
20 Isles, is that correct, in 2000?
- 21 A. Yes.
- 22 Q. You left that post in 2015?
- 23 A. Yes.
- 24 Q. Okay. Above you, in terms of the system, who would be
25 the next person, if you like, as a line manager? Would

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- 1 with some information about issues that related to the
2 prosecution of Post Office cases, should that have come
3 down to you?
- 4 A. It would depend entirely on what the information is and
5 whether the Lord Advocate thought it appropriate that
6 Procurator Fiscals on the ground should be aware of it.
- 7 Q. Right. Well, if it is of the nature of information that
8 relates to, say, the reliability of the Horizon system,
9 should that have come to you?
- 10 A. If it's of the level that the Lord Advocate has
11 indicated that it was, yes, and I understand that it did
12 come down.
- 13 Q. All right. Did it come to you? Mr Beer asked a number
14 of questions and you've used the term -- many a time you
15 used the term, "I can't recall, I can't remember"?
- 16 A. Yes.
- 17 Q. Did it or did it or not come to you?
- 18 A. How can I answer that? I can't recall whether it did or
19 not.
- 20 Q. Right. So it's a lack of recollection?
- 21 A. Correct.
- 22 Q. Right. So you're saying, essentially, that you do not
23 know whether or not it was sent to your office?
- 24 A. Correct.
- 25 Q. Okay. How do we check?

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1 A. I suppose your first port of call would be Crown Office.
 2 Q. Okay. Right. Now, moving on to Post Office cases, so
 3 concerning the prosecution of subpostmasters,
 4 mistresses, managers of post offices and employee staff
 5 at post offices, okay. In police cases, you get
 6 information from police officers; is that correct?
 7 A. They're often the reporters of cases, yes. The
 8 reporting officers, yes.
 9 Q. Because in police cases, the police themselves are the
 10 investigators, they're the reporters, normally to your
 11 office when you were in charge at the Western Isles as
 12 a Procurator Fiscal; is that correct?
 13 A. Yes.
 14 Q. Okay. So with police cases, you've got a basic
 15 understanding that these are police officers who have
 16 been trained in their job; is that correct?
 17 A. Correct.
 18 Q. They've been trained in the work of an investigator; is
 19 that correct?
 20 A. As far as I know, yes.
 21 Q. Well, when you say as far as you know, you should know,
 22 shouldn't you, Mr Teale, because of your work?
 23 A. They are.
 24 Q. They are, precisely. You're also aware that, therefore,
 25 their training will include how PACE works -- yes -- the

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1 guidance as to how your office should deal with Post
 2 Office cases?
 3 A. There was guidance from COPFS to the reporting agencies
 4 indicating what COPFS required of them, by way of
 5 reports and investigations. Does that answer your ...
 6 Q. Perhaps it does. Did that guidance go to the question
 7 of the quality of the information that was being
 8 provided; do you recall?
 9 A. Yes, in fact, I think the document we have here, it was
 10 provided to me yesterday, I think.
 11 Q. Just helping one step further, if we can, please. In
 12 relation to the Post Office, do you agree that one of
 13 the factors that's different to the police cases for the
 14 Post Office is that, in the Post Office cases, the Post
 15 Office is the victim?
 16 A. Yes.
 17 Q. Did you ever give that any pause for thought and think
 18 to yourself: have we got something here in relation to
 19 post offices that is, say, different from a police case?
 20 A. Yes, it's certainly something that, yes, I have
 21 considered.

22 It's a commercial organisation and that has been
 23 apparent to me throughout my career. Other reporting
 24 agencies have got their own priorities, like DWP, loss
 25 of funds to the public purse. But, yes, you're always

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1 Police and Criminal Evidence Act?
 2 A. I don't know if that applies in Scotland.
 3 Q. All right.
 4 A. I think there's an equivalent.
 5 Q. Equivalent in Scotland, the system of prosecutions, the
 6 checks and balances in relation to the collection and
 7 presentation of evidence?
 8 A. Yes.
 9 Q. Okay.
 10 A. I think it's a 2010 Act --
 11 Q. I'm very grateful.
 12 A. -- that regulates that.
 13 Q. Also you're aware that, as regards the police, that they
 14 have systems in place, so that they have --
 15 operationally, there are police officers, there are
 16 Sergeants, Inspectors, there's an entire system of
 17 checks and balances in relation to police work; do you
 18 agree?
 19 A. I'm not certain if that would be checks of balances, but
 20 there is that range of authority, yes.
 21 Q. Okay. Now, as far as you can recall, were you ever
 22 given any information about the training and experience
 23 of Post Office Investigators?
 24 A. No.
 25 Q. As far as you can recall, was there any protocol or

