

## The Post Office Horizon IT Inquiry

### Submission on Behalf of Anne Chambers

4 March 2024

1. Mrs Chambers has not asked to be made a Core Participant in these proceedings and does not seek to make submissions on the evidence generally. However, we do raise a complaint on the content of submissions filed by counsel instructed by Hodge, Jones and Allen on behalf of former sub-postmasters including Mr Castleton, which submissions accuse Mrs Chambers of the criminal offence of perjury.
2. We respectfully submit that the allegation is unjustified. Had those submissions been made orally it might have been that the Chair would have intervened and queried whether that could properly be said. As it was, written submissions have been published on the Inquiry's website without comment or caveat.
3. Counsel enjoy absolute privilege from actions for defamation when acting for a client in judicial proceedings. However, in the case generally cited as authority for that proposition, *Munster v Lamb* (1883) 11 Q.B.D. 588, it was noted by the Court of Appeal in the course of argument that it was to be recognised that the judge has the opportunity to check or reprimand a barrister. That was part of the justification for determining that privilege protected false and malicious statements as the price of shielding the honest from the attack. The Court of Appeal also stressed that counsel should not abuse the privilege against suit.

4. In the written submissions now published, counsel state at paragraph 6:

*"that there is evidence to support the following allegations: ... c. Anne Chambers committed perjury when testifying in POL v Castleton, by agreeing not to mention the Known Error Log, and obscuring the potential for there to have been errors in the Marine Drive cash accounts."*

This seems to be an allegation that whilst Mrs Chambers did not tell a lie, she purposely and dishonestly withheld information which she was required to give, presumably in answer to some unspecified question. It seems to be an allegation of perjury by omission.

5. This is against a context in which Mrs Chambers specifically gave evidence in the Castleton trial as to the existence of the Callendar Square Bug. This is an allegation then that whilst she was speaking of bugs, the law somehow required her, of her own volition, to bring up the existence of KELs.
6. The elements of the criminal offence of perjury were set out in Millward [1985] Q.B. 519; (1985) 80 Cr. App. R. 280. They require there to have been a positive statement which was untrue. There is no such offence as perjury by omission. They are summarised in Archbold at 28-141:

...the following must be proved:

(a) that the witness was lawfully sworn as a witness;

(b) in a judicial proceeding;

(c) that the witness made a statement wilfully, that is to say deliberately and not inadvertently or by mistake (see §§ 17B-48 and 28-154);

(d) that that statement was false (as to which, see s.13, § 28-146);

(e) that the witness knew it was false or did not believe it to be true;

(f) that the statement was, viewed objectively, material in the judicial proceeding; by reason of s.1(6) this last requirement is a matter to be decided by the judge.

Note, however, that (d) is not strictly a separate requirement; what the statute requires is proof that the witness made a statement known to be false or not believed to be true.

7. At paragraph 58 of the document from the Core Participants the unsupported submission is made that, "*What is inescapable, we say, is that Anne Chambers gave perjured evidence in the Castleton trial.*"
8. Across paragraphs 79 to 89, she is criticised in various respects about a failure to tell "*the whole truth*". More could be said in response to those criticisms, but we only address here what would in other circumstances be a defamatory allegation of perjury.
9. Mr Castleton's witness statement in Phase One of the Inquiry states that Mrs Chambers gave *misleading evidence* (para.105). It is of course reasonable to allow a certain margin to the lay witness, particularly one who has had such a torrid time, and that statement was at a very early stage in proceedings. In any case, it falls substantially short of an allegation of perjury. However, the submissions of counsel go much further and, importantly, if counsel wished to make this attack, then they had the opportunity to put the allegation to Mrs Chambers.
10. Counsel to the Inquiry did not suggest through his questions that Mrs Chambers had committed perjury. No counsel for a core participant put that to her, and specifically counsel who have drafted these submissions did not do so. The relevant part of the transcript is at pages 146-7 of 27 September 2023 records Ms Page's questions:

Q. All right. Now, why did accept that you shouldn't refer to KELs?

A. I assumed that -- that's what they said and so that's what I did. Perhaps I should have questioned it but I was in a very unfamiliar situation for me, and --

Q. Why didn't you mention it in your afterthoughts document? Because, at that stage, obviously, you had been told by Mr Dillely what you'd been told about your disclosure obligations and, as we've just agreed, KELs would have been disclosable under that test. So why not mention the problem with you being told that you shouldn't refer to KELs in your afterthoughts?

A. I thought I did. Did I mention PEAKs in there?

Q. You certainly talked about including things like the event logs on the back of PEAKs and making sure that people had PEAKs, but not KELs.

A. Yes, that was an oversight on my part when I wrote the afterthoughts document, then. I mean, I perhaps thought that PEAKs, you know -- it wasn't just the KELs that weren't being disclosed; it was PEAKs, which I think, to me, I thought was important as well but, yes, maybe KELs equally so, but I didn't include it in that document, but for no reason.

Q. Did it not strike you even then as perhaps slightly suspicious that nobody wanted you to mention known error logs with that title being what it was?

A. I don't think I thought of it as suspicious. I thought it seemed strange but, as I said, I was in a very unfamiliar situation.

11. Ms Page thus pulled any punch of an allegation of perjury. Indeed, she then went on to put to Mrs Chambers the possibility that she had suffered from confirmation bias (a suggestion which is inconsistent with an allegation of perjury).
12. These are not adversarial proceedings, but there must nevertheless, indeed perhaps accordingly, be a constraint on what can be said in a public forum (and published on the internet) about an individual. The considerations debated in *Munster v Lamb* must be developed to meet the modern reality.
13. We note that the submissions have been picked up by the national press, the allegation published in the Telegraph over the weekend. Predictably, the submissions are the news story, with no comparative exercise as between them and the evidence.
14. We acknowledge that Mrs Chambers remains under police investigation. One might submit that fact gives cause to restrict the publishing on the Inquiry website of conclusionary statements that she is guilty of criminal offence. Yet in fact, there is now so much more information available than there was at the time Mrs Chambers was referred to the DPP, that the allegation is clearly wrong. We respectfully submit that no-one who heard or has read her evidence could put forward in good conscience the suggestion that she committed perjury in the Castleton trial. That is simply not supported by the evidence.
15. If the written submissions are to remain in their current form, we respectfully invite the Chair to make a statement by way of health warning to accompany them, limited to the unsupported allegation of perjury.

**4 March 2024**

**Stuart Biggs**

**Cloth Fair Chambers**