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1 considering that, whenever you're looking at a case, is
 2 there any reason to suspect that something might not be
 3 as straightforward as it appears?
 4 Q. As you say, in relation to a commercial organisation,
 5 something like the Post Office, which also has
 6 a reputation to uphold, how would you apply that
 7 thinking to the analysis as to whether a case should go
 8 ahead?
 9 A. You've -- you're deciding on the basis of the evidence
 10 that's being supplied to you and I suppose, if you had
 11 some doubt that it was being manipulated or that it
 12 wasn't accurate, you would be very careful about
 13 proceeding.
 14 Q. Now, Mr Teale, you held a senior position in the system
 15 of prosecutions within Scotland for many years. You
 16 must have been following the progress of the proceedings
 17 in relation to Post Office cases. First of all, you're
 18 aware that 555 individuals took on the Post Office in
 19 the High Court; and, secondly, after that, in the
 20 Criminal Court of Appeal -- the Criminal Court of Appeal
 21 in England and Wales overturned many convictions later
 22 on; you're aware that, in Scotland, its own procedures
 23 are taking place in relation to convicted individuals;
 24 and, finally, of course, here you are at the Post Office
 25 Inquiry giving evidence in relation to your recollection

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1 of events that you were party to in Scotland when you
 2 were in post.
 3 You know now that defects, errors, bugs were found
 4 within the Horizon system. As we understand your
 5 evidence, you were never told about those bugs, errors
 6 or defects; is that correct?
 7 **A.** I can't recall being told about them.
 8 **Q.** Do you think you would have recalled, if you had been
 9 told?
 10 **A.** I can't say.
 11 **Q.** What do you think now about the fact that, as far as you
 12 know, you weren't told about bugs, errors and defects
 13 within the Horizon system? Do you think that's a matter
 14 that is of any concern to you now?
 15 **A.** Being told by COPFS?
 16 **Q.** Well, being told by all of the events that I've just
 17 described having taken place, the judgment in the High
 18 Court, the judgment in the Criminal Court of Appeal, the
 19 sheer fact that we're at the Post Office Horizon IT
 20 Inquiry. Does it give you any cause for concern that
 21 you weren't told, it seems, that there were bugs, errors
 22 and defects in the Horizon system?
 23 **A.** Well, I think the Lord Advocate made the position quite
 24 clear and, really, I don't think I can say anything
 25 further than that.

1 down, but there have been tweaks made to the approach to
 2 corroboration by the Appellate Courts in Scotland over
 3 time.
 4 **SIR WYN WILLIAMS:** Yes. Well, since we are not rushed for
 5 time today, I did notice that in the most recent
 6 Prosecutor Code you showed Mr Teale, the words "in
 7 general" were used in advance of corroboration being
 8 necessary.
 9 **MR BEER:** Yes.
 10 **SIR WYN WILLIAMS:** So it looks as if there are some tweaks,
 11 as you say. Fine.
 12 All right then. 10.00 tomorrow morning.
 13 **MR BEER:** Yes, please, sir. Thank you.
 14 **SIR WYN WILLIAMS:** Fine.
 15 (12.19 pm)
 16 (The hearing adjourned until 10.00 am the following day)

1 **Q.** Do you think it would have been a good idea for your
 2 office to have been told about those bugs, errors and
 3 defects, Mr Teale?
 4 **A.** I don't know.
 5 **MR STEIN:** Thank you, Mr Teale.
 6 **SIR WYN WILLIAMS:** Anyone else?
 7 **MR BEER:** No, I don't think there is, sir.
 8 **SIR WYN WILLIAMS:** Right.
 9 Well, thank you, Mr Teale, for providing your
 10 evidence in written and oral form.
 11 Just in case I wish to become a little better
 12 acquainted with the Scottish law of corroboration -- I'm
 13 not saying I will but just in case -- am I right in
 14 assuming that it's part of the common law of Scotland,
 15 it is not based on a statute?
 16 **A.** I think that's correct, yes.
 17 **SIR WYN WILLIAMS:** So if I wanted to have a greater
 18 understanding of how it operates, I'd probably need to
 19 look at a few leading cases from the High Court, yes?
 20 **A.** Stretching back many years, yes.
 21 **SIR WYN WILLIAMS:** Yes. Fine, all right. Thank you very
 22 much.
 23 **A.** Thank you.
 24 **MR BEER:** Sir, if it assists, you are right in that belief.
 25 Indeed, there have been -- I wouldn't call it watering

I N D E X

DAVID SUTHERLAND TEALE (sworn)	1
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